

# TERMS OF USE

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PLEASE REVIEW THIS USER AGREEMENT ("Agreement") CAREFULLY. The following terms govern your use of this website, any sub-domains or webpages ("Site"), as well as any of our features, products or services ("Services").

### RECITALS

- A. SunPlus Data Group, Inc. having its office at 325 Lester Rd, Ste A, Lawrenceville GA 30044 ("SunPlus") is the owner of the Software and Documentation (as defined below).
- B. "You" or "your" or "User" means any person or entity using the Site or Services, provided that if such person is under 18 years of age or the age of majority in your jurisdiction, whichever is older (the "Age of Majority"), "you" or "your" shall also include such person's parent or legal guardian.
- C. A "Licensee" will be any user that purchases the right to use SunPlus Services. SunPlus hereby grants to Licensee a perpetual, non-exclusive, limited license to use the Software and Documentation solely in accordance with the terms and on the conditions set forth in this Terms of Use Agreement.
- D. "Exhibit A" is the document which a SunPlus sales representative will provide to the Licensee, and will include pricing and any other client-specific terms and conditions.

NOW, THEREFORE, the parties hereto agree as follows:

### 1. DEFINITIONS.

- 1.1 "Designated Equipment" shall mean the hardware products identified in Exhibit "A" with which the Software is licensed for use.
- 1.2 "Documentation" shall mean all manuals, user documentation, and other related materials pertaining to the Software which are furnished to Licensee by SunPlus in connection with the Software.
- 1.3 "License Fee" shall mean the fees that are paid by the Licensee to SunPlus, in consideration for the grant of the license and the use of the Software as detailed in Exhibit "A".
- 1.4 "Setup Fee" shall mean the fees that are paid by the Licensee to SunPlus in consideration for such services which include but are not limited to the initial customization of the Software, initial setup of the Software, initial migration of Licensee's user information, and User training, as detailed in Exhibit "A".
- 1.5 "Software" shall mean the computer programs in machine readable object code form listed in Exhibit "A" attached hereto and any subsequent error corrections or updates supplied to Licensee by SunPlus pursuant to this Agreement. Exhibit "A" may be amended from time to time by the parties in writing.

### 2. GRANT OF RIGHTS.

The License granted for Software under this Agreement authorizes Licensee on a nonexclusive basis to use the Software on the number of primary systems of designated equipment identified in Exhibit "A" hereto for the license term set forth in Exhibit "A". The Software shall be used only on such primary systems if they are operating properly. If any primary system is not operational, the Software may be used on a backup system for that primary system. The Licensee grants SunPlus the right to use its name, logo, photographs, videos and other content as well as feedback about the software, on marketing collateral (including flyers, websites, brochures, etc) for promotional or testing objectives.

### 3. DELIVERY.

- 3.1 Software. SunPlus shall create for Licensee a cloud-based client-user account via which Licensee will be able to use all features of the software.
- 3.2 Documentation. SunPlus shall deliver copies of documentation as defined above.

#### 4. MODIFICATIONS.

- 4.1 Error Corrections and Updates. SunPlus will provide Licensee with error corrections, bug fixes, patches or other updates to the Software licensed hereunder in object code form to the extent available in accordance with SunPlus's release schedule for a period of one (1) year from the date of deployment.
- 4.2 Other Modifications. Licensee may, from time to time, request that SunPlus incorporate certain features, enhancements or modifications into the Software. SunPlus may, in its sole discretion, undertake to incorporate such changes and distribute the Software so modified to all or any of SunPlus's licensees. If these enhancements or modifications are significant, SunPlus may raise a Change Order request and charge for these modifications.
- 4.3 Title to Modifications. All such error corrections, bug fixes, patches, updates or other modifications shall be the sole property of SunPlus.

#### 5. COPIES.

- 5.1 Printed Matter. Except as specifically set forth herein, no Software or Documentation which is provided by SunPlus pursuant to this Agreement in human readable form, such as written or printed documents, shall be copied in whole or in part by Licensee without SunPlus's prior written agreement. Additional copies of printed materials may be obtained from SunPlus at the charges then in effect.
- 5.2 Machine Readable Matter. Except as specifically set forth herein, any Software provided in machine readable form may not be copied by Licensee in whole or in part, except for Licensee's backup or archive purposes. Licensee agrees to maintain appropriate records of the number and location of all copies of the Software and make such records available upon SunPlus's request. Licensee further agrees to reproduce all copyright and other proprietary notices on all copies of the Software in the same form and manner that such copyright and other proprietary notices are originally included on the Software.

