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# FAX COVER SHEET

Date: 12-16-04

To: Bob O'Connor From: Lori Welch

Company: Sun Dept.:

Phone: 781/442-0489 Phone: 408/540-0430

Fax: 781/442-1699 Fax: 408/540-0215

Subject:

Number of Pages (including cover): 20 Hard Copy to Follow: Yes ____ No ____

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Previous MSA w/ Sun

cc:

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**TRIAL EXHIBIT 484**

CASE NO. 10-03561 WHA

DATE ENTERED_____

BY_____
DEPUTY CLERK

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# MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT ("AGREEMENT") IS MADE AND ENTERED INTO, ON AND AS OF THE EFFECTIVE DATE, BY AND BETWEEN SUN MICROSYSTEMS, INC., ON BEHALF OF ITSELF, AND ITS DIVISIONS, SUBSIDIARIES AND AFFILIATES ("SUN"), AND THE SUPPLIER IDENTIFIED BELOW.

IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS CONTAINED HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:

**SERVICES:** Supplier shall perform Services pursuant to Purchase Orders issued by Sun for the period commencing on the Effective Date and continuing until terminated as provided in the Terms and Conditions herein. Supplier shall perform the Services set out in each Purchase Order (including any accompanying Scope of Work ) accepted by Supplier and referencing this Agreement. Capitalized terms used herein shall have the definitions set forth in the Terms and Conditions, which shall apply to all Services rendered under this Agreement.

**INSURANCE:** Supplier shall maintain in force the policies of insurance in the amounts set forth below, with terms and coverages reasonably acceptable to Sun (including thirty (30) days written notice to Sun prior to the cancellation or termination of any such insurance policy). Supplier shall provide evidence of such policies to Sun upon its request.

| | |
|---|---|
| Workers Compensation Insurance | as required by statutory limit in the state where work is performed |
| Employer's Liability Coverage | $500,000 per accident/disease |
| Commercial General Liability Insurance | $1,000,000/$500,000 combined single limit per occurrence |
| Automobile Liability Insurance | $1,000,000/$500,000 per occurrence |
| Professional Liability Insurance/Errors and Omissions (licensed professionals and programmers) | $1,000,000 per occurrence |

Supplier will maintain Professional Liability Insurance for a period of one year after acceptance of the results of the Services, if coverage is provided on a claims made basis. Sun shall be named an additional insured on Supplier's CGL policy. Supplier agrees to add the following endorsement to its insurance policy: Supplier's insurance is primary and not excess, and Sun's insurance, if any, is secondary and non-contributory." The foregoing insurance requirements and liability limits shall not limit, nor qualify the liability of Supplier under this Agreement. If not required to carry workman's compensation under state law, Supplier agrees to maintainin in force personal health insurance.

**PAYMENT FOR SERVICES:** Supplier shall be compensated as provided in the Purchase Order and any applicable Scope of Work. If Sun is to reimburse travel and related expenses, Supplier shall comply with the Contractor Travel Guidelines, attached as Exhibit A. Supplier's invoice shall comply with Sun's Invoicing Guidelines, attached as Exhibit B. Sun's payment will be made, according to the terms of payment, upon receipt of Supplier's complying invoice by Sun's Accounts Payable department. Payments are considered made by Sun on the date of mailing, as evidenced by the postmark. In no event will Sun be liable to pay any interest, late fees or penalties under this Agreement.

**TERMS OF PAYMENT:** 2% 10 Net 45 (2% discount for payment 10 days or net 45 days from date a correct invoice is received by Sun's Accounts Payable Department)

**SUN DISCOUNT:** In addition to the prompt payment discount, Supplier will furnish Sun a discount off the amount set out in every invoice submitted to Sun under this Agreement as provided in the attached Discount Schedule.

This agreement shall not take effect unless and until an Agreement Number has been assigned by Sun Global Supplier Management (GSM) representative.

*(TO BE COMPLETED BY SUN GSM)*

IN WITNESS WHEREOF, the parties hereto have signed this Agreement, as of the Effective Date below:

**SUN MICROSYSTEMS, INC.**

Signed: David Whiteman

Typed Name: David Whiteman

Title: Contracts Manager

Date: 7/31/02

Address: 4150 Network Circle
Mailstop: SCA12-115
Santa Clara, CA 95054

Contact Name: David Whiteman

Contact Phone: (408) 404-8232

Contact FAX: (408) 404-8232

Contact Email: david.whiteman@sun.com

**AGREEMENT NUMBER:** TS2784-0704

**EFFECTIVE DATE:** 8/1/02

**EXPIRATION DATE:** 7/31/04

**Venturi Partners** now Comsys

("SUPPLIER")

Signed:

Typed Name: Sarah Gordee

Title: Regional Manager

Date: July 18, 2002

Address: 1043 N. Shoreline Blvd., Ste. 101
Mountain View, CA 94043

Contact Name: Sarah Gordee

Contact Phone: 650/230-9132

Contact FAX: 650/964-8719

Contact Email: sgordee@venturipartners.com

Federal Tax ID Number: 56-1977717

State Tax ID Number: 42364166

URL: www.venturipartners.com



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## TERMS AND CONDITIONS

These terms and conditions supersede the preprinted terms and conditions appearing on the reverse side of any purchase order issued by Sun ("Purchase Order") and any terms and conditions that Supplier may transmit in its acknowledgment, acceptance or invoice. This Agreement does not constitute a Purchase Order or any other form of commitment to purchase Services. Sun will be liable under this Agreement only for those purchases of Services set forth in a written Purchase Order.

**1. Definitions**

1.1 "Deliverables" means Work Product and all products, technology, software, materials, or other items Supplier provides to Sun under this Agreement, including any Supplier Pre-Existing Work.

1.2 "Intellectual Property Rights" means all worldwide (a) patents, patent applications, and patent rights; (b) rights associated with works of authorship including copyrights, copyright applications, copyright restrictions, mask work rights, mask work applications, and mask work registrations; (c) rights relating to the protection of trade secrets and confidential information; (d) moral rights; (e) rights analogous to those set forth herein and any other proprietary rights relating to intangible property; and (f) divisions, continuations, renewals, reissues, and extensions of the foregoing (as applicable) now existing or hereafter filed, issued, or acquired.

1.3 "Position Services" means labor used to temporarily fill a position at Sun due to the cyclical nature of such Services or the temporary absence of a regular Sun worker, and includes any related or resulting Deliverables.

1.4 "Project Services" means labor used to accomplish tasks set forth on a Scope of Work, or tasks related to matters set forth on a Scope of Work, and includes any related or resulting Deliverables.

