

# End User License Agreement

DataSunrise™, Inc. End User License Agreement

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Effective Date: That date upon which the Software has first been downloaded and activated using the activation key.

## 1. DEFINITIONS

1.1. “DataSunrise” means DataSunrise, Inc., a Delaware corporation with its principal offices located at 3040 78th Ave SE Suite #273, Mercer Island, WA 98040, telephone (206) 420-6611. DataSunrise’s web address is [www.datasunrise.com](http://www.datasunrise.com). DataSunrise can also be contacted by e-mail at [sales@datasunrise.com](mailto:sales@datasunrise.com). “DataSunrise”, “DataSunrise Security”, “DataSunrise Firewall”, “DataSunrise Data Masking” and “DataSunrise Audit” are the trademarks of DataSunrise Technologies, Inc., and DataSunrise hereby reserves all rights associated therewith.

1.2. “Software” means DataSunrise’s proprietary software provided to You by DataSunrise in Java byte code or object code format only, and all associated files, including, without limitation, any Documentation, in any and all versions which DataSunrise in its sole option elects to provide to You, unless such subsequent version(s) are governed by a different license agreement.

1.3. “Documentation” means the written or on-line instructions, help information, and other written reference materials related to the Software, provided to You by DataSunrise.

1.4. “Fee” means the license fee for use of one copy of the Software for each database instance secured by the Software, and where the Software secures a multi-node cluster then the license fee will reflect three (3) copies of Software for each cluster without taking into account the number of nodes. Number of licenses and the corresponding Fees are reflected in DataSunrise’s invoice.

1.5. “Annual Support Fee” means the annual fee for support, as described in Section 10. Any applicable Annual Support Fee will be reflected in DataSunrise’s invoice.

1.6. “Registered Software” means the copy of the Software downloaded and licensed pursuant to this Agreement, for which You have paid the Fee and received a registration number from DataSunrise.

1.7. “Unregistered Software” means a copy of the Software downloaded for which You have not paid the Fee, including the Evaluation Version (as defined below).

1.8. “Evaluation Version” means the Software, for which You have not paid the Fee, but have received permission from DataSunrise to use the Software on a temporary basis for evaluation purposes only, on the terms and conditions of Section 2 below.

## **2. EVALUATION VERSION TERMS AND CONDITIONS**

2.1. Acknowledgment. The provisions of Articles 2, 4, 8, 9, 11, 12 and 13 and Sections 3.2, 3.3 of this Agreement apply to the Evaluation Version (the “Evaluation License Terms”). You acknowledge and agree that if You have download or use the Evaluation Version, that the Evaluation Version is being supplied to You on a limited basis without charge in exchange for Your evaluation of the Software for subsequent license of Registered Software. You further acknowledge and agree that if You subsequently purchase a license to the Registered Software, any and all such copies of Registered Software will thereafter be subject to all of the terms and conditions of this Agreement except this Section 2, and You agree to be bound by and comply with such terms and conditions.

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2.3. Term of Evaluation Version License. Your right to use the Evaluation Version of the Software shall be effective from the date You first download and install the Evaluation Version of the Software for a period of thirty (30) days. The Evaluation Version is time sensitive and will not function upon expiration of the 30-day period. Notice of expiration will not actively be given, so You need to plan for the expiration date and make a copy of and remove Your important data before expiration. If You desire to use the Software after Your evaluation is completed, You will need to pay the applicable Fee and acquire a validly licensed copy of Registered Software.

2.4. Feedback. You agree to use and evaluate the Evaluation Version of the Software, and to provide DataSunrise at its request with feedback describing the results of Your use and evaluation of the Software, including any defects found in the Software and any information necessary for DataSunrise to evaluate such defects. You agree that DataSunrise shall be free to use and incorporate any feedback in its Software or other products and services without restriction and without compensation to You.

2.5. No Obligation to Support Evaluation Version. DataSunrise has no obligation under this Agreement to correct any bugs, defects or errors in the Evaluation Version or to otherwise support or maintain Evaluation Version.

2.6. No Warranty. You agree that the Software is provided “AS IS” and that DataSunrise DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, RELATED TO THE EVALUATION VERSION, ITS USE OR ANY INABILITY TO USE IT, THE RESULTS OF ITS USE AND THIS AGREEMENT.

