



Agreement for IBM Software Support Services

Support Line for Linux on System i and System p

NOTICE: PLEASE CAREFULLY READ THE FOLLOWING TERMS UNDER WHICH IBM WILL PROVIDE THIS SOFTWARE SUPPORT SERVICE TO YOU. THE TERMS BELOW WILL GOVERN YOUR PURCHASE OF THIS SERVICE. THESE TERMS ARE THE COMPLETE AND EXCLUSIVE AGREEMENT REGARDING THIS SERVICE AND REPLACE ANY PRIOR ORAL OR WRITTEN COMMUNICATIONS BETWEEN YOU AND IBM CONCERNING THIS SERVICE. BY CLICKING THE "I ACCEPT" BUTTON YOU CONFIRM THAT YOU HAVE READ AND ACCEPT THESE TERMS WITHOUT MODIFICATION.

This Agreement for IBM Software Support Services - Support Line for Linux on System i and System p (called the "Agreement") governs your acquisition of this IBM Software Support Service to assist you with the operation of Linux supported products on specified IBM System i and System p machines (herein referred to as "Service").

IBM has signed agreements with certain organizations (called "IBM Business Partners") to promote and market Service offerings. When you order Service marketed to you by IBM Business Partners, IBM will provide Service to you under the terms of this Agreement. IBM is not responsible for 1) the actions of IBM Business Partners, 2) any additional obligations they have to you or 3) any products or services that they supply to you under their agreements. IBM Business Partners establish the price and term at which they market this Service. In the event that your IBM Business Partner is no longer able to market this Service, for any reason, you may continue to receive Service by contacting IBM.

1. Service Description

- a. **Support Period:** When you order the IBM System i and System p machine, you must specify you are selecting one year of this Service. Your selected Support Period begins on the date you accept the terms of this Agreement. Service under this Agreement will terminate at the end of your selected Support Period.
- b. **Definitions:**
 - (1) **Customer Critical Problem** means a problem for which you have no known work around resulting in a critical disruption in your business operations.
 - (2) **Enterprise** means any legal entity (such as a corporation) and the subsidiaries it owns by more than 50 percent. The term "Enterprise" applies only to the portion of the Enterprise located in Canada.
 - (3) **Off Shift** means all hours outside of Prime Shift.
 - (4) **Prime Shift** means 8 a.m. to 5 p.m. in the local time zone where you receive the Service, Monday through Friday (excluding statutory holidays).
 - (5) **Supported Products** means those Linux products and system environments for your covered IBM System i and System p support groups identified in the Supported Products List located at IBM's Internet address <http://www.ibm.com/services/sl/products>, or as otherwise provided by IBM.

1.2 IBM Responsibilities:

During your specified coverage period, IBM will provide you remote assistance (via telephone from IBM's support centre at **1-800-IBM-SERV** or via an electronic questioning capability at <http://www.ibm.com/support/electronic> in response to your requests pertaining to any of the following information regarding your covered Supported Products:

- a. basic, short duration installation, usage, and configuration questions;
- b. questions regarding IBM Supported Product publications; and
- c. in addition, IBM will make available new fixes to the Red Hat and SuSE Enterprise releases of Linux operating system open source components for IBM supported Linux distributions. IBM will make available emergency source code fixes as new defects are reported. IBM does not support the office applications or the Windows emulators. IBM is not a Linux distributor and does not distribute maintenance updates or refreshes. You must receive maintenance updates and refreshes directly

from the Linux distributor under the terms of their license. IBM will make these new source code fixes available to the Linux distributor and the open source maintainer for inclusion and distribution as errata updates and patches. IBM will support and maintain these new source code fixes until such time as the Linux distributor or open source maintainer incorporates them or develops an alternate fix and distributes as an errata update or patch. At such point, IBM will consider its support requirement fulfilled.

Response Criteria:

If not initially answered by a Service technician, IBM will use commercially reasonable efforts to respond, by telephone, to Service calls from you within two hours during Prime Shift. IBM's initial response may result in resolution of your request or it will form the basis for determining what additional actions may be required to achieve technical resolution of your request. During Off Shift IBM will use commercially reasonable efforts to respond to Service calls which you specify to be Customer Critical Problems within two hours.

Electronic Support:

You will also be able to electronically submit Service requests for some Supported Products, provided you meet the prerequisites IBM specifies for electronic access. IBM will use commercially reasonable efforts to respond to each electronic Service request from you within two hours of receipt during Prime Shift. For electronic Service requests received during Off Shift, IBM will use commercially reasonable efforts to respond within two hours of the start of Prime Shift on the next business day. IBM is not responsible for delays in response delivery caused by systems and network problems.