1.5 "Scope of Work" means a document approved by Sun, usually labeled "Scope of Work," that (a) describes Project Services, including, as applicable, a description of deliverables, milestones and related matters Supplier will provide to Sun; (b) describes any products, technology, software, materials or other items Supplier will provide to Sun; and/or (c) outlines Supplier's provision of Position Workers.

1.6 "Services" means Project Services or Position Services together with all Deliverables. The term "Services" shall not include contingency or retained search recruiting services or payroll services.

1.7 "Subcontractors" means third parties retained by Supplier to perform portions of the Services.

1.8 "Sun Proprietary Information" means any information disclosed to Supplier, or created by Supplier on behalf of Sun, which Sun deems to be confidential, including, but not limited to, documents, observations by Supplier, and discussion of Sun's technology, strategy, operations, internal corporate information, Sun customers, sources of supply, Sun personnel, methods and procedures, and the Work Product.

1.9 "Supplier Pre-Existing Work" means any designs, discoveries, inventions (whether or not patentable), products, computer programs (including source code), procedures, improvements, developments, drawings, specifications, data, memoranda, notes, documents, manuals, information, and other materials or property, made, authored, conceived or developed by Supplier prior to the Effective Date and disclosed in the Scope of Work.

1.10 "Position Workers" means individuals or Subcontractors employed or retained by Supplier, or any Subcontractors, who perform Position Services for Sun.

1.11 "Workers" means all individuals provided by Supplier who perform Services under this Agreement.

1.12 "Work Product" means all designs, discoveries, inventions (whether or not patentable), products, computer programs (including source code), procedures, improvements, developments, drawings, specifications, data, memoranda, notes, documents, manuals, information, and other materials or property, made, authored, conceived or developed by Supplier and its Workers, alone or with others, including any developed product, technology, or materials produced.

**2. Relationship of the Parties**

2.1 This Agreement is not intended to create a relationship such as a partnership, franchise, joint venture, agency or employment relationship. Neither party may act in a manner which expresses or implies a relationship other than that of independent contractor, nor bind the other party. Workers shall be the employees or Subcontractors of Supplier, and not of Sun, and Supplier shall be solely liable for the conduct of such Workers and their compliance with the relevant provisions of this Agreement.

2.2 Supplier is, and shall be, the sole employer of all Workers with regard to the Services (except for Subcontractors retained in accordance with Section 5.6). Supplier and Workers will provide the Services under the general direction of Sun, but the manner and the means by which the Services are provided are in the sole discretion of the Supplier and Workers. Supplier shall indemnify and hold Sun harmless from and against any claims or actions brought by any Worker or governmental agency with respect to a claim that such Worker is an employee of Sun, and from any and all damages, losses, liabilities, and expenses, including reasonable attorneys' fees and costs of litigation, arising out of or resulting therefrom.

**3. Purchase Orders**

3.1 Supplier will use its best efforts promptly to accept any Purchase Order issued by Sun under this Agreement. If Supplier rejects any Purchase Order, Supplier will do so promptly and state its reasons therefor. Upon issuance of a Purchase Order, and Supplier's acceptance thereof, Supplier will use its best efforts to provide, and to cause Workers to provide, the Services in accordance with the Scope of Work and the terms of this Agreement. All correspondence from Supplier, including all invoices, must reference this Agreement and the applicable Purchase Order number. Supplier shall indemnify and hold Sun harmless from and against any claims or actions brought by third parties with respect to the negligent performance of the Services by, or the willful misconduct of, Supplier or Workers, and from any and all damages, losses, liabilities and expenses, including reasonable attorneys' fees and costs of litigation, arising out of or resulting therefrom.

3.2 Supplier acknowledges that the full and timely provision of all Services (including all deliverables and milestones) is a material condition of this Agreement. In addition to any other remedies, Sun shall be entitled to terminate any Purchase Order for Supplier's failure to timely provide a deliverable or achieve a milestone meeting the requirements of the Scope of Work, including any acceptance criteria or specifications set forth therein.

3.3 Workers will not provide Services on an "overtime" basis, as that term is defined by applicable state and federal law, unless such overtime is planned and authorized in advance by the appropriate Sun manager. Sun will only compensate Supplier for overtime pay which has been pre-approved by Sun and which is properly paid to Workers who are not exempt from such overtime legislation under applicable law. (Sun will only compensate Supplier on a "straight time" basis for Workers who are exempt.)

**4. Change Orders**

Sun may issue written change orders to a Scope of Work or other terms of the Purchase Order ("Change Order"). If Supplier is compensated based upon an hourly rate for Services, the Scope of Work will be deemed amended upon the issuance of the Change Order. If Supplier is compensated based upon the timely delivery or completion of Services, the Scope of Work will be deemed amended unless Supplier delivers to Sun a proposal for a change in the Scope of Work, specifying any necessary adjustment of the contract price or schedule, within ten (10) business days after receipt of the Change Order. If Sun elects to proceed with the Scope of Work as proposed by Supplier, Sun will re-issue the Change Order specifying the changes to the Scope of Work, contract price and/or schedule. Supplier will not undertake any changes in the Scope of Work without a Change Order.

**5. Management of Workers and Compliance with Laws**

5.1 Supplier will be solely responsible for paying Workers for Services and will pay such Workers promptly (including making any agreed



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upon reimbursement of expenses), and in accordance with applicable state and federal wage and hour laws. Supplier shall indemnify and hold Sun harmless from any claim or action brought against Sun asserting that Supplier or Sun has violated any state or federal wage and hour law as a result of this Agreement, any Purchase Orders issued hereunder, or by the performance of Services, and from any and all damages, losses, liabilities and expenses, including reasonable attorneys' fees and costs of litigation, arising out of or resulting therefrom.

5.2 Irrespective of how Supplier is compensated by Sun, it is the intent of the parties that no Worker will be eligible for any Sun-sponsored benefits, including, but not limited to, paid vacation, sick leave, medical insurance, employee stock purchase plans, bonuses, awards, or 401k participation.

5.3 Before any Worker is permitted to perform Services on Sun's premises, Supplier will require such prospective Worker to complete and execute, the then current SunScreen Temporary Worker/Contractor Application ("SunScreen Application"), the current form of which is attached hereto as Exhibit C. Workers who have not performed Services on Sun's premises within the previous six (6) months must complete a new SunScreen Application. Sun may refuse to allow a Worker to perform Services on its premises based upon its evaluation of the information contained in the SunScreen Application.

5.4 Sun may at any time, with or without cause, require Supplier to remove any Worker from Sun's premises or to otherwise replace a Worker assigned to perform Services. Sun's sole liability and responsibility in connection with the replacement or removal of a Worker will be to pay Supplier for the Services actually performed by the Worker.