### **3. REGISTERED SOFTWARE – LICENSE GRANT**

3.1. License Grant. Upon payment by You of the Fee and Annual Support Fee (if any) stated in DataSunrise’s invoice, and subject to the terms and conditions set forth in this Agreement, DataSunrise hereby grants You a limited, non-exclusive, non-transferable, non-sublicensable, revocable license (the “License”) to use the Software for one year unless another term is specified in DataSunrise’s invoice as follows:

- (a) You may use one (1) copy of the Software for each database instance, or,
- (b) in the case of a database represented by a multi-node cluster, You must procure and You may use three (3) licenses of the Software to secure the database represented by the multi-node cluster.

3.2. Limitations On License. Except as expressly authorized in Section 3.1, You and/or any person(s) acting with or for You may not:

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3.3. Source Code. Nothing in this Agreement grants You and/or any person(s) acting with or for You any rights, license or interest with respect to the source code of the Software, and DataSunrise retains all right, title and interest therein.

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4.4. Modifications. DataSunrise reserves the right to modify or discontinue the Software at any time without prior notice to or consent by You.

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You agree to pay the Fee as set forth herein. DataSunrise reserves the right to change its prices for future additional licenses of the Software at any time or from time to time as solely determined by DataSunrise.

## **6. REPRESENTATIONS AND WARRANTY**

6.1. You represent and warrant that (i) You have the right to enter into this Agreement, (ii) Your use of the Software will not violate any applicable local, state, national or international law, and (iii) You shall only represent to third parties such information and material about the Software as DataSunrise states in its published product descriptions, advertising and promotional materials or as may be stated in other non-confidential written material generally furnished by DataSunrise, as modified from time to time.

6.2. If You have paid the Fee for a Registered copy of the Software, then for a period of thirty (30) days from the date of registration of the Software, DataSunrise warrants the Software against any defects resulting from the electronic transmission process, and any Software media supplied by DataSunrise will be free from defects in materials and workmanship.

## **7. DISCLAIMER OF WARRANTIES**

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7.2. EXCEPT FOR THE FOREGOING, THE SOFTWARE IS PROVIDED AS IS AND DATASUNRISE MAKES NO REPRESENTATIONS OR WARRANTIES (WRITTEN OR ORAL). TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DATASUNRISE, AND ITS SUPPLIERS AND RESELLERS, DISCLAIM ALL WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER AND TO ANY PERSON OR ENTITY, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS AND THOSE ARISING FROM A COURSE OF DEALING OR USAGE IN TRADE. NO WARRANTY IS MADE THAT ANY ERRORS OR DEFECTS IN THE SOFTWARE WILL BE CORRECTED, OR THAT THE SOFTWARE WILL MEET YOUR REQUIREMENTS.

7.3. DataSunrise reserves the right at any time to cease the support of the Software and to alter prices, features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of the Software.

## **8. LIMITATION OF LIABILITY**

8.1. IN NO EVENT SHALL DATASUNRISE OR ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, OR SUPPLIERS BE LIABLE FOR BREACH OR ANY OTHER CLAIM, ARISING UNDER, OR RELATED TO THIS AGREEMENT OR THE SOFTWARE OR SERVICE PROVIDED HEREUNDER, UNDER ANY THEORY, FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR SIMILAR DAMAGES (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION OR DATA, OR ANY OTHER LOSS) WHETHER FORESEEABLE OR NOT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

8.2. IN ANY CASE, DATASUNRISE'S ENTIRE LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT SHALL BE LIMITED TO THE LESSER OF ACTUAL, PROVEN DIRECT DAMAGES OR THE AMOUNT ACTUALLY PAID BY YOU FOR THE SOFTWARE.

## **9. PROTECTION FROM UNAUTHORIZED USE**

IN ORDER TO PROTECT THE SOFTWARE FROM UNAUTHORIZED USE, THE SOFTWARE CONTAINS A TRANSPARENT VALIDATION PROCEDURE. IF THE SOFTWARE DETECTS ANY VIOLATION OF THE TERMS OF THIS AGREEMENT, YOU MAY BE UNABLE TO USE THE SOFTWARE AND/OR CREATE UNRESTRICTED

SECURITY PRODUCTS UNTIL THE PROBLEM IS CORRECTED. IF THIS OCCURS, YOU SHOULD IMMEDIATELY CONTACT DATASUNRISE.

