

Agreement for Support Line for OSS on Power Systems™

Using this IBM Agreement for Support Line for Linux™ OSS on Power Systems™ (the Agreement) and the IBM Client Relationship Agreement (CRA) attached hereto (or available on <http://www-05.ibm.com/support/operations/us/en/documents.html>), Client may acquire the IBM Services described herein.

1. Scope of Work

Support Line for Linux Open Source Software (OSS) on Power Systems is remote assistance with the operation of supported original software supplier (Supplier) products (Eligible Products) and system environments only (the Service). Supported Supplier versions are located at <http://www-03.ibm.com/services/supline/products/>, or as otherwise provided by IBM.

2. Contract Period

When Client orders the IBM Power System Machine, Client must specify one year or three years of this Service (the Contract Period). The selected Contract Period begins on the date Client purchases the Service. Service will terminate at the end of the Contract Period, depending on the selected period.

This Service does not automatically renew.

3. Service Description

For all Eligible Products, IBM will provide remote assistance (via telephone from IBM's support center, or electronically) in response to requests pertaining to the following:

- a. basic, short duration installation, usage, and configuration questions;
- b. code-related problem questions;
- c. diagnostic information review to assist in isolation of a problem cause (for example, assistance interpreting traces and dumps for installation and code-related problems); and
- d. for known defects, available corrective service information and a method to obtain available program patches from the Open Source supplier.

IBM will assist Client in determining the cause of the problem and provide corrective information if it is available from the editor or the Open Source supplier. IBM is not responsible for the resolution of defects in the programs supported under this Agreement.

IBM will provide Client with guidance on how to obtain patches, maintenance updates or refreshes (collectively Fixes) directly from the Open Source supplier. For Eligible Products, IBM may also direct Client to Rogue Wave, where Fixes may be available in the form of patches under separate terms solely between Client and Rogue Wave. Rogue Wave may make such patches available to the Open Source supplier for inclusion and distribution as errata updates and patches. There is no guarantee that the patches will be created or accepted by Open Source supplier as part of the main code branch.

If a new defect (referenced or without known correction) is identified, IBM will report the defect to the Open Source supplier, and will inform Client of known actions taken and the availability of corrective information. Open Source supplier-licensed or Rogue Wave-licensed software, including Fixes, is directly distributed and licensed to Client by the Open Source supplier or Rogue Wave under the terms and conditions of the Open Source supplier's or Rogue Wave's end user license agreement (EULA). While IBM may place an order with the Open Source supplier or Rogue Wave on Client's behalf as a convenience, Client acknowledges and agrees that IBM is neither a party to the EULA nor a distributor, licensor, or reseller of the Open Source supplier-licensed software, including any Fixes. While the Open Source supplier or Rogue Wave may provide Client with certain warranties, representations, or indemnities under the EULA, IBM does not provide, whether express or implied, any warranty, representation, indemnity, or other license with respect to the Open Source supplier-licensed or Rogue Wave-licensed software and is merely providing Services under this Agreement on Client's behalf at Client's request. Without limiting the generality of the foregoing, IBM provides no indemnity for any claim or alleged claim that all or any portion of the Open Source supplier-licensed or Rogue Wave-licensed software may infringe a third party's intellectual property right.

3.1 Response Criteria

IBM will use commercially reasonable efforts to respond, by telephone, to Service calls from Client within two hours during Prime Shift. IBM's initial response may result in resolution of Client's request or it will form the basis for determining what additional actions may be required to achieve technical resolution of Client's request. During Off Shift IBM will use commercially reasonable efforts to respond to Service calls which Client specify to be Client Critical Problems within two hours.

Note: Support requests for Client Critical Problems during Off Shift must be reported by a voice call.

4. Charges

The charges for the selected service are detailed in the documentation provided to the Client at purchase of the service.

5. Client Responsibilities

Client:

- a. will designate the Client Primary Technical Contact (PTC), Client's representative for IBM to direct general technical information pertaining to the Service. The PTC must have sufficient technical knowledge regarding the Eligible Products in Client's environment to enable effective communication with the IBM support center;
- b. agrees to provide IBM the inventory of Eligible Products to be covered at each specified location, and to provide written notice of changes to inventory within one month after the change occurs. Such changes may cause a revision to charges;
- c. agrees to ensure that any access codes IBM provides are used only by authorized Client personnel;
- d. will have valid licensing and subscription (as applicable) in place for Eligible Programs covered by this Service;
- e. will provide appropriate remote access to Eligible Products and provide IBM with all relevant and available diagnostic information (including product or system information) pertaining to software problems. Client remains responsible for adequately protecting Client's system and all data contained therein whenever IBM remotely accesses it with permission. If Client declines such remote system access, IBM may be limited in its ability to provide the full Service necessary to resolve the problem. If IBM is unable to do so, IBM will notify Client and close the service call; and
- f. is responsible for obtaining all necessary permissions to use, provide, store and process content in Services and grants IBM permission to do the same. Client's content may be subject to governmental regulation or may require security measures beyond those specified by IBM for an offering. Client will not input or provide such content unless IBM has first agreed in writing to implement additional required security measures.
- g. will pay his own communication charges associated with accessing this Service including but not limited to, phone and internet charges;
- h. will obtain consents for IBM and its subcontractors to process contact information of Client's employees and contractors in furtherance of our business relationship. IBM will comply with requests to access, update, correct or delete such contact information upon requests;

