Agreement for Support Line for Nutanix hyperconverged solution on Power Systems™

Client acquires Support Line for Nutanix hyperconverged solution on Power Systems™ (the Service), subject to this IBM Agreement for Support Line for Nutanix hyperconverged solution on Power Systems™ (the Agreement).

THE TERMS BELOW 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.

Client accepts the terms of this Agreement without modification by any one of the following means: to the extent permissible under applicable law, by ordering, using, or making payment for the Service or, where required by law, signing this Agreement. A Service becomes subject to this Agreement when IBM or Client's IBM Business Partner accepts Client's order or payment. Once in effect, 1) unless prohibited by applicable local law or specified otherwise, any reproduction of this Agreement made by reliable means (for example, photocopy, electronic scan or facsimile) is considered an original and 2) Service under this Agreement is subject to it.

Client may access IBM Support by calling 1-800-IBM-SERV or the Software Support number for Client's country, listed at https://www.ibm.com/planetwide/ and providing Client's machine type/serial or Product ID number on which the Eligible Product is installed or Client's customer number. To obtain support electronically, please use the Internet web site: http://www.ibm.com/support

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.

Service Description

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

When Client orders the IBM Power System Machine, Client must specify three years or five years of this Service (the Support Period). The selected Support Period begins on the date Client accepts the terms of this Agreement. Service will terminate at the end of the Support Period. This Service does not automatically renew. For IBM installations, support will begin on the date of installation. For Client installations with hardware acquisition, support will begin seven days after shipment date. For Client installations without hardware acquisition, support will begin at contract signature.

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 Supplier.

IBM will assist Client in determining the cause of the problem and provide corrective information if it is available from the editor or 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 Supplier.

If a new defect (referenced or without known correction) is identified, IBM will report the defect to the Supplier, and will inform Client of known actions taken and the availability of corrective information. Supplier-licensed corrective information, including Fixes, is directly distributed and licensed to Client by the Supplier under the terms and conditions of the Supplier's end user license agreement (EULA). While IBM may place an order with the Supplier 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 Supplier-licensed software, including any Fixes. While the Supplier 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 Supplier-licensed software and is merely providing Service 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 Supplier-licensed software may infringe a third party's intellectual property right.

Response Objective

IBM provides Severity 1 assistance 24 hours a day, every day of the year, for Eligible Products where the Client has selected the 24x7 option (if available). Consult the IBM Software Support Guide at http://www14.software.ibm.com/webapp/set2/sas/f/handbook/home.html for details, including the call handling process.

During Prime Shift, IBM's response time objective is two hours for voice and electronic problem submissions. For voice problem submissions outside of Prime Shift hours, IBM's response time objective for Severity 1 is two hours and, if available, and if Client selects the 24x7 severity option, four hours for non-critical problems. For electronic problem submissions during other than Prime Shift, IBM's response time objective is within two hours of the start of Prime Shift on the next business day. IBM is not responsible for delays in electronic response delivery caused by systems and network problems.

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.

Termination

Product or feature. Client may terminate Support Line for any product or any optional feature on 60 days' written notice to IBM, after the first full contract year, or otherwise as specified. IBM may withdraw a Service or support for an Eligible Product on at least three months' written notice to Client.

Agreement. Either party may terminate this agreement: i) without cause on at least one month's notice to the other after expiration or termination of its obligations under the Agreement; or ii) immediately for cause if the other is in material breach of the Agreement, provided the one who is not complying is given notice and reasonable time to comply. Failure to pay is a material breach. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to successors and assignees.

General Terms

Warranties and Post Warranty Support

IBM warrants that it provides Services using commercially reasonable care and skill in accordance with the Service description. The warranty for a Service ends when the Service ends.

IBM does not warrant uninterrupted or error-free operation of an IBM Service or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access. These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose. IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, failure to comply with instructions provided by IBM, or if otherwise stated.