5.5 Sun may directly employ a Position Worker after completion by such Position Worker of a minimum number of hours or months of Services, as follows: for non-exempt Workers the earlier to occur of the completion of 504 aggregate hours or three (3) consecutive months of Services; and for exempt Workers, the earlier to occur of the completion of 1,008 aggregate hours or six (6) consecutive months of Services.

5.6 Supplier may retain Subcontractors. Each Subcontractor will be required to complete the then current Subcontractor Application Form ("Subcontractor Application"), the current form of which is attached hereto as Exhibit D, prior to the Subcontractor performing any of the Services. The costs of processing the Subcontractor Application shall be paid by Supplier. If Sun determines, in good faith, that the Subcontractor would not qualify as an independent contractor under federal or state income tax laws, Supplier may hire the Subcontractor as an employee or refer the Subcontractor to a Sun approved payroll service as a condition of utilization of the Subcontractor.

5.7 Supplier agrees to comply strictly with all United States export laws and the applicable export and import laws of other countries. Supplier shall obtain all necessary licenses to export, re-export, or import any information received from Sun as may be required. Unless authorized by the United States Government, Supplier will not, directly or indirectly, export the Work Product or any other items covered by this agreement, nor direct products therefrom, to any embargoed or restricted country identified in the United States export laws. Supplier and Workers must not be included on any United States export exclusion lists. Supplier shall not use items covered by this agreement nor direct products therefrom for nuclear, missile, or chemical biological weaponry end uses. Supplier will promptly notify Sun if it learns of any violations of export laws.

5.8 Supplier will comply with the provisions of the Equal Opportunity Clause set forth in 41 CFR 60-1.4(a) and Executive Order 11246 (as amended). Supplier further agrees to assign Workers to perform Services without regard to race, religion, national origin, color, age, sex, sexual orientation, marital status, pregnancy, physical or mental disability, veteran status, or any other classification protected by applicable local, state or federal employment discrimination laws.

5.9 Supplier will comply with all applicable laws and regulations in connection with the performance of the Services, including obtaining any necessary licenses or permits.

**6. Taxes**

Supplier is responsible for payment of all federal, state and local taxes due as a result of the performance of the Services. Supplier will report as income all compensation received hereunder. Supplier represents and warrants each Worker (except Subcontractors permitted under Section 5.6) has executed a Federal W-4 Withholding Allowance Certificate and an equivalent state personal income tax withholding form (if required). Supplier will issue and file accurate Form W-2 Wage and Tax Statements annually for each employee Worker and Form 1099 Statements for each Subcontractor. Supplier will indemnify and hold Sun harmless from any obligation to pay to any governmental entity any employer statutory taxes, withholding taxes, social security taxes, unemployment or disability insurance or similar charges or imposts (including any interest or penalties thereon) in connection with the Services, and from any and all damages, losses, liabilities, and expenses, including reasonable attorneys' fees and costs of litigation, arising out of or resulting therefrom. In no event will Sun be liable to pay sales or use tax in connection with the Services or Work Product unless Sun has agreed in writing to be liable for such taxes and such taxes are separately stated on Supplier's invoice.

**7. Warranties and Intellectual Property Rights**

7.1 Supplier warrants that Services: (a) will be performed by qualified Workers, (b) will be of a quality conforming to the highest standards in the industry, and (c) will conform to any applicable specifications in the Scope of Work. In addition, Supplier warrants that Deliverables do not contain any virus, worm or other harmful code.

7.2 Supplier represents and warrants that Supplier and its Workers are, and will be, the sole developers of any Work Product; that each Work Product is original and does not infringe or misappropriate any Intellectual Property Right of any third party; that the Work Product does not violate the privacy of or defame any third party; and that Supplier has the right to make disclosure and use of all ideas, processes, designs, data, and other information disclosed or used by Supplier and its Workers in the performance of the Services and has obtained all necessary releases and assignments, including the Worker Statement described in Section 8.5. Supplier represents and warrants that Supplier and its Workers are under no preexisting obligation or obligations inconsistent with the provisions of this Agreement.

7.3 If any claim of infringement or misappropriation of Intellectual Property Rights is made by any third party against Sun with respect to Deliverables, Sun will promptly notify Supplier, and Supplier will defend, indemnify and hold Sun harmless against any and all damages, losses, liabilities and expenses, including reasonable attorneys' fees and costs of litigation, arising out of or resulting therefrom, whether or not the claim ultimately is successful.

7.4 If Sun is enjoined, or likely to be enjoined, from using any of the Deliverables, or otherwise exploiting the results of the Services, because of a claim of infringement or misappropriation of Intellectual Property Rights of any third party, Supplier will, at its own expense, use its best efforts to (i) obtain for Sun the right to continue using such Deliverables or results of the Services; or (ii) replace or modify the Deliverables or results of the Services to make them non-infringing, so long as the replacement or modification conforms to the Scope of Work. If neither of the foregoing alternatives is commercially feasible, Supplier will accept return of the infringing Deliverables and refund all payments made by Sun with respect to the affected Purchase Order.

7.5 EXCEPT AS PROVIDED IN THIS AGREEMENT, SUPPLIER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY CONCERNING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**8. Confidentiality, Assignment of Inventions and Ownership of Work Product**

8.1 Supplier and Workers will hold Sun Proprietary Information in confidence and not disclose Sun Proprietary Information to others, unless: (i) such information is generally available to the public, through no fault of Supplier and Workers and without breach of this Agreement; (ii) such information was already in the possession of Supplier without restriction prior to any disclosure by Sun hereunder; (iii) such information was lawfully disclosed to Supplier by a third party without an obligation of confidentiality upon Supplier; or (iv) Supplier can prove that such information was developed independently by Supplier without use of information disclosed by or developed for Sun and without the participation of Workers.

8.2 Supplier will: (i) not copy, sell, disclose, make public or authorize any disclosure or publication of any Sun Proprietary Information except in response to a valid subpoena or other legal process, provided that Supplier has given Sun timely written notice promptly after receipt thereof; (ii)



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take all reasonable and necessary steps to assure that Workers do not disclose, make public, or authorize any disclosure or publication of any Sun Proprietary Information; (iii) not use Sun Proprietary Information for any purpose other than in the performance of the Services; and (iv) return all Sun Proprietary Information to Sun no later than fifteen (15) days after the date of termination of this Agreement or the applicable Purchase Order, or upon Sun's written demand.

8.3 All Work Product and Intellectual Property Rights therein, together with any Information Supplier and Workers may receive from Sun while performing Services, belongs and will belong exclusively to Sun; provided, however, that Supplier retains ownership of Supplier's Pre-Existing Work. Sun will have the sole right to obtain and to hold in its own name copyrights, patents, mask works rights, trademark registrations, or such other legal protection as Sun may deem appropriate to protect the Intellectual Property Rights in such Work Product and any derivative work thereof. Supplier agrees to attach such notices or legends to the Work Product as Sun may instruct. Sun will have the sole right to determine the method of protection of the Intellectual Property Rights in any Work Product.

