



## IRON SUPPORT SERVICES LICENSING AGREEMENT

- A. **AGREEMENT.** The following are the terms and conditions under which Iron Systems, Inc. (“IRON”) agrees to provide support to you (“Customer”) for certain network servers, storage, appliances and firmware. Subjected to your payment of applicable maintenance and support fees, IRON agrees to support, maintain, repair or replace the IRON products (s) properly registered and entitled subject to these terms and conditions (“Agreement”). By accessing support service in any way, you agree to be bound by the terms and conditions below.
- B. **TERM.** Coverage under this Agreement will commence on the earlier of (a) (7) days after the date the Product is shipped from the manufacturing facilities of IRON, or (b) the date the Product is received by Customer, or (c) the date the covered Product is activated with IRON. Customer support agreements will automatically renew for additional one year terms unless either Customer or IRON provides written notice of termination at least 30 days prior to the end of any such term. Each renewal will be at IRON’s then-current rate. Services pricing will be charged for all IRON product platform and add-on software purchases. The total service price will be calculated as a percentage of total list prices, appropriate to the level of service purchased. Either party may terminate this Customer support agreement upon 30 days’ notice in the event of a material breach by the other party, provided such breach is not cured by the end of such 30 day period.
- C. **DEFINITIONS.** For the purposes of this Agreement, the following definitions shall apply

1. **Customer Support Center** or **CSC** means an IRON-authorized location where service requests are routed for telephone or electronic mail technical support and problem resolution.
2. **Support Engineer** means an IRON-authorized technician who provides support services under this Agreement.
3. **Local Time** means the local time at the facility where the Product is registered.
4. **Product** means the IRON network servers, storage, appliances, associated firmware, software and IT services.
5. **Software** means the application component of the Covered Product.
6. **Hardware** means the server or appliance on which the Software is installed and runs.
7. **Updates** means new releases of the software or firmware supported under the terms of this Agreement.
8. **Covered Products** means those IRON products that include both Software and Hardware as specified in one of the following documents: (a) invoice from IRON to Customer, or (b) executed sales quotation between Customer and IRON, or (c) a purchase order from Customer to IRON.
9. **Resolution** means that IRON has provided the Customer with a workable solution for the problem or question submitted.
10. **Term** mean the length of the support agreement is valid for the term described in the applicable product invoice or product documentation. If Customer has multiple Covered Products, IRON reserves the right to change the length of a particular term, and prorate Support Fees as necessary, so that the terms for all Covered Products begin and start on the same date.
11. **Territory** means the location or locations in which Products are registered.
12. **Third-party Product** means a hardware device or software product produced by a company other than IRON.
13. **Third-party Service Provider** means a partner IRON may engage with to provide certain technical support services

### D. IRON RESPONSIBILITIES FOR SUPPORT SERVICES

1. **Principal Period of Maintenance.** Support is provided during the hours and for the period described in the applicable Service Product Description, product invoice or product documentation. The scope of the support services will vary based on the level of support purchased and it will be provided in accordance with IRON’s support policy guidelines available at: [www.IronSystems.com/support](http://www.IronSystems.com/support)

