

Fujitsu Enterprise Postgres LinuxONE (s390x)

FUJITSU ANNUAL SUBSCRIPTION AGREEMENT

For the purposes of this Fujitsu Annual Subscription Agreement, “Licensed Material” shall mean the software program (“Software”) and the accompanying documentation, including “Read Me” file(s) contained in the media (“Documentation”), which is identified on Exhibit A attached hereto. The Software is copyrighted and owned by Fujitsu Limited or a Fujitsu’s licensor, and licensed, not sold to you (“you” or “You”). The term “Fujitsu” hereunder shall collectively mean Fujitsu Limited or its subsidiaries.

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE SOFTWARE. FUJITSU WILL LICENSE THE SOFTWARE TO YOU ONLY IF YOU FIRST ACCEPT THE TERMS OF THIS AGREEMENT. BY USING THE SOFTWARE, WHICH IS CONTAINED IN THE MEDIA CORRESPONDING TO THE SOFTWARE (“MEDIA”), YOU AGREE TO THESE TERMS.

The Software and specific support services (“Support”) that Fujitsu or its authorized reseller will provide to you are also described in and subject to a purchase agreement (“Purchase Agreement”), signed by You and Fujitsu or its authorized reseller, or otherwise accepted by Fujitsu or its authorized reseller, which may consist of one or more mutually agreed order forms, statements of work or similar transaction documents.

This Fujitsu Annual Subscription Agreement, together with its Exhibits (“Agreement”), and the Purchase Agreement are the complete agreement regarding the use of the Software and the Support and replace any prior oral or written communications between you and Fujitsu. In the event of conflicts between the provisions of this Agreement and those of the Purchase Agreement, those of this Agreement shall prevail.

1. License.

a. Grant. Subject to the terms of this Agreement and subject to your payment of the applicable subscription fees, Fujitsu grants to you a limited, non-exclusive, non-transferable subscription license, without the right to sublicense, to install and use the Software on

computer hardware and Documentation during the period set forth in Exhibit A ("License and Support Period"). Unless the Software has copy guard functions, you are permitted to copy the Software for archiving purpose and other purposes as expressly permitted under the Documentation, provided each copy or partial copy of the Software must include the copyright notice and any other ownership information as they appear in the media or within the Software or Documentation.

b. Additional Use. In case expressly permitted under the Documentation, you may embed the whole or part of the Software into your software program in accordance with the terms and conditions described in the Documentation.

c. Restrictions on Use. You shall not, and shall not permit any third party to: (i) use or copy the Licensed Materials except to the extent permitted in Sections 1(a) and 1(b); (ii) use or cause any person or corporation to use any part of the Software in any way to provide software as a service provider service, application service provider service, computing service, commercial timesharing service or other services of similar nature; (iii) modify any part of the Licensed Materials; (iv) market, sell, license, sublicense, distribute, publish, display, reproduce, rent, lease, loan, assign or otherwise transfer to a third party the Licensed Materials or any copy thereof, in whole or in part; or (v) disclose results of any benchmark tests of any Programs to any third party without Fujitsu's prior written approval. You agree that, except to the extent permitted by law, you shall not, and shall not cause or permit any third party to, disassemble, decompile or reverse engineer of the Software or otherwise attempt to gain access to the source code to the Software, provided, however, that you may modify or reverseengineer the programs specified in the Software Release Notes of this product only to the extent permitted by the GNU LESSER GENERAL PUBLIC LICENCE applicable to the free software used with this product. You agree that only Fujitsu Limited or its licensors shall have the right to maintain, enhance or otherwise modify the Licensed Materials.

d. Open Source Software. The Software may also contain open source software components that are distributed under the GNU General Public License, the PostgreSQL License, the GNU LESSER GENERAL PUBLIC LICENSE Version 2.1, the GNU LESSER