8.4 Supplier agrees: (i) to disclose promptly in writing to Sun all Work Product; (ii) to assign, and Supplier hereby does assign, to Sun all rights to Work Product, including, but not limited to, all Intellectual Property Rights; and (iii) to cooperate with and assist Sun, or Sun's designee or assignee, to apply for and to execute any applications and/or assignments reasonably necessary to obtain, evidence or perfect any Intellectual Property Right in such Work Product. Supplier hereby grants Sun a fully paid-up, worldwide, unrestricted license in perpetuity to use, reproduce, modify and distribute any material or Intellectual Property Right owned by Supplier (including, but not limited to, Supplier's Pre-Existing Work) which is necessary to the full and unrestricted enjoyment or utilization of the Work Product or results of the Services. The foregoing license rights are also granted with respect to any Work Product where Supplier's assignment is precluded by law or otherwise ineffective. These obligations to disclose, assign, assist, execute and license will survive termination of this Agreement.

8.5 Supplier agrees to procure the written agreement of each Worker to the terms of the then current Worker Confidentiality and Assignment Agreement, a current copy of which is attached as Exhibit E ("Worker Agreement"), and will maintain copies of such statements available for audit under the provisions of Section 10.2.

8.6 Supplier acknowledges that any breach or threatened breach of this Article 8 will constitute an irreparable injury to Sun, and that monetary damages will be inadequate. Therefore, in addition to any other available rights or remedies, Sun will have the right to have an injunction issued against Supplier to prevent any further or threatened breach. Supplier hereby waives any requirement for the posting of a bond or any other security if Sun seeks an injunction hereunder.

## 9. Term and Termination

9.1 The term of this Agreement shall commence on the **EFFECTIVE DATE** specified on page one above and continue until the **EXPIRATION DATE** also specified on page one above unless terminated in accordance with this Section 9.1 ("Term"). This Agreement, including any affected Purchase Order, will be terminated upon the occurrence of any of the following: (a) without notice, upon the liquidation or dissolution of Sun or Supplier; (b) upon notice, in the event of the other party's material breach of this Agreement, which breach continues uncured for a period of ten (10) days following the breaching party's receipt of the non-breaching party's written notice of breach; (c) upon thirty (30) days prior written notice given by either party to the other party for its convenience; (d) upon notice by Sun, if Sun receives information indicating that Supplier has given any agent or employee of Sun any compensation, gratuity, gift, remuneration or perquisite of any kind whatsoever in connection with the solicitation or award of any Purchase Order; or (e) upon notice by Sun, in the event of the direct or indirect taking over or the assumption of control of Supplier or of substantially all of its assets by any governmental agency or other third party. All Services will continue during the period after notice and prior to termination in accordance with the terms and conditions of this Agreement. Any notice given hereunder shall specify the number of any Purchase Orders which are terminated.

9.2 Termination of this Agreement will not cause a termination of any open Purchase Order which is not terminated, and the terms and conditions of this Agreement will continue to apply to the open Purchase Order until completed or terminated. Termination of this Agreement or the completion of any applicable Purchase Order will not relieve Supplier of its obligations under Sections 2.2, 3.1, 5.1, 10.2, Articles 6, 7, 8, and 9 and the relevant provisions of Article 12, nor will any such termination or completion relieve Supplier or Sun from any liability arising from any breach of this Agreement.

9.3 Upon termination of this Agreement, Supplier will be entitled to receive payment for Services rendered through the effective termination of, or satisfactory completion of, any open Purchase Order. As a condition to receiving final payment under this Section, Supplier immediately will deliver to Sun: (a) any property of Sun (including Sun Proprietary Information) in the possession or control of Supplier, or Workers, in good condition, reasonable wear and tear excepted; and (b) all Deliverables, whether finished or unfinished. Sun will not be responsible for any costs incurred after the effective date of termination of this Agreement, other than pursuant to open Purchase Orders that are not terminated.

## 10. Reporting and Audit Rights

10.1 Supplier shall furnish to Sun such reports as are required by Exhibit F, and as set forth in the Purchase Order, in a timely manner.

10.2 Upon request by Sun during the Term and for a period of seven (7) years thereafter, Supplier will furnish to Sun written evidence of Supplier's compliance with its obligations under this Agreement and the status of the Services. During the Term, and for a period of seven (7) years thereafter, Supplier further will keep proper books of record and account, in accordance with generally accepted accounting practices consistently applied, and documentation relating to the Services. Upon five (5) business days notice, Supplier will permit Sun, or an independent accounting firm designated by Sun, to examine, inspect and copy, at Supplier's facility and during normal business hours, all relevant books, records and documents of Supplier for the purpose of determining Supplier's compliance with the terms of this Agreement, the correctness of any invoices to Sun for costs and expenses, and the Services provided hereunder. If the audit discloses any material discrepancy in the amounts invoiced Sun from those actually due, Supplier shall promptly refund any overpayment.

## 11. Assignment

Supplier may not delegate any obligation hereunder (except to Subcontractors permitted under Section 5.6) nor assign this Agreement, in whole or in part, without the prior written consent of Sun. Any attempted assignment or unauthorized delegation by Supplier will be null and void. The rights and obligations of the parties hereunder will be binding upon and inure to the benefit of their respective successors, permitted assigns, executors, and administrators.

## 12. Miscellaneous

12.1 Neither party shall bring any action to enforce the terms of this Agreement except in a court of appropriate subject matter jurisdiction in Santa Clara County, California, and the parties expressly consent to personal jurisdiction and proper venue by and in such court. The prevailing party in such action will be entitled to recover its costs and expenses in connection with the action, including reasonable attorneys' fees. This Agreement will be governed by California law and controlling U.S. federal law. No choice of law rules of any jurisdiction will apply. If any provision of this Agreement is held invalid, illegal, or unenforceable, the validity, legality or enforceability of the remaining provisions will in no way be affected or impaired thereby. Any waiver of any provision of this Agreement, or a delay by either party in the enforcement of any right hereunder, shall neither be construed as a continuing waiver nor create an expectation of non-enforcement of that or any other provision or right.

12.2 Any notice required under this Agreement will be in writing and will be sent to each party at the address on the first page of this Agreement. Notices will be effective when received and will be sent via personal delivery, certified or registered mail (return receipt requested), or via overnight courier.

12.3 A party is not liable under this Agreement for non-performance caused by events or conditions beyond that party's control, if the party



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gives prompt notice and makes all reasonable efforts to perform.