2. **Hardware Services.** These services include the repair or replacement of failing hardware returned to IRON factory. Customer will receive Standard Depot Repair as part of Limited Hardware Warranty or Premium Advance Replacement Plan, if purchased separately and as indicated in the order for customer support services.
- 2.1 **Limited Hardware Warranty.** Each new purchaser of a IRON product receives a (2) two year Limited Warranty Coverage on every Standard system (listed on website) sold and 1 year for Custom system for defects in quality, Customer is entitled for hardware maintenance at no charge, a separate agreement must be executed to extend the warranty and for Technical Support to be extended beyond two (2) year.
- a. **No Cost Depot Repair Service.** IRON will provide depot repair services for any product or component that fails during the term of Customer's support agreement at no cost to Customer, provided that Customer contacts the IRON technical support center to report the nature of failure, provides written instructions as how to reproduce the problem and complies with IRON's return RMA policies. Upon remote diagnosis of a hardware failure, IRON's Support Engineer will issue the Customer Representative with an RMA number and provide him/her with instructions for returning the failed hardware to IRON for depot repair service.
- b. **Customers Responsibility.** (a) If a defective product is returned, the cost of incoming freight and insurance is the responsibility of the Customer. (b) Products returned to IRON must be preauthorized by IRON with a Return Material Authorization (RMA) number marked on the outside of the package, and sent prepaid, insured and packaged appropriately for safe shipment. (c) Only packages with RMA numbers written on the outside of the shipping carton and/or the packing slips and shipping paperwork will be accepted by IRON's receiving department. All other packages will be rejected. (d) All products to be returned must be in the original manufacturer's undamaged packaging with all accessories shipped with the original product including cables, handles and manuals. If you did not retain the original packaging materials please contact IRON Customer Service department at 408-943-8000 x 2 or Support-at-IronSystems.com. There is a charge for replacement packaging. (e) IRON may invoice the Customer for any failed products or components (1) with respect to which the damage to such Products or components is attributable to actions taken by Customer or any of its agents (including but not limited to the categories set forth in Section 4 below); (2) missing parts or (3) a product returned for repair but found to be in good working order will be charged a \$200 "No Trouble Fee". (4) Customers' credit card number (American Express, Visa, or MasterCard) will be required. (f) The Customer is responsible for all customs fees, taxes or VAT that may be due (excluding income taxes).
- c. **IRON Responsibility.** (a) The received product will be repaired or replaced, and shipped back to Customers within 14 days of its receipt. (b) If replaced, the product may be new, refurbished like-new. In the event of product obsolescence, IRON reserves the right to replace failing product with a product of like or better features and functionality. (c) The cost of return freight is the responsibility of IRON (d) IRON uses new and reconditioned parts made by various manufactures when performing warranty repairs and building replacement products. IRON will retain ownership of all parts removed from repaired systems. (e) Repair or replacement of a part or product will not extend the Limited Warranty. (f) Title to any returned products or components will transfer to IRON upon receipt. (g) IRON will replace defective media or documentation or, at its option, undertake reasonable efforts to modify the software to correct any substantial non-conformance with the specifications. (h) IRON will receive and ship the repaired or replacement units from its customer support center and repair depot facilities in San Jose, California or from Buckinghamshire in the UK for units registered in EMEA.
- 2.2 **Premium Advance Replacement Hardware Service Plan.** Advance replacement is an optional service upgrade and must be purchased and executed at the time of original system purchase, when in effect this contract extends the Limited Warranty to the term of this contract.
- a. IRON will, at its sole option, repair or replace any product or component that fails during the term of Customer's support agreement at no additional cost to Customer, provided that Customer contacts the IRON technical support center to report

the nature of failure, provides written instructions as how to reproduce the problem and complies with IRON's return policies.

- b. IRON's Support Engineer will issue the Customer Representative with an RMA number following diagnosis of hardware failure and provide him/her with instructions for returning the failed hardware to IRON.
  - c. IRON will ship an advance replacement component or product to the Customer at earliest for Next-Day delivery following IRON's confirmation of the failure of the original product or component via remote troubleshooting. The replacement product may be new, refurbished like-new. In the event of product obsolescence, IRON reserves the right to replace failing product with a product of like or better features and functionality. IRON will ship a replacement unit to Customer based on contracted principal period of support. Replacement units will be shipped from IRON's facilities in San Jose, California or from Buckinghamshire in the UK for units registered in EMEA. The Customer is responsible for all customs fees, taxes or VAT that may be due (excluding income taxes).
  - d. Customer will return the failed product or component to IRON under the RMA number issued by IRON upon receipt of the replacement. IRON will be responsible for all freight charges for returned Products or components provided Customer uses IRON designated carrier. Products returned to IRON must be preauthorized by IRON with a Return Material Authorization (RMA) number marked on the outside of the package, and sent prepaid, insured and packaged appropriately for safe shipment. Only packages with RMA numbers written on the outside of the shipping carton and/or the packing slips and shipping paperwork will be accepted by IRON's receiving department. All other packages will be rejected. All products to be returned must be in the original manufacturer's undamaged packaging with all accessories shipped with the original product including cables, handles and manuals. If you did not retain the original packaging materials please contact IRON Customer Service department at 408-943-8000 x 2 or Support-at-IronSystems.com. There is a charge for replacement packaging. IRON may invoice the Customer for any failed products or components (a) with respect to which the damage to such Products or components is attributable to actions taken by Customer or any of its agents (including but not limited to the categories set forth in Section F below); or (b) missing parts; or (c) a product returned for repair but found to be in good working order will be charged a \$300 "No Trouble Fee" or (b) not returned within ten (10) days of shipment of the replacement unit(s), Customer will be charged the full retail price of the product. Customers' credit card number (American Express, Visa, or MasterCard) will be required.
  - e. Title to any returned products or components will transfer to IRON upon receipt. IRON uses new and reconditioned parts made by various manufactures when preparing refurbished units or performing warranty repairs and building replacement products. IRON will retain ownership of all parts removed from repaired systems. Repair or replacement of a part or product will not extend the Limited Warranty.
3. **Premium Help Desk and Hardware Services – Telephone, Web-Based Email Support and Last-Mile Maintenance Plans.** Premium support contracts are optional service upgrade and must be purchased and executed, when in effect this contract extends the Limited Warranty to the term of this contract. (a) IRON provides interactive technical assistance during coverage hours by telephone, or Web-based email, or through Web-based support tools. An IRON technical specialist will work with a Customer representative remotely to diagnose and identify software and hardware not performing to documented specifications. (b) Support also includes general assistance regarding usage, documentation and configuration on a limited basis. (c) IRON support contracts and warranty support do not include installation; if a Customer needs installation, IRON will offer IRON's consulting services or refer the Customer to a 3<sup>rd</sup> party certified value-added reseller. (d) Please note that Support in the Americas, Asia Pacific, EMEA and Japan is provided in English only. (e) A separate agreement must be executed to extend the warranty and for Technical Support. (f) IRON reserves the right to cancel Technical Support Contracts for which payment has not been received. (g) Customer will receive Silver, Gold or Platinum service as indicated in its order for the customer support services.
- 3.1 **Web-Based Email Support, 8x5 Silver Technical Support Plan.** This service offers Technical Support for troubleshooting the installation and maintenance of the product as well as software updates. Technical Support is available 9 am to 5 pm Monday through Friday (except holidays) in your local time zone via email.