#### 6. LICENSE FEES AND PAYMENT.

- 6.1 License Fee. In consideration of the license rights granted in Article 2 above, Licensee shall pay the License Fees, Setup Fees and other consideration for the Software and Documentation as set forth in Exhibit "A" attached hereto. All amounts payable hereunder by Licensee shall be payable in United States funds without deductions for taxes, assessments, fees, or charges of any kind. SunPlus reserves the right to change any pricing at its discretion. Checks shall be made payable to SunPlus and shall be forwarded to the Office at SunPlus as follows:

SunPlus Data Group, Inc.  
Accounting Department  
325 Lester Road NW, Suite A,  
Lawrenceville, GA 30044

- 6.2 Taxes and Other Charges. Licensee shall be responsible for paying all (i) sales, use, excise, value-added, or other tax or governmental charges imposed on the licensing or use of the Software or Documentation hereunder, (ii) freight and insurance charges, and (iii) import or export duties or like charges.

#### 7. PROTECTION OF SOFTWARE.

- 7.1 Proprietary Notices. Licensee agrees to respect and not to remove, obliterate, or cancel from view any copyright, trademark, confidentiality or other proprietary notice, mark, or legend appearing on any of the Software or output generated by the Software, and to reproduce and include same on each copy of the Software, unless where customized by SunPlus in mutual written agreement with the Licensee.
- 7.2 No Reverse Engineering. Licensee agrees not to modify, reverse engineer, disassemble, or decompile the Software, or any portion thereof. Only SunPlus can host the original Software. Licensee may not establish an emulated environment, unless specifically customized by SunPlus for the Licensee.
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## 8. CONFIDENTIALITY.

- 8.1 Acknowledgement. Licensee hereby acknowledges and agrees that the Software and Documentation constitute and contain valuable proprietary products and trade secrets of SunPlus and/or its suppliers, embodying substantial creative efforts and confidential information, ideas, and expressions. Accordingly, Licensee agrees to treat (and take precautions to ensure that its employees treat) the Software and Documentation as confidential in accordance with the confidentiality requirements and conditions set forth below.
- 8.2 Maintenance of Confidential Information. Each party agrees to keep confidential all confidential information disclosed to it by the other party in accordance herewith, and to protect the confidentiality thereof in the same manner it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of confidential information); provided, however, that neither party shall have any such obligation with respect to use or disclosure to others not parties to this Agreement of such confidential information as can be established to: (a) have been known publicly; (b) have been known generally in the industry before communication by the disclosing party to the recipient; (c) have become known publicly, without fault on the part of the recipient, subsequent to disclosure by the disclosing party; (d) have been known otherwise by the recipient before communication by the disclosing party; or (e) have been received by the recipient without any obligation of confidentiality from a source (other than the disclosing party) lawfully having possession of such information.
- 8.3 Injunctive Relief. Licensee acknowledges that the unauthorized use, transfer or disclosure of the Software and Documentation or copies thereof will (i) substantially diminish the value to SunPlus of the trade secrets and other proprietary interests that are the subject of this Agreement; (ii) render SunPlus's remedy at law for such unauthorized use, disclosure or transfer inadequate; and (iii) cause irreparable injury in a short period of time. If Licensee breaches any of its obligations with respect to the use or confidentiality of the Software or Documentation, SunPlus shall be entitled to equitable relief to protect its interests therein, including, but not limited to, preliminary and permanent injunctive relief.
- 8.4 Survival. Licensee's obligations under this Article 8 will survive the termination of this Agreement or of any license granted under this Agreement for whatever reason.
- 8.5 User Information Security: Licensee agrees that it is fully responsible for the confidentiality of the Usernames and Passwords for all of its users. Licensee agrees to notify SunPlus immediately of any unauthorized use or any other breach of security, and to provide documentary evidence if SunPlus requests it. SunPlus is not responsible for any breach of security which can be traced back to Licensee's devices or user errors.