12.4 Supplier will not use Sun's name or logo in any form of publicity or release, or otherwise make public disclosure of the existence of this Agreement, any Purchase Order or Scope of Work, or the terms hereof or thereof, except with the specific written approval of Sun. No license to the trademarks, trade names or service marks of either party is granted under this Agreement.

12.5 This Agreement, together with its Exhibits, is the parties' entire agreement relating to its subject matter. It supersedes all prior or contemporaneous oral or written communications, proposals, conditions, representations and warranties, and, except as set forth in an accepted Purchase Order, prevails over any conflicting or additional terms of any quotation, acknowledgment or other communication between the parties relating to its subject matter. No modification to this Agreement will be binding, unless in writing and signed by an authorized representative of each party.

12.6 If any inconsistencies or conflicts arise between the provisions of this Agreement, a Scope of Work or a Purchase Order, the following order of precedence shall apply: (1) the Agreement, (2) the Scope of Work, and (3) the Purchase Order.

12.7 The parties understand that this Agreement cannot be amended through an engagement letter or other document, without the prior written consent of Sun GSM Counsel. Any engagement letter or other document that pertends to amend this agreement without the prior approval of Sun GSM Counsel is null and void.



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# Exhibit A – Contractor Travel Policy

1. **PURPOSE**

The following policy provides a framework to clarify and simplify the travel reservation, expense reporting and approval processes for business travel and expenses.

2. **SCOPE**

This travel policy applies to all contractors incurring travel expenses on behalf of Sun Microsystems Inc., its divisions and subsidiaries (Sun).

3. **DEFINITIONS**

3.1 "Contractor" – Any Sun-approved supplier and/or any worker supplied by the Sun-approved supplier, traveling on behalf of Sun.

3.2 "Denied Boarding Compensation" – Compensation, such as a ticket voucher, offered by an airline as compensation for denying boarding to a ticketed passenger.

3.3 "Hotel "no-show" Charges" – Fees assessed by the hotel for unused reservations that were not cancelled prior to the hotel's cancellation deadline.

3.4 "Lowest Logical Airfare" – The most inexpensive airfare available at the time of booking dependant on fare availability and logical routing.

3.5 "Prepaid Tickets" – Tickets booked in advance but issued by the airline at the airport, generally on the day of departure and for an additional fee.

3.6 "Secondary Airport" – An airport within the same metropolitan region, but less convenient than a Contractor's primary airport choice.

4. **RESPONSIBILITY**

4.1 All Sun Managers, and the Contractor, are accountable for implementing this policy and ensuring adherence in their respective staffs.

4.2 All Sun and Contractor Managers, Directors, Vice Presidents and Officers are accountable for ensuring adherence to this policy when approving business travel and expenses.

5. **POLICY**

Travel should only be undertaken when ordinary business communications are not sufficient to accomplish the business mission. The cost of business travel should be reasonable and comply with this policy. This document supersedes any and all previous guidelines and/or policies on business-related travel.

5.1 **Travel And Expense Approval** – The applicable Sun Manager's written approval is required prior to the Contractor incurring any travel-related expense.

5.2 **Air Transportation**

***Airfares*** – Contractors should accept the Lowest Logical Airfare, taking advantage of fares that carry cancellation penalties. Secondary Airports should be considered if substantial savings are available after factoring in additional commuting costs. Frequent flyer preference is not a valid reason for rejecting the Lowest Logical Airfare. When travel is required, every attempt must be made to purchase airline tickets 21-days in advance to take advantage of the lowest possible airfare. At no time should the Contractor's airline tickets be purchased within fourteen (14) days of the travel date without the Sun Manager's prior approval.

***Class Of Service*** – All international and domestic travel shall be economy or coach class only. Any incremental cost for upgrading to a higher class will be paid by the Contractor, not Sun.

***Prepaid Tickets*** – Prepaid Tickets are strongly discouraged, and are to be used only when approved in advance by the Sun Manager.

***Denied Boarding Compensation*** – Denied Boarding Compensation is retained by the Contractor.

5.3 **Automobile Transportation**

***Personal Car*** – Mileage is reimbursable only for round trips exceeding 120 miles, at a rate of $.32.5 per mile. No reimbursement will be made for any loss or damage that occurs to Contractor's personal vehicle, whether or not Contractor is travelling on business. Contractors are responsible for maintaining their own insurance.

***Rental Car*** – Compact cars should be reserved, however, if three or more passengers are in an auto, a mid-size car is permitted. Contractor is required to refuel the automobile prior to returning to the rental agency.

***Airport Transportation*** – Use of free hotel shuttle is preferred. Alternate methods of transportation, such as limousines, etc., must be approved in advance by the appropriate Sun Manager.

5.4 **Insurance** – All auto, travel, or any other required insurance coverage is the responsibility of the Contractor, not Sun.

5.5 **Hotel Accommodations** – Cost of accommodation should not exceed the general standard rate for a single room in the area being visited. Guarantee of hotel room reservations will be made with the Contractor's credit card. The Contractor is responsible for all Hotel "No-Show" Charges.

5.6 **Credit Cards** – The Contractor is responsible for the timely payment of all charges to his/her credit card. Late charges on credit cards are the responsibility of the Contractor and will not be reimbursed by Sun.

5.7 **Receipts/Invoicing** – Receipts are required to support all expenses, which must be itemized on the Contractor's invoice detailing the purpose of the trip.

5.8 **Meals** – Actual meal expenses will be reimbursed if original receipts are provided, and the meal costs are reasonable for the area in which the expense is incurred. Business entertainment expenses related to Sun are reimbursable only if reasonable and approved in advance by the appropriate Sun Manager.

5.9 **Direct Bills** – Contractors are not allowed to direct bill any expenses to Sun. This includes, but is not limited to hotel, auto or limousine service. All travel expenses will be paid by the traveller at the time of service.

5.10 **Telephones** – Business telephone calls dealing with Sun business are a reimbursable expense while traveling.

5.11 **Miscellaneous Travel Expenses** – Reasonable miscellaneous travel expenses such as tips/gratuities are reimbursable, and if meal related, are to be reported in the cost of the meal. Personal travel combined with business travel is permitted at either end of a business trip when authorized in advance by the appropriate Sun Manager. Any costs (i.e. hotel, automobile, additional airfare, long distance calls, meals, etc.) associated with personal travel are not reimbursable by Sun. Detailed information must be provided in the Contractor's invoice regarding any airfare differentials between the business and personal travel. Any differences will be the responsibility of the Contractor. Reasonable laundry expenses will be reimbursed while traveling on Sun business if the required stay is longer than one (1) week.