If making his facilities, software, hardware, networks or other similar resources available to IBM, Client will promptly obtain any licenses or approvals necessary for IBM or its subcontractors to use, access and modify such resources to the extent necessary for IBM to perform the Service, including the development of any Materials. IBM will be relieved of its obligations to the extent Client fails to promptly obtain such licenses or the approvals adversely affect IBM's ability to perform its obligations. If a third party asserts a claim against IBM as a result of Client's failure to promptly obtain these licenses or approvals, Client agrees to reimburse IBM for any costs and damages that IBM may reasonably incur in connection with such claim.

5.1 Data Protection

Client agrees:

- a. to be responsible as sole Data Controller for complying with all applicable data protection or similar laws such as EU Directive 95/46/EC and laws implementing that Directive that regulate the Processing of any Personal Data and special categories of data that are provided by or through Client to IBM as such terms are defined in that Directive. Client is solely responsible for determining

the purposes and means of processing Client Personal Data by IBM under this Agreement, including that such processing according to Client's instructions will not place IBM in breach of applicable data protection laws. Prior to processing, Client will inform IBM about any special categories of data contained within Client's Personal Data and any restrictions or special requirements in the processing of such special categories of data, including any cross border transfer restrictions. Client is responsible for ensuring that the Services as described in this Agreement meet such restrictions or special requirements. IBM will follow Client's reasonable data processing instructions and only process Client Personal Data in a manner which is reasonably necessary to provide the Services and only for that purpose. IBM will apply the security measures as set forth in this Agreement or as notified to IBM in writing in advance. Client is responsible for determining that these measures provide an appropriate level of protection. On termination or expiry of this Agreement, IBM will destroy or return to Client all Client Personal Data. If Client or a Client Data Controller is required by applicable data protection laws to provide information about or access to Client Personal Data to an individual or to the relevant authority, IBM will reasonably cooperate with Client in providing such information or access; and

- b. that when IBM reasonably determines it is useful in its provision of the Services, IBM may transfer Client's data, including Personal Data, across a country border, to entities and countries notified to Client. Such transfer may be made to a country outside the European Economic Area (EEA) or to a country that has not been declared by the European Commission to provide an adequate level of data protection (a "Third Country") provided that Client has had an opportunity to obtain any mandatory approvals. IBM shall reasonably cooperate with Client to meet its legal requirements, including mandatory legal approvals. On this basis Client consent to the Services being provided by these entities in these countries and is solely responsible for determining that any transfer of Client data, including Personal Data, across a country border under this Agreement complies with the applicable data protection laws. If a transfer is to a Third Country, IBM collaboration may include the execution of one or more processing agreements that contain the EU standard contractual clauses for the transfer of personal data to data processors established in third countries in accordance with Decision 2010/87/EU or any European Commission approved replacement (a "Transfer Agreement"). IBM or IBM Affiliates would be a Data Importer and Client or Client's Affiliates would be a Data Exporter as defined in a Transfer Agreement. Any disputes or liability arising from any Transfer Agreement, even if executed by Affiliates of parties to this Agreement, will be treated as if the dispute or liability arose between those parties under the terms of this Agreement.

6. Termination

IBM may withdraw a Service or support for an Eligible Product on at least three months' written notice to Client. If IBM withdraws a Service for which Client has prepaid and IBM has not yet fully provided it to Client, IBM will give Client a prorated refund upon request.

THE TERMS IN THIS AGREEMENT AND THE IBM CLIENT RELATIONSHIP AGREEMENT GOVERN CLIENT'S PURCHASE OF THIS SERVICE. THESE TERMS ARE THE COMPLETE AND EXCLUSIVE AGREEMENT REGARDING THIS SERVICE AND REPLACE ANY PRIOR ORAL OR WRITTEN COMMUNICATIONS BETWEEN CLIENT AND IBM CONCERNING THIS SERVICE. BY PURCHASING THIS SERVICE, CLIENT CONFIRMS THAT CLIENT HAS READ AND ACCEPTS THESE TERMS WITHOUT MODIFICATION.

Neither party is relying on any representation not specified in this Agreement. For a change to the Agreement terms to be valid, both of us must acknowledge acceptance of the change. Additional or different terms in any written communication from Client (such as a purchase order) are void.