GENERAL PUBLIC LICENSE Version 3, the GNU LIBRARY GENERAL PUBLIC LICENSE Version 2 or any other open source or third party software license applicable to such open source software components (“Applicable Open Source Software License”). You recognize and accept that the licensing of such open source software components is governed by the Applicable Open Source Software License as additional terms of this Agreement. In the event of conflicts between the provisions of this Agreement and those of the Applicable Open Source Software License, those of the Applicable Open Source Software License shall prevail. Notwithstanding anything herein to the contrary, THE OPEN SOURCE SOFTWARE COMPONENTS (EXCLUDING THE OPEN SOURCE SOFTWARE COMPONENT, WHICH IS DEFINED IN THE DOCUMENTATION AS SUBJECT TO LIMITED WARRANTY UNDER THIS AGREEMENT) ARE PROVIDED “AS IS” AND FUJITSU ASSUMES NO EXPRESS OR IMPLIED LIABILITY FOR SUCH OPEN SOURCE SOFTWARE COMPONENTS AND EXCLUDES ANY KIND OF WARRANTY FOR SUCH OPEN SOURCE SOFTWARE COMPONENTS, PARTICULARLY IN CONNECTION WITH MISSING SPECIFICATIONS, LACK OF FUNCTIONALITY, PROGRAMMING ERRORS OR ANY OTHER MALFUNCTIONS.

2. Support.

Fujitsu or its authorized reseller will provide the Support to you during the License and Support Period. The details of the Support are described in the Purchase Agreement or otherwise provided to you in writing by Fujitsu or its authorized reseller.

3. Payment Term.

You agree to pay the applicable subscription fees for the Software and Support to Fujitsu or its authorized reseller in accordance with the terms of the Purchase Agreement. These subscription fees are non-refundable.

4. Ownership.

You acknowledge and agree that Fujitsu Limited or its licensors’ own and shall retain all proprietary rights, title and interest in and to the Licensed Materials. You acknowledge that the license granted under

this Agreement does not provide you with title to or ownership of the Licensed Materials, but only a right of limited use under the terms and conditions of this Agreement.

5. Confidentiality.

Any Licensed Materials are considered the confidential information of Fujitsu and you shall not disclose, disseminate or otherwise publish or communicate such confidential information to any person, firm, corporation or other third party without the prior written consent of Fujitsu.

6. Limited Warranty.

a. Scope of Limited Warranty. Fujitsu warrants to you that for a period of ninety (90) days ("Warranty Period") from delivery of the Software, the Software (other than open source software components as stated in Section 1(d), if any), as delivered, will perform substantially in accordance with the Documentation for the Software.

b. Sole Remedy. Fujitsu's liability and your sole and exclusive remedies under the limited warranty set forth above shall be, at Fujitsu's election, to attempt, through reasonable efforts, to correct any failure of the Software to conform to the Documentation or to provide the information relating to such correction. The above remedies are available only if discovery of the non-conformity occurs during the Warranty Period, and Fujitsu is promptly notified in writing by you of such discovery. These limited warranties shall not apply if the Software has been: (i) altered or modified; (ii) subjected to negligence, computer or electrical malfunction; or (iii) used, adjusted, installed or operated (A) other than in accordance with this Agreement or the instructions furnished by Fujitsu or (B) with an application or in an environment other than that intended by Fujitsu.

c. Disclaimer of Any Other Warranties. EXCEPT FOR THE EXPRESS, LIMITED WARRANTY PROVIDED IN THIS SECTION 6, FUJITSU MAKES NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE LICENSED MATERIALS OR ANY OTHER ACCOMPANYING MATERIAL PROVIDED HEREUNDER. FUJITSU SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND IMPLIED,

INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT AND THOSE ARISING FROM A COURSE OF DEALING, USAGE OR TRADE, AND ALL SUCH WARRANTIES ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE LICENSED MATERIAL IS PROVIDED ON AN AS IS, AS AVAILABLE BASIS.