5.12 **Non-Reimbursable Travel Expenses**

- Airline club fees
- Rental Premium Services (fee charged)
- Magazines, movies and newspapers
- Home maintenance and family care expenses
- Medical expenses, personal legal charges, traffic violations
- Lost, damaged or stolen personal items, including, but not limited to luggage, cash, wallets, clothing and briefcases.

**(End of Document)**



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## Exhibit B - Invoicing Guidelines

The following constitute the guidelines which should be adhered to by Suppliers in sending invoices for the Temps @ Sun program. Failure to follow these Invoicing Guidelines may result in delayed payment to Supplier. Capitalized terms used herein shall have the definitions set forth in the Terms and Conditions of the applicable agreement between Sun and Supplier.

1. The Temps @ Sun program will utilize PrO's e-procurement system (WAND) which will allow all contingent workers to report time and expenses online. Additional billing items such as Sales tax, Adjustments, and Expense report receipts should be forwarded in writing to:

   PrO Unlimited, Inc.
   Attention: Billing Services
   10370 Old Placerville Road, Suite 100
   Sacramento, CA 95827

2. All additional invoicing must have the correct WAND order number listed so that it can be properly processed.

3. Invoices will be created weekly from PrO's e-procurement system (WAND) to Sun on behalf of the suppliers.

4. Suppliers will be required to reconcile their workers time in the WAND system each week. This will enable the Suppliers to process their workers payroll. Supplier is required to adhere to applicable law: (a) Supplier has paid, or will pay, its Worker(s) for the Services; (b) Supplier has made, or will make, all required tax withholdings from its Worker(s); and (c) Supplier has paid, or will pay, any required tax contributions pertaining to its Worker(s).

5. Upon discovering any discrepancy in an invoice or payment, Supplier will promptly notify PrO so that the parties may resolve the discrepancy. Payment of any discrepant invoice shall not be deemed overdue during such time as PrO is using reasonable efforts to resolve such discrepancy, and the time for payment shall be extended during the period PrO is undertaking to resolve the discrepancy.

6. Sun shall be entitled to withhold payment of any invoice, or portion of an invoice, where Supplier has failed to submit proper documentation or where the amount of the invoice is disputed by Sun. Sun / PrO shall notify Supplier of such action and shall work with Supplier to promptly resolve any dispute. The time for payment of the invoice shall not commence until proper documentation has been submitted, or the dispute has been resolved.

7. Expenses incurred by Supplier in connection with the performance of Services generally shall be considered a cost of doing business. Reimbursement of specific expenses shall only be made if reimbursement of that expense is approved in writing by the Sun Manager in advance of being incurred, and if such expenses are reasonable in amount. All reimbursable travel-related expenses must be in accordance with Sun's Contractor Travel Policy, attached as Exhibit A, in order to be eligible for reimbursement. Invoice amounts for reimbursable expenses shall be listed as a separate line item on Supplier's invoice.



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## Exhibit C – Sunscreen Temporary/Contractor Application & Fax Cover Sheet

Sun microsystems

# Sunscreen
## Fax Cover Sheet
## Fax Number: (408) 544-0512

**Fax Information**

| Date | Time Sent | Total # of Pages |
|---|---|---|
| | | |

**How to submit a Sunscreen**

1. Have the candidate complete the appropriate application:
   Sun Hires = Sun Employment application
   Temps and Contractors = Temporary/Contractor application
2. Review the application for completeness, legibility and signature date not over 60 days
3. Requestor information MUST be complete.
4. Submit the application, resume (for Sun hires), and this cover sheet to Sunscreen.
5. Sunscreen has a 2-3 day turn around time. Due to restrictions from our vendors, there is a 1:30 pm cut off time. Any applications submitted after the cut off will not be started until the following business day.

**Requestor Information**

*Hiring Manager*

| Full Name | Employee # | Department # | Extension |
|---|---|---|---|
| | | | |

*Recruiter (Sun Hires Only)*

| Full Name | Employee # | Title | Extension |
|---|---|---|---|
| | | | |

*Human Resources Representative*

| Full Name | Employee # | Title | Extension |
|---|---|---|---|
| | | | |

For additional applicants, please use an additional cover sheet

**Applicant #1 Information**

| Full Name | Sun | Temp | Contr | Agency |
|---|---|---|---|---|
| | | | | |

| Social Security Number | Drivers License Number | State |
|---|---|---|
| | | |

**Applicant #2 Information**

| Full Name | Sun | Temp | Contr | Agency |
|---|---|---|---|---|
| | | | | |

| Social Security Number | Drivers License Number | State |
|---|---|---|
| | | |



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Sun microsystems

# Sunscreen

## Temporary / Contractor Application

***Rev 3.98***

Please print and complete this application thoroughly and neatly. If it is not complete or legible, it can not be processed. Circle or check questions with listed options such as "yes" or "no". The number of pages required to print this form may depend on your browser and printer settings. Please write your name at the top of each page before faxing. Please fax ALL PAGES including this heading.

| | | | |
|---|---|---|---|
| Last Name: | First Name: | | Middle Name: |
| Please list any other names that you have been known by (AKA's, aliases, maiden names, etc.): | | | |
| Current Address: | | | Home Phone Number: ( ) |
| City: | State: | Zip Code: | Work Phone Number: ( ) |
| Please list all previous addresses where you have lived during the past 5 years: | | | |
| Social Security Number: | Drivers License Number: | State: | Month and Day of birth: |
| Have you held any other drivers licenses within the past 5 years? If yes, please list states and license numbers: | | Yes | No |
| Have you ever worked at Sun ?: | No | Yes | If yes, you were a: Temp / Contractor / Employee |

| Employment History: | | | | | |
|---|---|---|---|---|---|
| 1. | Present (or most recent) Employer: | City and State: | Position: | Start Date: | End Date: |
| 2. | Previous Employer: | City and State: | Position: | Start Date: | End Date: |
| 3. | Previous Employer: | City and State: | Position: | Start Date: | End Date: |



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| | | | |
|---|---|---|---|
| 1. | Have you ever been convicted of a misdemeanor or felony OTHER THAN:<br><br>Convictions for which the record has been judicially expunged, sealed or eradicated<br><br>Misdemeanor convictions for which BOTH the probation has been completed or otherwise discharged AND the case judicially dismissed; or<br><br>Misdemeanor marijuana convictions that are more than two (2) years old?<br><br>If "yes", please list dates, places, charges and disposition: | Yes | No |
| 2. | Are you currently pending trial for any misdemeanor or felony offense for which you are out on bail or your own recognizance?<br><br>If "yes", please provide us with information regarding your charge, expected date of trial, trial location and an estimation of trial length: | Yes | No |
| 3. | Note: Do not include information regarding your participation in a pre or post trial diversion program.<br><br>Convictions include pleas, verdicts or findings of guilt (whether or not a sentence is imposed by the court). A conviction or current arrest is NOT an automatic disqualification from assignment. However, we do check this information and any misstatement, falsification, or material omission of information you have made may result in your failure to be approved for this assignment or the immediate termination of your assignment.<br><br>If you are unsure of how to complete this section, please consult with your attorney prior to signing this form. Please consult with your hiring agency if you need more time to complete this form. | | |

| | | |
|---|---|---|
| Agency Hiring Manager: | Position: | |
| Can you show evidence of the legal right to work in the U.S.? | Yes | No |