## 9. WARRANTIES; SUPERIOR RIGHTS.

- 9.1 Ownership. Except for the rights, if any of the Government of the United States, as set forth herein below, SunPlus represents its belief that it is the owner of the entire right, title, and interest in and to Software, and that it has the sole right to grant licenses thereunder, and that it has not knowingly granted licenses thereunder to any other entity that would restrict rights granted hereunder except as stated herein.
- 9.2 Limited Warranty. SunPlus represents and warrants to Licensee that the Software, when properly installed by Licensee and used with the Designated Equipment, will perform substantially as described in SunPlus's then current Documentation for such Software for a period of ninety (90) days from the date of installation.
- 9.3 Limitations. Notwithstanding the warranty provisions set forth in Section 9.2 above, all of SunPlus's obligations with respect to such warranties shall be contingent on Licensee's use of the Software in accordance with this Agreement and in accordance with SunPlus's instructions as provided by SunPlus in the Documentation, as such instructions may be amended, supplemented, or modified by SunPlus from time to time. SunPlus shall have no warranty obligations with respect to any failures of the Software which are the result of accident, abuse, misapplication, extreme power surge, extreme electromagnetic field, or inappropriate use by the users of the Software. Licensee also agrees that in its use of the Software, it will not run Maillist, Listserv, any form of auto-responder or "spam" on the Software, or any processes that run or are activated while Licensee is not logged into the Software, or that otherwise interferes with the proper working of the Software (including by placing an unreasonable load on SunPlus infrastructure). The terms of use as referenced in this entire agreement are applicable for the use on devices as listed in Exhibit "A", and the manufacturer or software platform vendor may have their own additional terms that may apply to this Software. Licensee

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- 9.5 Disclaimer of Warranties. SUNPLUS DOES NOT REPRESENT OR WARRANT THAT ALL ERRORS IN THE SOFTWARE AND DOCUMENTATION WILL BE CORRECTED. THE WARRANTIES STATED IN SECTION 9.2 ABOVE ARE THE SOLE AND THE EXCLUSIVE WARRANTIES OFFERED BY SUNPLUS. THERE ARE NO OTHER WARRANTIES RESPECTING THE SOFTWARE AND DOCUMENTATION OR SERVICES PROVIDED HEREUNDER, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF DESIGN, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, EVEN IF SUNPLUS HAS BEEN INFORMED OF SUCH PURPOSE. NO AGENT OF SUNPLUS IS AUTHORIZED TO ALTER OR EXCEED THE WARRANTY OBLIGATIONS OF SUNPLUS AS SET FORTH HEREIN.
- 9.6 Limitation of Liability. LICENSEE ACKNOWLEDGES AND AGREES THAT THE CONSIDERATION WHICH SUNPLUS IS CHARGING HEREUNDER DOES NOT INCLUDE ANY CONSIDERATION FOR ASSUMPTION BY SUNPLUS OF THE RISK OF LICENSEE'S CONSEQUENTIAL OR INCIDENTAL DAMAGES WHICH MAY ARISE IN CONNECTION WITH LICENSEE'S USE OF THE SOFTWARE AND DOCUMENTATION. ACCORDINGLY, LICENSEE AGREES THAT SUNPLUS SHALL NOT BE RESPONSIBLE TO LICENSEE FOR ANY LOSS-OF-PROFIT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE LICENSING OR USE OF THE SOFTWARE OR DOCUMENTATION. Any provision herein to the contrary notwithstanding, the maximum liability of SunPlus to any person, firm or corporation whatsoever arising out of or in the connection with any license, use or other employment of any Software delivered to Licensee hereunder, whether such liability arises from any claim based on breach or repudiation of contract, warranty, tort or otherwise, shall in no case exceed the actual price paid to SunPlus by Licensee for the Software whose license, use, or other employment gives rise to the liability. The essential purpose of this provision is to limit the potential liability of SunPlus arising out of this Agreement. The parties acknowledge that the limitations set forth in this Article 9 are integral to the amount of consideration levied in connection with the license of the Software and Documentation and any services rendered hereunder and that, were SunPlus to assume any further liability other than as set forth herein, such consideration would of necessity be set substantially higher.

