

Sunhillo Corporation

End-User Software License Agreement

This End-User Software License Agreement (this "AGREEMENT") is a license agreement between you (the "LICENSEE") and Sunhillo Corporation ("SUNHILLO") in which you are granted a license to use certain SUNHILLO software products in return for your acceptance of the terms and conditions set forth herein. You should read this AGREEMENT carefully before opening this package or extracting the software from the media, as these acts constitute your acceptance of this AGREEMENT. If you do not agree with the terms of this AGREEMENT, you should promptly return the complete package, with any media unopened, to SUNHILLO or your supplier.

In the context of this AGREEMENT, the term "SOFTWARE" refers to the machine-executable object code contained in the accompanying media or detailed in an exhibit attached to this AGREEMENT.

1. License Grant

- 1.1. In return for the associated fee, SUNHILLO hereby grants to LICENSEE a non-exclusive license to use one copy of the SOFTWARE on one computer, processor, or controller at any one time. The license terms set forth in this paragraph may be superseded by terms set forth in an exhibit attached to this AGREEMENT.
- 1.2. If the SOFTWARE is supplied in conjunction with hardware product, the SOFTWARE may not be used for applications that do not include that hardware product.

2. Ownership and Copyright

- 2.1. Title to the SOFTWARE and all copies thereof resides with and shall remain with SUNHILLO, its licensors, and suppliers. Except as expressly provided herein, SUNHILLO does not grant LICENSEE any express or implied rights in the SOFTWARE or its associated source code. The SOFTWARE is copyrighted and is protected by United States copyright laws and international treaty provisions and the notice of copyright may not be removed from the SOFTWARE.
- 2.2. SOFTWARE may contain Free/Libre Open-Source Software (FLOSS). Details of FLOSS used in SOFTWARE, and its associated licensing, may be found in SUN2513 - Sunhillo FLOSS Statement a copy of which is available from www.sunhillo.com/support. To obtain further details or copies of the source for those portions covered under a public license, contact SUNHILLO or visit www.sunhillo.com. Specific provisions of this AGREEMENT may not apply to those portions of the SOFTWARE licensed under a public license.

3. Copying

LICENSEE may copy the SOFTWARE from SUNHILLO's distribution media onto the computer, processor, or controller on which it is to be used. LICENSEE may, in addition, make one additional copy onto any machine for the purposes of backup. All copies of the SOFTWARE must have all of SUNHILLO's notices, marks, and legends intact.

4. Distribution

LICENSEE may not sublicense or otherwise distribute the SOFTWARE or any copies thereof in any form.

5. Distribution to the U.S. Government

5.1. The SOFTWARE provided under this AGREEMENT consists of commercial computer software programs developed exclusively at private expense. Use, duplication and disclosure by civilian agencies of the U.S. Government shall be in accordance with FAR 52.227-19 (c) or other agency data rights provisions, as may be applicable.

5.2. Use, duplication and disclosure by DOD agencies is subject solely to the terms of standard software License AGREEMENT as stated in DFARS 227.7202.

6. Transfer

6.1. The LICENSEE may not transfer the SOFTWARE license granted hereunder except by written permission of SUNHILLO.

6.2. SUNHILLO's permission for such transfer will require, at a minimum, that the party to whom the LICENSEE proposes to transfer the SOFTWARE license agrees to be unconditionally bound by the terms of this AGREEMENT (as a LICENSEE) and that the original LICENSEE terminates all rights under this AGREEMENT and retains no full or partial copies of the SOFTWARE.

7. Reverse Engineering

The SOFTWARE may not be decompiled, reverse assembled, or otherwise reverse engineered.

8. Export

LICENSEE may not export or re-export the SOFTWARE in any form without the appropriate U.S. and/or foreign government licenses.

9. Warranty

9.1. SUNHILLO warrants that the SOFTWARE, or the SOFTWARE portion of system products will, at the time of shipment and for a period of one (1) year thereafter, perform substantially in conformance with SUNHILLO's applicable published specifications or with LICENSEE's specifications as accepted by SUNHILLO in writing and will be supplied on media which is free of defects in material and workmanship.

9.2. Written notice of nonconformance must be received by SUNHILLO within the warranty period and should include a detailed description of the failure or non-conformity. Notices of non-conformity will be forwarded to SUNHILLO's engineering department for analysis and correction. Corrections will be included in a future scheduled maintenance release of the SOFTWARE.

9.3. SUNHILLO'S SOLE OBLIGATION UNDER THIS WARRANTY SHALL BE, AT SUNHILLO'S OPTION, TO REFUND THE LICENSE FEE, REPAIR, OR REPLACE THE SOFTWARE. IN NO EVENT SHALL SUNHILLO'S LIABILITY TO LICENSEE OR TO ANY OTHER PARTY FOR BREACH OF THIS WARRANTY EXCEED THE LICENSE FEE PAID TO SUNHILLO FOR THE NONCONFORMING SOFTWARE.