Charges, Taxes, and Payment
Service charges are adjusted when:
a.   a review of the inventory count indicates a change from the last accounting; or
b.   a Specified Location is affected by a change that results in additional charges (e.g., a change in tax rates), Eligible Machine type, or Service is added, deleted, or changed.

Service acquired from an IBM Business Partner.
For Services acquired from an IBM Business Partner, the IBM Business Partner sets the charges and the terms governing charges. Client will pay the IBM Business Partner directly and IBM will provide Service to Client under the terms of this Agreement.

Service acquired directly from IBM. Charges for Services are invoiced in advance. Charges depend on the coverage period (Prime Shift or Full Shift) and the support period (one year or three years). If any authority imposes a duty, tax, levy or fee, excluding those based on IBM's net income, upon the Service IBM supplies under this Agreement, Client agree to pay that amount as specified in the invoice or supply exemption documentation. Should Client be required under any law or regulation of any governmental entity or authority, domestic or foreign to withhold or deduct any portion of the payments due to IBM, then the sum payable to IBM shall be increased by the amount necessary to yield to IBM an amount equal to the sum it would have received had no withholdings or deductions been made. IBM does not give refunds or credits for the unused Service. Client agrees to pay all applicable charges specified by IBM, any customs or other duty, tax, levy, or fee imposed by any authority resulting from Client's acquisitions under this Agreement, and any late payment fees. Amounts are due upon receipt of the

invoice and payable within 30 days of the invoice date to an account specified by IBM. Prepaid Services must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid.

Liability and Indemnity
IBM's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the Service that is the subject of the claim, regardless of the basis of the claim. This limit applies collectively to IBM, its subsidiaries, contractors, and suppliers. IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.

The following amounts, if a party is legally liable for them, are not subject to the above cap: i) third party payments referred to in the paragraph below; ii) damages for body injury (including death); iii) damages to real property and tangible personal property; and iv) damages that cannot be limited under applicable law.

If a third party asserts a claim against Client that an IBM Service acquired under this Agreement infringes a patent or copyright, IBM will defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM, provided that Client promptly (i) notifies IBM in writing of the claim, (ii) supplies information requested by IBM, and (iii) allows IBM to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.

IBM has no responsibility for claims based, in whole or part, on Non-IBM products, items not provided by IBM, or any violation of law or third party rights caused by Client's content, materials, designs, or specifications.

Governing Laws. Each party is responsible for complying with: i) laws and regulations applicable to its business and content, and ii) import, export and economic sanction laws and regulations, including those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. Both parties agree to the application of the laws of the country where the transaction is performed to the Agreement, without regard to conflict of law principles. In the U.S., the laws of the State of New York apply. The rights and obligations of each party are valid only in the country where the transaction is performed. If any provision of the Agreement is invalid or unenforceable, the remaining provisions remain in full force and effect. Nothing in the Agreement affects statutory rights of consumers that cannot be waived or limited by contract. The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under this Agreement.

Confidentiality. Parties will not disclose confidential information without a separate, signed confidentiality agreement. If confidential information is exchanged in connection with the Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this agreement.

Relationship. IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any responsibility for Client's business or operations. Each party is responsible for determining the assignment of its personnel and contractors, and for their direction, control, and compensation. IBM Business Partners are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings.

IBM maintains a robust set of business conduct and related guidelines covering conflicts of interest, market abuse, anti-bribery and corruption, and fraud. IBM and its personnel comply with such policies and require contractors to have similar policies.

IBM and its affiliates, and their subcontractors, may process and store business contact information of Client personnel in connection with the performance of this Agreement wherever they do business. IBM may use personnel and resources in locations worldwide and third party suppliers to support Service delivery.

Neither party may assign the Agreement. Assignment of IBM rights to receive payments and by IBM in conjunction with the sale of the portion of IBM's business that includes the Services is not restricted.

No right or cause of action for any third party is created by this Agreement. Neither party will bring a legal action arising out of or related to the Agreement more than two years after the cause of action arose. Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control.