1.3 Your Responsibilities:

You agree to:

- a. pay any communications charges associated with accessing this Service unless IBM specifies otherwise;
- b. ensure you are properly licensed for all software and have a current Linux subscription for Supported Products for which you request assistance;
- c. retrieve and review a current Supported Products List on a regular basis to verify whether there have been any additions or deletions within your covered support groups;
- d. ensure that any access codes IBM provides to you are used only by your authorized personnel;
- e. designate a technically qualified representative (called "Primary Technical Contact") who will be your focal point to whom IBM may direct general technical information pertaining to your Supported Products. Your Primary Technical Contact and each caller must have sufficient technical knowledge of your Supported Product environment to enable effective communication with the IBM support centre;
- f. provide IBM with all relevant and available diagnostic information (including product or system information) pertaining to software problems for which you request assistance;
- g. if necessary, provide IBM with appropriate remote access to your system to assist you in isolating the software problem cause. You will remain responsible for adequately protecting your system and all data contained therein whenever it is remotely accessed by IBM with your permission; and
- h. use the information obtained under this Service only for the support of the information processing requirements within your Enterprise.

2. Charges and Payment

Service acquired from an IBM Business Partner

When you acquire Service from an IBM Business Partner, the IBM Business Partner sets the charges and the terms governing charges. You will pay your IBM Business Partner directly.

Service acquired directly from IBM

- a. Charges for Service during the Support Period, called the Support Charge, are invoiced in advance.
- b. The Support Charge may vary, depending on, for example, the coverage period and the Support Period (one year).
- c. Amounts are due and payable upon receipt of invoice. You agree to pay accordingly, including any late payment fee.

- d. 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, you agree to pay that amount as specified in the invoice or supply exemption documentation.
- e. IBM does not give refunds or credits for the unused Service.

3. General Principles of Our Relationship

- a. Neither party grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent.
- b. All information exchanged is non-confidential. If either of us requires the exchange of confidential information, it will be made under a signed confidentiality agreement.
- c. Each of us is free to enter into similar agreements with others.
- d. You authorize International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors and IBM Business Partners) to store and use your business contact information wherever they do business, in connection with IBM products and services or in furtherance of IBM's business relationship with you.
- e. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is IBM responsible for any third party claims against you except as permitted by the Limitation of Liability section below for bodily injury (including death) or physical harm to real or tangible personal property caused by IBM's negligence for which IBM is legally liable to that third party.
- f. Where approval, acceptance, consent or similar action by either party is required under this Agreement, such action will not be unreasonably delayed or withheld.
- g. Neither of us is responsible for failure to fulfill any non-monetary obligations due to events beyond its control.

3.1 Notices and Communication

Written communications, including notices to the receiving party's designated representative, are to be sent to the address (physical, e-mail or facsimile) provided by each party to the other. The parties consent to the use of electronic means and facsimile transmissions to send and receive communications in connection with our business relationship arising out of this Agreement, and such communications are acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity.

3.2 Assignment and Resale

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other. Any attempt to assign without consent is void. The assignment of this Agreement, in whole or in part, within the Enterprise of which either party is a part or to a successor organization by merger or acquisition does not require the consent of the other. IBM is also permitted to assign its rights to payments without obtaining your consent. It is not considered an assignment for IBM to divest a portion of its business in a manner that similarly affects all of its customers.

You agree not to resell the Service or use it to provide support to third parties without IBM's prior written consent. Any attempt to do so is void.

3.3 Compliance and Laws

IBM will comply with laws applicable to IBM generally as a provider of information technology Products and Services. IBM is not responsible for determining the requirements of laws applicable to your business, including those relating to the Service that you acquire under this Agreement, or that IBM's provision of or your receipt of the Service under this Agreement meets the requirements of such laws. Notwithstanding anything in this Agreement to the contrary, neither party is obligated to take any action that would violate law applicable to that party. Each party will comply with applicable export and import laws and regulations, including those of the United States that prohibit or limit export for certain uses or to certain end users.

3.4 Dispute Resolution

Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation, i) neither party will bring a legal

action, regardless of form, arising out of or related to this Agreement or any transaction under it more than two years after the cause of action arose; and ii) after such time limit, any legal action arising out of this Agreement or any transaction under it and all respective rights related to any such action lapse.

4. Warranty for Service

IBM warrants that it performs the Service using reasonable care and skill and according to its current description contained in this Agreement and any Attachments. You agree to provide timely written notice of any failure to comply with this warranty so that IBM can take corrective action.

THIS WARRANTY IS YOUR EXCLUSIVE WARRANTY AND REPLACES ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

IBM does not warrant uninterrupted or error-free operation of the Service or that IBM will correct all defects.

5. Limitation of Liability

Circumstances may arise where, because of a default on IBM's part or other liability, you are entitled to recover damages from IBM. Regardless of the basis on which you are entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM's entire liability for all claims in the aggregate arising from or related to the Service or otherwise arising under this Agreement will not exceed the amount of any actual direct damages up to the greater of \$100,000, or the charges for the Service that is the subject of the claim.

This limit also applies to any of IBM's subcontractors and program developers. It is the maximum for which IBM and its subcontractors and program developers are collectively responsible. The following amounts are not subject to a cap on the amount of:

- a) damages for bodily injury (including death) and physical harm to real property and tangible personal property caused by IBM's negligence.