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| Are you a citizen of any of the countries listed below? | Yes | No |
|---|---|---|

| | | | | |
|---|---|---|---|---|
| Albania | Armenia | Azerbaijan | Belarus | Bulgaria |
| Cambodia | Cuba | Estonia | Georgia | Iran |
| Iraq | Kazakhstan | Kyrgyzstan | Laos | Latvia |
| Libya | Lithuania | Moldovia | Mongolia | North Korea |
| People's Republic of China | Romania | Russia | Sudan | Syria |
| Tajikistan | Turkmenistan | Ukraine | Uzbekistan | Vietnam |

I certify that all statements I have made on this application and any resume or other supplementary material submitted with this application, or other supplementary material are true and correct. In the event that I am placed on a temporary/contractor assignment at Sun Microsystems, Inc., I authorize Sun Microsystems, Inc. to investigate the accuracy of the information on my this form by contacting any person or organization, and I release Sun Microsystems Inc. and all persons and organizations from all claims and liability whatsoever arising from such an investigation. I acknowledge that my assignment at Sun Microsystems, Inc. is conditional upon the results of such investigation and upon my execution of the Worker Confidentiality and Assignment Agreement required for assignment to Sun Microsystems, Inc. If such investigation results in the disclosure of misleading or false information supplied by me, Sun Microsystems, Inc. may refuse this assignment, or if already assigned, may terminate my assignment.

Nothing on this Application creates a relationship of employment between me and Sun; rather I acknowledge that, at all times during my assignment I will be an employee of _____ Hiring Agency/Self-employed and that I will not be eligible for any benefits of employment from Sun including, but not limited to, wages, vacation, paid or unpaid leave, or participation in any Sun employee benefit plan. I acknowledge that this temporary or contract assignment is not a guarantee or representation that I will become an employee of Sun and that any statements or representations made to me with respect to such employment are not binding on Sun Microsystems, Inc. unless and until a written offer is made to me from the Human Resources Department of Sun Microsystems, Inc.

| I have read and understand the foregoing statement. | |
|---|---|
| Signature: | Date: |

# Exhibit D – Subcontractor Application Form

TO BE COMPLETED BY LABOR SERVICE SUPPLIER WHEN SUBCONTRACTING LABOR AT SUN"

"PLEASE NOTE: There will be a $300 processing fee for each Subcontractor Application Form, payable to PrO Unlimited.

Please complete, sign and forward this form along with the required documents to :

PrO Unlimited – Attn: Screening Desk
1350 Old Bayshore Hwy., Suite 350
Burlingame, CA 94010

Telephone: (650) 373-2412
FAX: (650) 401-6383
Email: screening@prounlimited.com

Labor Service Supplier Information:

Business Name: _____

Contact Name: _____ Title: _____

Street Address: _____

County: _____ City: _____ State: _____ Zip Code: _____

Telephone: _____ Fax: _____ Email: _____

Federal Employer ID Number: ___ ___ - ___ ___ ___ ___ ___ ___ ___

State Employer ID Number: _____ State issued: _____

Subcontractor Information:

Business Name (if applicable): _____

Contract Name: _____ Title: _____

Street Address: _____

County: _____ City: _____ State: _____ Zip Code: _____

Telephone: _____ Fax: _____ Email: _____

Federal Employer ID Number: ___ ___ - ___ ___ ___ ___ ___ ___ ___

State Employer ID Number: _____ State issued: _____

Type of Firm: ( ) Sole Proprietorship ( ) Partnership ( ) Corporation ( ) Other _____

Worker Information:

Name: _____ Other/Maiden Name (if applicable): _____

Address: _____

Telephone: _____ Fax: _____ Email: _____

Federal Employer ID Number: ___ ___ - ___ ___ ___ ___ ___ ___ ___

State Employer ID Number: _____ State issued: _____

Social Security No.: ___ ___ ___ - ___ ___ - ___ ___ ___ ___

Worker's relationship to Subcontracting firm: ( ) Owner ( ) W-2 Employee ( ) Non-employee / 1099 Recipient



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Sun Manager Information:

Name: _____ Phone: _____

Email: _____

Administrator or alternate contact:

Name: _____ Phone: _____

Email: _____

THE FOLLOWING QUESTIONS ARE REGARDING THE WORKER'S RELATIONSHIP WITH SUN

Please provide a brief description of the work to be performed: _____

_____

_____

1. Has the Worker ever been employed as an employee of Sun? ( ) Yes ( ) No If yes, please give a description of the scope of work he/she performed as an employee and dates of employment.

   _____

   Dates of employment: From: _____ To: _____

2. Does the Worker or his/her firm represent itself to the public as being in business to perform the same or similar services they are currently providing Sun? ( ) Yes ( ) No
   If yes, how are those services marketed? _____

   _____

3. Does the Worker or his/her firm actually perform similar services for other firms? ( ) Yes ( ) No
   If yes, then please estimate percentage of non-employee income (1099) from other firms for the current year:

   _____

4. What is the expected duration of this project? Start Date: _____ End Date: _____

   What is the projected amount to be paid for the Worker's services? _____

5. Do you expect Sun to provide office space or support services (phone, fax, e-mail, clerical)? ( ) Yes ( ) No

6. What percentage of time will the Worker perform his/her services on Sun premises or designated site? _____

   Please indicate the reasons the Worker will be on site: _____

   _____

7. Does the Worker or his/her firm have a significant investment in tools, materials, office space and equipment required to complete the task? ( ) Yes ( ) No If yes, please describe this investment:

   _____

   Does the Worker or his/her firm have a ( ) leased office ( ) home office?

8. What are the terms of payment from the Labor Service Supplier to the subcontracting firm or Worker? Is payment based upon:

   ( ) "what" they produce - flat rate per agreed upon deliverable(s)

   OR

   ( ) passage of time - paid by the hour, day or month.

9. Is the Worker required to work set hours or to perform the required services in a sequence/routine outlined by Sun?

   ( ) Yes ( ) No If yes, please explain: _____

   _____





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10. Does Sun have the right to require the Worker to comply with significant instructions as to how the work is performed?