- 3.2 **Phone and Web-Based Email Support, 8x5 Gold Technical Support Plan.** This service offers Technical Support for troubleshooting the installation and maintenance of the product as well as software updates. Technical Support is available 9 am to 5 pm Monday through Friday (except holidays) in your local time zone via telephone or email.
- 3.3 **Phone and Web-Based Email Support, 24x7 Platinum Technical Support Plan.** This service offers Technical Support for troubleshooting the installation and maintenance of the product as well as software updates. Technical Support is available 24 x 7 in your local time zone via telephone or email.
- 3.4 **Last-Mile Support and Service Maintenance Plan.** Iron System through **Third-party Service** Provider partners provides Last-Mile warranty repair and services for its server, storage and appliance products. (a) Iron System or its partner will provide warranty services based upon the type of service, SLA and length of service Customer originally purchased from Iron Systems. (b) Customer has the responsibility to provide access to the equipment in an area that offers a safe working environment to provide repair. (c) Iron System or its partner will schedule the last-mile repair with the Customer within the prescribed time of the warranty agreement. (d) Scope of coverage provides coverage for all components within the system from manufacturer's defect for the warranty period. (e) It is required that necessary spare parts be on site prior to dispatch of a support engineer.
4. **Software/Firmware Support.** IRON will log, track, prioritize and resolve software, firmware and/or documentation bug reports and enhancement requests for software/firmware support under this agreement. Subscription services support does not include issues related to the operation of the server, storage, appliance, firmware or software updates/upgrades or hardware replacement.
5. **Software/Firmware Update Service.** All software and firmware maintenance releases and updates are included in this agreement. The updates will be delivered exclusively via the Web under download section of our customer support portal.
6. **Subscription Services Support.** IRON will provide telephone and Web-based support for products based upon the contracted principal period of support. Support for subscription services, are provided for the length of the subscription services contract for that service. Subscription services support does not include issues related to the operation of the Product, firmware or software updates/upgrades or hardware replacement.
7. **Support Tools.** This agreement includes unlimited access to IRON's Web-based support tools, including FAQs, documentation and Knowledgebase systems.

## **E. CUSTOMER RESPONSIBILITIES FOR SUPPORT SERVICES**

1. **It is the Customer's responsibility To:** (a) Provide complete information to and cooperate with the Support Engineer in resolving the problem Customer is experiencing. Information required by the Support Engineer may include, but not be limited to, the type of server hardware you use, the complete text of error messages and description of the problem for which you seek support and additional software or hardware you are using that falls outside the scope of coverage of this Agreement. Customer understands and agrees that the completeness and accuracy of the information provided to IRON may affect IRON's ability to assist you. (b) Cooperate with the Support Engineer to resolve the problem you are experiencing. Among other things, the Support Engineer may require that you reload firmware or configuration information or help perform the tests or to reproduce the problem in order to diagnose problems. (c) Maintain the equipment in a location that conforms to the environmental conditions required of the IRON product.
2. **Lapsed Service Fee.** If Customer purchases an annual Maintenance Agreement for a Product for which maintenance was never originally purchased or for which maintenance has lapsed, Customer will be charged a "Lapsed Service" fee in addition to the then-current standard maintenance fee pro-rated for the time period during which no maintenance was in effect from the date the product was first received by Customer.