- 9.4. This warranty extends to LICENSEE only and may not be invoked directly by LICENSEE's customers.
- 9.5. SUNHILLO does not warrant that the SOFTWARE, alone or when integrated with other components not supplied by SUNHILLO, will meet LICENSEE's requirements, or that the operation of the SOFTWARE will be uninterrupted or error free, or that the SOFTWARE will inter-operate with other components not supplied by SUNHILLO.
- 9.6. The SOFTWARE is warranted to meet SUNHILLO's applicable published specifications or LICENSEE's accepted specifications, as they exist at the time of shipment. SUNHILLO does not warrant that the SOFTWARE will continue to conform to SUNHILLO's, LICENSEE's, or third party referenced specifications if those specifications are modified subsequent to the time of shipment.
- 9.7. This warranty excludes all costs of shipping, customs clearance and related charges outside the United States.
- 9.8. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

10. Intellectual Rights Indemnification

- 10.1. SUNHILLO will indemnify, hold LICENSEE harmless, and defend or settle any claim made by a third party against LICENSEE that the SOFTWARE, as delivered by SUNHILLO and not in combination with any other hardware or software (except hardware or software provided by SUNHILLO) infringes any U.S. patent, utility model, industrial design, copyright, trade secret, or trademark, providing that LICENSEE promptly notifies SUNHILLO in writing of the claim, cooperates with SUNHILLO in the defense of the claim, and grants SUNHILLO sole authority to control the defense and any related settlement.
- 10.2. SUNHILLO will pay reasonable fees and expenses associated with such defense and settlement, as well as any reasonable costs and damages finally awarded against LICENSEE. If such claim is made or appears likely to be made, SUNHILLO may procure the right for LICENSEE to continue using the SOFTWARE, may modify the SOFTWARE, or may replace it. If use of the SOFTWARE is enjoined by a court and/or SUNHILLO determines that none of these alternatives is reasonably available, SUNHILLO will take back the SOFTWARE and refund its original value, depreciated on a straight-line basis over five (5) years.
- 10.3. SUNHILLO has no obligation for any claim of infringement arising from: SUNHILLO's compliance with any design, specifications, or instructions from LICENSEE; modification of the SOFTWARE by LICENSEE or a third party; use of the SOFTWARE in a way not specified by SUNHILLO; or; use of the SOFTWARE with other products not supplied by SUNHILLO.
- 10.4. The foregoing states the entire liability of SUNHILLO for patent or copyright infringement. In no event will SUNHILLO be liable for incidental or consequential damages arising from infringement or alleged infringement of patents or copyrights.

11. Limitation of Liability

IN NO EVENT WILL EITHER PARTY BE LIABLE FOR LOSS OF USE, PROFIT, REVENUE, GOODWILL OR OTHER INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE AGGREGATE LIABILITY OF SUNHILLO AND ITS AGENTS FOR ALL CLAIMS (EXCLUDING CLAIMS FOR PHYSICAL INJURY OR PROPERTY DAMAGE RESULTING FROM NEGLIGENCE OR WILLFUL MISCONDUCT) ARISING OUT OF THIS AGREEMENT SHALL NOT EXCEED THE SUM OF THE LICENSE FEES PAID BY LICENSEE TO SUNHILLO DURING THE PREVIOUS 12 MONTH PERIOD FOR THE SOFTWARE THAT IS THE SUBJECT MATTER OF THE CLAIM OR THE VALUE OF THE HARDWARE IN WHICH THE SOFTWARE IS EMBEDDED, WHICHEVER IS GREATER.

12. Termination

12.1. LICENSEE may terminate this AGREEMENT by furnishing to SUNHILLO written notice of its intention to terminate this AGREEMENT 45 days prior to the date upon which LICENSEE proposes to terminate this AGREEMENT.

12.2. SUNHILLO may terminate this AGREEMENT upon LICENSEE's failure to pay promptly any fees or other payments associated with this AGREEMENT or comply with the terms or conditions of this AGREEMENT, provided that LICENSEE shall have 30 days to cure any such failure, unless LICENSEE's noncompliance is incurable, in which event SUNHILLO shall have the right to terminate this AGREEMENT immediately.

12.3. Upon termination, the original master and all copies of the SOFTWARE, including manuals and other documentation, must be destroyed and/or returned to SUNHILLO, and SUNHILLO shall have the right to receive from LICENSEE a certificate attesting to the return or destruction of the same.

12.4. Upon Termination, any associated fees paid by LICENSEE are non-refundable.

13. Updates, Upgrades, and Enhancements

13.1. The license granted under this AGREEMENT does not entitle the LICENSEE to updates, upgrades or enhancements of the SOFTWARE. SUNHILLO reserves the right to require an additional license and fee for updates, upgrades, or enhancements or for use of the SOFTWARE on other platforms.

13.2. SOFTWARE releases provided by SUNHILLO to LICENSEE to correct non-conformities may contain updates, upgrades, and enhancements in addition to the corrected SOFTWARE. LICENSEE may not activate or use such updates, upgrades, or enhancements unless specifically authorized to do so under additional license.

14. General

14.1. Any changes in the terms and conditions contained herein must specifically be agreed to in writing by an authorized representative of both parties before becoming binding on either party.

14.2. If any provision of this AGREEMENT is held to be unenforceable, the enforceability of the remaining provisions shall in no way be affected or impaired.

14.3. SUNHILLO's failure to exercise any of its rights under this AGREEMENT shall not constitute a waiver or forfeiture of such rights.

- 14.4. This AGREEMENT, along with any exhibits or schedules thereto, supersedes all prior agreements and understandings, oral or written, between SUNHILLO and LICENSEE and is intended as the complete and exclusive statement of this AGREEMENT.
- 14.5. The prevailing party in any action or proceeding brought in connection with a breach of this AGREEMENT will be entitled to reimbursement by the other party for reasonable costs and reasonable attorney's fees.
- 14.6. Any controversy or claim arising out of or relating to this AGREEMENT or the breach thereof shall be settled in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The location of such arbitration proceedings shall be West Berlin, New Jersey, USA for actions brought by the LICENSEE or, for actions initiated by SUNHILLO, a U.S. city specified by the LICENSEE. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
- 14.7. This AGREEMENT will be governed by and construed in accordance with the laws of the State of New Jersey, USA, without regard to the conflict of laws principles thereof.

Sunhillo Corporation
444 Kelley Drive
West Berlin, NJ 08091
USA

Telephone: (856) 767-7676
Fax: (856) 767-9557
Email: sales@sunhillo.com
Website: www.sunhillo.com