7. Limitation of Liability.

IN NO EVENT SHALL FUJITSU'S LIABILITY ARISING UNDER THIS AGREEMENT EXCEED THE AMOUNT OF SUBSCRIPTION FEE PAID BY YOU FOR THE 12 MONTHS PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. FUJITSU WILL NOT BE LIABLE TO YOU FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, BUSINESS, CONTRACTS, REVENUE, GOODWILL, PRODUCTION, ANTICIPATED SAVINGS, LOSS OF DATA, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR, FOR ANY CLAIM OR DEMAND BY YOU, HOWEVER CAUSED AND (TO THE FULLEST EXTENT PERMITTED BY LAW) UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE) EVEN IF FUJITSU HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOU ACKNOWLEDGE THAT THE AMOUNTS PAYABLE HEREUNDER ARE BASED IN PART ON THESE LIMITATIONS, AND FURTHER AGREE THAT THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

8. Termination.

Fujitsu shall have the right to terminate immediately this Agreement and the license granted herein upon written notice in the event that you fail to comply with any of the terms and conditions of this Agreement. The rights and obligations of Fujitsu and your rights and obligations in Sections 1(c), 4, 5, 6(c), 7, 8 and 9 shall survive termination of this Agreement. Upon termination of this Agreement,

according to Fujitsu's request, you shall return to Fujitsu or, destroy, at your expense, all Licensed Materials, including all copies thereof.

9. Miscellaneous.

a. Assignment. You shall not assign or otherwise transfer this Agreement or any rights or obligations hereunder, in whole or in part, whether by operation of law or otherwise, to any other party without Fujitsu's prior written consent. Any purported transfer, assignment or delegation without such prior written consent will be null and void and of no force or effect.

b. Entire Agreement; Modification; Waiver. This Agreement represents the entire agreement between the parties, and supersedes all prior agreements and understandings, written or oral, with respect to the matters covered by this Agreement. No modification or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing and signed by both parties. The waiver of one breach or default or any delay in exercising any rights shall not constitute a waiver of any subsequent breach or default.

c. Governing Law. This Agreement is governed by the laws of California. The United Nations Convention on Contracts for the International Sales of Goods shall not apply to this Agreement.

d. Severability. If any provision of this Agreement is held invalid or unenforceable under applicable law by a court of competent jurisdiction, it shall be replaced with the valid provision that most closely reflects the intent of the parties and the remaining provisions of this Agreement will remain in full force and effect.

e. U.S. Government Restricted Rights. If this Licensed Material is being licensed to the U.S. Government, the Licensed Materials are "commercial computer software" and "commercial computer documentation" developed exclusively at private expense, and (a) if acquired by or on behalf of a civilian agency, shall be subject solely to the terms of this computer software license as specified in 48 C.F.R. 12.212 of the Federal Acquisition Regulations and its successors; and (b) if acquired by or on behalf of units of the Department of Defense ("DOD") shall be subject to the terms of this commercial computer

software license as specified in 48 C.F.R. 227.7202-2, DOD FAR Supplement and its successors.

f. Export Law Assurances. You understand that the Licensed Materials are subject to export control laws and regulations. You may not export or re-export the Licensed Materials or any underlying information or technology except in full compliance with all applicable export laws and regulations.

g. High Safety Required Use. You acknowledge and agree that the Software is designed, developed and manufactured as contemplated for general use, including without limitation, general office use, personal use, household use, and ordinary industrial use, but is not designed, developed and manufactured as contemplated for use accompanying fatal risks or dangers that, unless extremely high safety is secured, could lead directly to death, personal injury, severe physical damage or other loss (hereinafter "High Safety Required Use"), including without limitation, nuclear reaction control in nuclear facility, aircraft flight control, air traffic control, mass transport control, medical life support system, missile launch control in weapon system. You shall not use the Software without securing the sufficient safety required for the High Safety Required Use. In addition, Fujitsu shall not be liable against you and/or any third party for any claims or damages arising in connection with the High Safety Required Use of the Software.

h. Audit. Fujitsu may, at its expense, appoint its own personnel or an independent third party to audit the numbers of copies and installations as well as usage of the Software in use by you. Any such audit shall be conducted upon thirty (30) days prior notice, during regular business hours on your offices and shall not unreasonably interfere with your business activities.

EXHIBIT A

1. Licensed Material

1. Licensed Material.

Product Name:

2. Product Number: _____

3. Media:

4. Number of Licenses: _____

5. License and Support Period:

License and Support Period is as defined in the Purchase Agreement, or , if it is not defined in the Purchase Agreement, twelve (12) months from the initial shipping date of this Licensed Material. Subject to payment of applicable subscription fee, this License and Support Period shall be automatically and continuously extended for twelve (12) months under the same conditions or for the period specified in the Purchase Agreement, unless either party notifies in writing its intention not to renew at least one (1) month prior to the expiration date of then-current period.