## **10. SUPPORT**

If DataSunrise' invoice states that You are entitled to support, and You pay any Annual Support Fee stated in DataSunrise's invoice, DataSunrise will provide technical support and updates for a period of one (1) year, as follows: (i) unlimited email support for "bug" fixes and other similar problem and error corrections, resolutions and/or work arounds for the Software, and (ii) You will be entitled to receive any upgrades, modifications or other enhancements to the version of the Software covered by this Agreement that DataSunrise, in its sole discretion, may choose to provide at any time.

## **11. TERMINATION**

11.1. This Agreement (and the License granted herein to You) will terminate immediately if You provide any false information to DataSunrise or if You fail to materially comply with the terms and conditions of this Agreement. You may terminate this Agreement at any time by notifying DataSunrise. Upon the termination of this Agreement, You must discontinue use of the Software and delete all copies of the Software from Your computer and archives, and must return or destroy any Documentation in Your possession.

11.2. YOU AGREE THAT UPON TERMINATION OR YOUR BREACH OF THIS AGREEMENT FOR ANY REASON, DATASUNRISE MAY TAKE ACTIONS SO THAT THE SOFTWARE NO LONGER OPERATES, WITHOUT PREJUDICE TO OTHER REMEDIES AVAILABLE.

11.3. Survival of certain terms: The following Articles shall survive any expiration or termination: 1-DEFINITIONS, 4-OWNERSHIP/PROPRIETARY RIGHTS, 8-LIMITATION OF LIABILITY, 11-TERMINATION, and 13-MISCELLANEOUS PROVISIONS and any obligations arising prior to the effective date of termination shall survive.

## **12. MARKETING**

You agree to be identified as a customer of DataSunrise and You agree that DataSunrise may refer to You by name, trade name and trademark, if applicable, and may briefly describe Your business in DataSunrise 's marketing materials and web site. You grant DataSunrise a license to use Your name and any of Your tradenames and trademarks solely in connection with the rights granted to DataSunrise pursuant to this paragraph.

## **13. MISCELLANEOUS PROVISIONS**

13.1. Governing Law and Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of Washington, irrespective of its choice of law principles. The parties agree to submit to the exclusive jurisdiction of the Washington state courts in and for King County or the United States District Court for the Washington Western District of

Washington. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

13.2. Assignability. This Agreement is personal to You and shall not be assignable by You, by operation of law or otherwise, without the prior written consent of DataSunrise (at DataSunrise's sole discretion). DataSunrise may assign or transfer this Agreement or any of its rights or obligations hereunder at any time. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties, their respective successors and permitted assigns.

13.3. Confidential Information. You agree that the Software and any information concerning the Software, including its nature and existence, and any other information disclosed by DataSunrise to You, will be considered and referred to collectively in this Agreement as "Confidential Information."

Confidential Information, however, does not include information that: (i) is now or subsequently becomes generally available to the public through no action of Yours; (ii) You can demonstrate to have had rightfully in Your possession prior to disclosure to You by DataSunrise; (iii) is independently developed by You without the use of any Confidential Information; or (iv) You rightfully obtain from a third party who has the right to transfer or disclose it.

You agree not to disclose, publish, or disseminate Confidential Information to anyone other than Your employees and contractors or other third parties providing services to You who agree to use the Software solely for your benefit and be bound by the terms of this Agreement. All Confidential Information remains the sole property of DataSunrise. You agree to take reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of Confidential Information without the prior written approval of DataSunrise in each instance. You have no implied licenses or other rights in the Confidential Information not specifically granted in this Agreement.

When requesting and receiving technical support, You will not provide DataSunrise with any information that is confidential to You or any third party.

13.4. Other Provisions. This Agreement constitutes the entire understanding and agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous purchase orders, agreements, representations and understandings between the parties regarding the subject matter hereof, and any pre-printed terms and conditions contained in Your company's purchase order are null and void. Any term or provision of this Agreement may be amended, and the observance of any term of this Agreement may be waived, only by a writing signed by the party to be bound. If any provision of this Agreement is found to be invalid or unenforceable, such provision shall be severed from the Agreement and the remainder of this Agreement shall be interpreted so as best to reasonably effect the intent of the parties hereto. All headings herein are not to be considered in the construction or interpretation of any provision of this Agreement. DataSunrise and You are independent contractors. Failure of either DataSunrise or You to insist on performance of any term or condition of this Agreement or to exercise any

right or privilege thereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege.

13.5. Export Controls: You agree to comply with all applicable U.S. export control laws and regulations, including without limitation, the laws and regulations administered by the United States Department of Commerce and the United States Department of State.