



# Agreement for Support Line for Linux on Power Systems

Client acquires Support Line for Linux on Power Systems (the Service), subject to this IBM Agreement (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 0800 733 222 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 Linux on Power Systems is remote assistance with the operation of supported Linux products (Eligible Products) and system environments only. Supported versions are located at <http://www-03.ibm.com/services/supline/products/> or as otherwise provided by IBM.

Client's order for the IBM Power System Machine will specify the Support Period. The Support Period begins at the start of Machine warranty. For IBM installations, support begins on the date of installation. For Client installations, support begins seven days after shipment date. For Client installations without hardware acquisitions, support begins at contract acceptance. Service will terminate at the end of the Support Period. This Service does not automatically renew.

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, guidance on how to obtain available corrective service information and available program patches directly from the Linux publisher or supplier (collectively, the Supplier).

IBM will assist Client in determining the cause of the problem and provide Client with guidance on how to obtain patches, maintenance updates, or refreshes (collectively Fixes) directly from the Supplier under the Supplier's terms. IBM is not responsible for the resolution of defects in the Eligible Products supported under this Agreement. IBM is not a party to Client's acquisition of Fixes 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, if any. While IBM may report the defect to the Supplier on Client's behalf as a convenience, Client acknowledges and agrees that IBM is not a distributor, licensor, or reseller of the Linux operating system, including any Fixes.

## Response Objective

IBM provides Severity 1 assistance 24 hours a day, 365 days a year, for Eligible Products for which Client selected the 24x7 option (if available). For hardware or software issues, select the hardware option. To expedite processing, have the machine type, model, and serial number available.

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 provides no product warranties under this Service agreement, nor does IBM provide any pass-through warranties on behalf of any supplier. IBM and its subcontractors do not warrant any non-IBM product.**

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. 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. 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.

Without limiting the generality of the foregoing, IBM provides no indemnity for any claim or alleged claim that all or any portion of the Linux operating system may infringe a third party's intellectual property right.

**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.

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