If you fail to make any payment by due date, Fujitsu, at its sole discretion and without affecting the rights of Fujitsu under this Agreement, may cancel or suspend the license and support.

2. Additional Terms

The Software which is included in Licensed Material listed above is licensed under the following terms and conditions in addition to those of this Agreement.

1. Notwithstanding anything contained herein to the contrary, in the case that the Software is installed on a physical server or a virtual server, you must be licensed for the maximum number of IFL in the server or, if “Capacities” is applicable, the number of Capacities.

Capacities: In the case the partial number of IFLs is allocated to virtual machine which the Software is installed, the number of allocated IFLs is licensed but the number is rounded up to the nearest IFL.

For example:

- a. The Software is installed in three (3) virtual servers allocated eight (8) Virtual cores each summing to a total twenty-four (24) Virtual cores. The three (3) virtual servers reside on a single physical server with sixteen (16) IFLs installed. In this case, the number of Capacities is sixteen (16) and you must be licensed for the sixteen (16) IFLs.
- b. The Software is installed in one (1) virtual server allocated 70% capacities which means five point six (5.6) Virtual cores to a 8 IFLs at a server. In this case, the number of Capacities is six (6) and you must be licensed for the six (6) Virtual cores as rounded up to the nearest core.

IFL: IBM® Integrated Facility for Linux (“IFL”), a processor dedicated to Linux workloads on IBM z®, mounted in the Computer. For the purpose of this Exhibit, “Computer” shall mean the computer hardware that runs the OS approved by Fujitsu as the operating environment for the Software. In case you divide physically one (1) Computer into a number of individual sections where each section acts as an independent system (“Partition”), then one (1) Partition shall be deemed equivalent to one (1) Computer or Virtual Server under this Agreement.

2. If the software program for Client (“Client Software”) is included in the Software, you can install and use the Client Software on multiple Clients regardless of Section 1 above. For the purpose of this Agreement, “Client” shall mean the client systems in client-server systems connected via a network.

3. If the software program for WebAdmin (“WebAdmin Software”) is included in the Software, you can install and use the WebAdmin Software on multiple Computers regardless of Section 1 above. For

the purpose of this Agreement, “WebAdmin” shall mean GUI tool for a range of tasks, from database installation to operation management.

4. If the software program for Arbitration server (“Arbitration Software”) is included in the Software, you can install and use the Arbitration Software on the one (1) Arbitration Server regardless of Section 1 above.

5. If the “Pgpool-II” is included in the Software, you can install and use the Pgpool-II on the multiple Computers regardless of Section 1 above.

6. You may also install and use the Software on your Cold Stand-by Computer(s) without additional charge. “Cold Stand-by Computer(s)” means standby Computer(s) which is available for substitute use, but not powered or warmed up and ready for use. If the Computer breaks down or needs to be taken over, you are required to switch on and start the Cold Stand-by Computer in order to take over the Computer. When you install the Software both on the Computer and the Cold Stand-by Computer, you shall not run the Computer and the Cold Stand-by Computer at the same time.

You may also install and use the Software on your Passive Stand-by Computer(s) without additional charge. “Passive Stand-by Computer(s)” means standby Computer(s) which is available for substitute use are powered on and the Software is ready to use but with no user activity or connections. The only activity allowed is that performed by HA replication.

7. If your third party cloud provider is not listed below and Fujitsu has not otherwise announced support for it, Fujitsu may request, in event of a Support request, that you reproduce the problem on a supported cloud or physical server environment if they suspect the problem you are experiencing may be due to your cloud platform.

- IBM Cloud

8. When an upgraded version of the Software is released by Fujitsu, you may request Fujitsu for such upgraded version. In this case, additional terms may be applied, if any. For the avoidance of doubt, (i) such upgraded version shall be deemed as the Software in this

Agreement, and, (ii) for the license count calculation counts the number re-calculated by the contents of Section 1 for the computer where all versions of the software are installed.

9. When an installation is used for purely development, test or user acceptance testing purpose only (“Non Production Environment”), 1 license allows you to use the Software upto four (4) IFLs on the physical or virtual environment.