## 10. INDEMNIFICATION

- 10.1 SunPlus shall indemnify, hold harmless and defend Licensee against any action brought against Licensee to the extent that such action is based on a claim that the unmodified Software, when used in accordance with this Agreement, infringes a United States copyright and SunPlus shall pay all costs, settlements and damages finally awarded; provided, that Licensee promptly notifies SunPlus in writing of any claim, gives SunPlus sole control of the defense and settlement thereof and provides all reasonable assistance in connection therewith. If any Software is finally adjudged to so infringe, or in SunPlus's opinion is likely to become the subject of such a claim, SunPlus shall, at its option, either: (i) procure for Licensee the right to continue using the Software (ii) modify or replace the Software to make it non-infringing, or (iii) refund the fee paid, less reasonable depreciation, upon return of the Software. SunPlus shall have no liability regarding any claim arising out of: (a) use of other than a current, unaltered release of the Software unless the infringing portion is also in the then current, unaltered release, (b) use of the Software in combination with non-SunPlus software, data or equipment if the infringement was caused by such use or combination, (c) any modification or derivation of the Software not specifically authorized in writing by SunPlus or (d) use of third party software. THE FOREGOING STATES THE ENTIRE LIABILITY OF SUNPLUS AND THE EXCLUSIVE REMEDY FOR LICENSEE RELATING TO INFRINGEMENT OR CLAIMS OF INFRINGEMENT OF ANY COPYRIGHT OR OTHER PROPRIETARY RIGHT BY THE SOFTWARE.
- 10.2 Except for the foregoing infringement claims, Licensee shall indemnify and hold harmless, SunPlus, their Regents, officers, agents and employees from and against any claims, demands, or causes of action whatsoever, including without limitation those arising on account of Licensee's modification or enhancement of the Software or otherwise caused by, or arising out of, or resulting from, the exercise or practice of the license granted hereunder by Licensee, its sub-licensees, if any, its subsidiaries or their officers, employees, agents or representatives.
- 10.3 No software provider can guarantee complete security in today's connected environment. SunPlus endeavors, using multiple security mechanisms and technologies, to protect the privacy and security of its customers and their personal information that is held on SunPlus servers and Software. Licensee agrees to fully indemnify SunPlus in case of any unauthorized entry or use, hardware or software failure, or any other factors that may compromise user information security that has been caused by an action carried out by the employees, customers, or end-users of the Licensee.

## 11. DEFAULT AND TERMINATION.

- 11.1 Events of Default. This Agreement may be terminated by the non-defaulting party if any of the following events of default occur: (1) if a party materially fails to perform or comply with this Agreement or any provision hereof; (2) if either party fails to strictly comply with the provisions of Section 8 (Confidentiality) or makes an assignment in violation of Section 13 (Nonassignability); (3) if a party becomes insolvent or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; (4) if a petition under any foreign, state, or United States bankruptcy act, receivership statute, or the like, as they now exist, or as they may be amended, is filed by a party; or (5) if such a petition is filed by any third party, or an application for a receiver is made by anyone and such petition or application is not resolved favorably within ninety (90) days.
- 11.2 Effective Date of Termination. Termination due to a material breach of Articles 2 (Grant of Rights), 5 (Copies), 7 (Protection of Software), or 8 (Confidentiality) shall be effective on notice. In all other cases, termination shall be effective thirty (30) days after notice of termination to the defaulting party if the defaults have not been cured within such thirty (30) day period.
- 11.3 Obligations on Termination. In the event that this Agreement is terminated, Licensee will no longer be able to access its Account information. Within ten (10) days after termination of this Agreement, Licensee shall return to SunPlus all full or partial copies of the Software and Documentation in Licensee's possession or under its control. SunPlus shall bill Licensee any outstanding fees incurred prior to termination and balance amount due as per the original duration of the agreement.

## 12. NOTICES.

All notices, authorizations, and requests in connection with this Agreement shall be deemed given (i) five days after being deposited in the U.S. mail, postage prepaid, certified or registered, return receipt requested; or (ii) one day after being sent by overnight courier, charges prepaid, with a confirming fax; and addressed as first set forth above or to such other address as the party to receive the notice or request so designates by written notice to the other.

## 13. NONASSIGNABILITY.

Licensee shall not assign this Agreement or its rights hereunder without the prior written consent of SunPlus.

## 14. GOVERNING LAW;

**JURISDICTION AND VENUE.** The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Georgia. The Federal and State courts within the State of Georgia shall have exclusive jurisdiction to adjudicate any disputes arising out of in connection with this Agreement, , and Licensee hereby consents to the jurisdiction of such courts

## 15. SEVERABILITY.

If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

## 16. MISCELLANEOUS.

This Agreement and its exhibits contain the entire understanding and agreement between the parties respecting the subject matter hereof. This Agreement may not be supplemented, modified, amended, released or discharged except by an instrument in writing signed by each party's duly authorized representative. All captions and headings in this Agreement are for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. Any waiver by either party of any default or breach hereunder shall not constitute a waiver of any provision of this Agreement or of any subsequent default or breach of the same or a different kind.