( ) Yes ( ) No If yes, please explain: _____

_____

11. Does Sun expect that the Worker:

( ) will hire and pay assistants / helpers, at his/her own discretion and cost

OR

( ) must provide the services personally

12. Has the Subcontractor (or any of its principals) or the Worker applied to do business with Sun Microsystems, Inc.?

( ) Yes ( ) No If yes, were they approved? ( ) Yes ( ) No If no, please explain: _____

_____

13. Has the Subcontractor or Worker ever been involved in any legal litigation with Sun Microsystems, Inc. OR it subsidiaries?

( ) Yes ( ) No If yes, please explain: _____

_____

Subcontractor, please attach the following documentation:

① Business License (if required by the municipality in which the business is located)
② Articles of Incorporation OR Fictitious Business Name Statement (if required by local ordinances)
③ Business Card
④ Client reference list of at least three (3) clients (not including Sun or the Labor Service Supplier)

We certify that the information provided on this application is true and correct. We hereby authorize Sun Microsystems, Inc. or it agents, to investigate the accuracy of this information. We further allow them to gather data necessary to include credit records that they deem necessary in order to verify this information.

We understand that any falsification of information contained in this application may be grounds for termination of any agreements between our companies.

_____
Labor Services Supplier (Please Print)

_____ _____ _____
Signature Title Date

_____
Subcontracting Firm (Please Print)

_____ _____ _____
Signature Title Date



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# Exhibit E – Worker Confidentiality and Assignment Agreement

I, _____ have been assigned by _____ ("Contracting Party"), to perform services for Sun Microsystems, Inc. or one of its divisions, subsidiaries or affiliates ("Sun") pursuant to an agreement between Sun and Contracting Party (the "Services"). In consideration of the payments received by me from Contracting Party for performing the Services, and as a condition to my being permitted to perform the Services for Sun, I hereby agree and represent as follows:

1. **Confidentiality.** I agree to keep confidential and not to disclose or make any use of, except for the benefit of Sun, at any time either during or subsequent to my performance of the Services, any trade secrets or confidential or proprietary information of Sun, including without limitation knowledge, data, or other information relating to products, processes, know-how, techniques, designs, formulas, test data, costs, customer lists, employees, business plans, marketing plans and strategies, pricing, or other subject matter pertaining to any existing or contemplated business of Sun or any of its employees, clients, customers, agents, or independent contractors performing services for Sun, which I may produce, obtain, or otherwise acquire during the course of the Services ("Sun Proprietary Information"). Upon the termination of my performance of the Services, I agree to promptly surrender and deliver to Sun all copies of records, materials, equipment, drawings, documents, and data of any nature pertaining to Sun Proprietary Information.

2. **Assignment of Work Products.** As used herein, "Work Product" shall include but not be limited to ideas improvements, designs, discoveries, inventions (whether or not patentable), developments, works of authorship or artistry (including software, drawings, specifications, data, manuals, notes and other documents) and other work product made, authored, conceived or developed by me, alone or with others, which result from or relate to the Services, including any developed product, technology or materials. I hereby assign and transfer to Contracting Party my entire right, title, and interest in and to all Work Products, whether or not used by Contracting Party or its assignees, which are reduced to practice, made or conceived by me (solely or jointly with others) during the period of the Services, which relate in any manner to the business, products, technologies, techniques, processes, services, or research and development of Sun or which result from the Services ("Assignable Work Products"). Not included in Assignable Work Products are those Work Products made by me while performing work for companies other than Sun, in hours during which I am not actually performing Services, and for which no fee will be charged to Sun, as long as those Work Products have not been based, directly or indirectly, on Sun Proprietary Information. I understand that Contracting Party will assign its rights in and to Assignable Work Products to Sun. I agree that all Assignable Work Products are the sole property of Contracting Party or its assignee, Sun. Assignable Work Products do not include those inventions excluded by the provisions of Section 2870 of the California Labor Code (a reprint of which is included in the attached Schedule A), if applicable. I agree to preserve and protect any Assignable Work Product as Sun Proprietary Information.

I agree to disclose each Work Product promptly in writing to Contracting Party (which will in turn disclose them to Sun), regardless of whether I believe the Work Product is an Assignable Work Product or is excluded under Section 2870. In order to permit Contracting Party and Sun to determine rights to which they may be entitled under this Agreement. I agree to assist Contracting Party and Sun, upon request and at Contracting Party's expense, during and after the completion of my performance of the Services, in every reasonable way, to obtain, evidence or enforce for Sun's benefit patents, trademarks, copyrights, mask work rights or other proprietary rights for Assignable Work Product in any and all countries. I agree to execute such papers and perform such lawful acts as Sun deems to be necessary to allow it to perfect all rights, title, and interest in Assignable Work Product, including but not limited to executing, acknowledging, and/or delivering to Sun, upon request and at Contracting Party's expense, applications for registration and assignments of Assignable Work Product, and intellectual property rights therein, in any and all countries. I agree that my time for such assistance will be compensated by Contracting Party at my regular hourly rate for the Services or, if such assistance is rendered after I have completed the Services, at my final rate of compensation for those Services.

3. **Waiver of Moral Rights.** I hereby waive and agree never to claim or assert any Moral Rights with respect to Assignable Work Product. As used herein, "Moral Rights" means any rights of paternity or integrity with respect to Assignable Work Product; any right to claim authorship of Assignable Work Product; any right to object to or prevent any distortion, mutilation or modification of, or other derogatory action in relation to Assignable Work Product, whether or not such would be prejudicial to my honor or reputation; any right to withdraw from circulation or control the publication or distribution of Assignable Work Product; and any similar right existing under judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or generally referred to as a "moral" right.

4. **Maintenance of Records.** I agree to keep and maintain adequate and current written records of all Work Product made by me, during my period of assignment to Sun, for Sun (in the form of notes, sketches, drawings, and as may be specified by Sun) which records shall be available to and remain the sole property of Sun at all times.

5. **Pre-Existing Works.** It is understood that all Work Product which I made prior to my period of assignment to Sun and which are disclosed on Schedule A ("Pre-Existing Works") are excluded from the scope of this Agreement. Set forth on Schedule A is a list of all my Pre-Existing Works, including an identification of all patents and patent applications, copyright, trademark and mask work right registrations, and a brief description of all unregistered Pre-Existing Works. I represent that the list is complete and that, if an item is not on the list, I claim no right in such Pre-Existing Works. I agree to notify Contracting Party and Sun in writing before I make any disclosure or perform Services which use or appear to threaten or conflict with proprietary rights I claim in any Pre-Existing Work. In the event of my failure to give such notice, I agree that I will make no claim against Contracting Party or Sun with respect to such Pre-Existing Work.





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