Items for Which IBM Is Not Liable

Except as expressly required by law without the possibility of contractual waiver under no circumstances is IBM, its subcontractors, or program developers liable for any of the following even if informed of their possibility:

- a. loss of, or damage to, data;
- b. special, incidental, consequential or indirect damages (other than as part of the payments referred to in our terms for bodily injury including death caused by our negligence) including, but not limited to, lost profits, business, revenue, goodwill or anticipated savings even if informed of their possibility; or
- c. exemplary damages.

6. Changes to Agreement Terms

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 you (such as a purchase order) are void.

7. Termination and Withdrawal

Either of us may terminate this Agreement if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time to comply.

IBM may withdraw Service for a Linux support group on the Supported Products list on three months' written notice to you. Other changes to the Supported Products List (for example, addition of new products or deletion of products at their end of currency date) will be posted to the Supported Products List as they occur.

IBM may withdraw this Service in its entirety on six months' written notice to you by letter or e-mail.

If IBM withdraws or either of us terminates the Service as provided in this section, upon your request IBM or your IBM Business Partner will provide a prorated refund. This does not apply for support withdrawn for individual products on the Supported Products List.

Any terms of this Agreement which by their nature extend beyond the Agreement termination or withdrawal remain in effect until fulfilled, and apply to respective successors and assignees.

8. Geographic Scope and Governing Law

The rights, duties, and obligations of each of us are valid only in Canada.

Both parties agree to the application of the laws in the Province of Ontario to govern, interpret, and enforce all of your and IBM's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract

9. Data Privacy – All Customers except Public Bodies who are subject to Public Sector Privacy Legislation

For purposes of this section, "Personal Data" refers to information relating to an identified or identifiable individual made available by one of the parties, its personnel or any other individual to the other in connection with this Agreement. In addition to each party's obligations under any existing agreements, the following provisions apply in the event that one party makes Personal Data available to the other:

a. General

- (1) Each party is responsible for complying with any obligations applying respectively to each party under applicable Canadian data privacy laws and regulations ("Laws").
- (2) Neither party will request Personal Data beyond what is necessary to fulfill the purpose(s) for which it is requested. The purpose(s) for requesting Personal Data shall be reasonable. The parties will agree in advance as to the type of Personal Data which is required to be made available.

b. Security Safeguards

- (1) Each party acknowledges that it is solely responsible for determining and communicating to the other the appropriate technological, physical and organizational security measures required to protect Personal Data.
- (2) Each party will ensure that Personal Data is protected in accordance with the security safeguards communicated by the other and agreed to by the receiving party.
- (3) Each party will ensure that any third party to whom Personal Data is transferred is bound by the applicable terms of this section.
- (4) Additional or different services required to comply with the Laws will be deemed a request for new services.

c. Use

Each party agrees that Personal Data will only be used, accessed, managed, transferred, disclosed to third parties or otherwise processed to fulfill the purpose(s) for which it was made available.

d. Access Requests

- (1) Each party agrees to reasonably cooperate with the other in connection with requests to access or amend Personal Data.
- (2) Each party agrees to reimburse the other for any reasonable charges incurred in providing each other assistance.
- (3) Each party agrees to amend Personal Data only upon receiving instructions to do so from the other party or its personnel.

e. Retention

Each party will promptly return to the other or destroy all Personal Data which is no longer necessary to fulfill the purpose(s) for which it was made available, unless otherwise instructed by the other or its personnel, or required by law.

Or

Data Privacy – Public Body Customers Only Who are Subject to Public Sector Privacy Legislation

For purposes of this section, "Personal Data" refers to information relating to an identified or identifiable individual made available by IBM, our personnel, or any other individual to you in connection with this Agreement. In addition to each party's obligations under any existing agreements, the following provisions shall apply in the event that IBM makes Personal Data available to you:

f. **General**

- (1) Each party is responsible for complying with any obligations applying respectively to the parties under applicable Canadian data privacy laws and regulations.
- (2) You will not request Personal Data beyond what is necessary to fulfill the purpose(s) for which it is requested. The purpose(s) for requesting the Personal Data shall be reasonable.

g. **Security Safeguards**

- (1) IBM acknowledges that it is solely responsible for determining and communicating to you the appropriate technological, physical and organizational security safeguards required to protect Personal Data.
- (2) You will ensure that Personal Data is protected in accordance with the security safeguards communicated to you.
- (3) You will ensure that any third party to whom Personal Data is transferred is bound by the applicable terms of this section.

h. **Use**

You agree that Personal Data will only be used, accessed, managed, transferred, disclosed to third parties or otherwise processed to fulfill the purpose(s) for which it was made available.

i. **Access Requests**

- (1) The parties will reasonably cooperate with each other in connection with requests to access or amend Personal Data.
- (2) You will amend Personal Data only upon receiving instructions to do so from IBM or its personnel.

j. **Retention**

You will promptly return to IBM or destroy all Personal Data which is no longer necessary to fulfill the purpose(s) for which it was made available, unless otherwise instructed by IBM or its personnel or required by law.