3. **Recertification.** Requests for maintenance on equipment purchased from sources other than a IRON VAR or directly from IRON (i.e. used or gray market systems - like EBAY) will first be subject to an inspection by a representative of IRON at the rate of \$1,000 per unit. The inspection will determine if the unit is at a maintainable state. The following criteria will be used.
- (a) The original invoice for the system must be paid in full
  - (b) Unit must comply with IRON end-of-life policy
  - (c) Hardware platform must support IRON current software version
  - (d) Hardware is in good working order

If the inspection determines that the unit is not at a maintainable state IRON will:

- (a) Repair or replace the defective hardware
- (b) Upgrade software to current supported versions
- (c) Hourly charges for time spent bringing the unit to a maintainable state and cost of materials will be billed to the Customer.

Once the unit has passed inspection, a maintenance contract and additional services may be purchased at the current published rates.

4. **Prices and Payment.** Fees for the initial or any subsequent term of Customer's support agreement will be due and payable net 30 days from date of invoice, and all payments will be made in US dollars. IRON may accept payment in any amount without prejudice to its right to recover the balance of the amount due or to pursue any other right or remedy. No endorsement or statement on any check or payment or in any letter accompanying a check or payment or elsewhere will be construed as an accord or satisfaction. Overdue payments may be charged interest at the lesser of 1.5% per month or the maximum interest allowed by law. If IRON is required to retain a collection agency or attorney to collect overdue payment, all reasonable collection costs, including attorney fees, will be payable by Purchaser.
5. **Applicable Taxes and Other Charges.** All charges are exclusive of all foreign, federal, state, municipal, or other government excise, duty, sales, use or occupational taxes or charges now in force or enacted in the future, and therefore are subject to an increase equal in amount to any taxes or charges IRON may be required to collect or pay upon the services performed or materials provided hereunder whether during the service coverage period or otherwise.

## F. EXCLUSIONS AND LIMITATIONS

(a) This Service Agreement is valid during the Term and in the Territory only. (b) Support Services are strictly limited to telephone and electronic support only. Customer acknowledges and understands that no hardware or software is perfect or error-free and that, despite its commercially reasonable efforts, IRON may be unable to provide answers to or resolve some or all requests for software support. IRON makes no promises, guarantees or assurances of any kind that it will be able to provide resolution to problems that you report. Support Services will be provided only on the official current release, and the most recent prior release, of the firmware or software. Support Services do not include configuration of third-party hardware, unauthorized upgrades, general solution provider services, general network maintenance or any default last-mile service. (c) Installation, de-installation or relocation services are not covered by this Agreement. IRON is not obligated under this Agreement to repair or replace (i) Product that has been Damaged by abuse, accident, act of God, external causes, misuse, misapplication, improper installation or shipment or the like; or (ii) Product that has been modified or on which the serial number has been removed or altered. (d) IRON is not obligated to repair or replace product damaged by accident, catastrophe, neglect, theft, misuse, transportation, modification, unauthorized maintenance, or damage from faulty external factors (e.g. electrical power, temperature or humidity).

## **G. WARRANTY DISCLAIMER**

IN CONNECTION WITH THIS AGREEMENT, SERVICES RENDERED HEREUNDER AND PARTS SUPPLIED PURSUANT HERETO, IRON MAKES NO WARRANTY, EITHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, OR NONINFRINGEMENT. IRON'S SOLE OBLIGATION AND CUSTOMER'S SOLE REMEDY SHALL BE LIMITED TO IRON'S REASONABLE COMMERCIAL EFFORTS TO REPAIR OR REPLACE ANY DEFECTIVE PRODUCT.

ANY HARDWARE OR SOFTWARE FURNISHED TO YOU HEREUNDER ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED, IMPLIED, STATUTORY OR OTHERWISE INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, OR NONINFRINGEMENT.

## **H. LIMITATION OF LIABILITY**

IRON'S LIABILITY IN CONNECTION WITH THIS AGREEMENT, RENDERED HEREUNDER WHETHER FOR BREACH OF CONTRACT, TORT, OR OTHERWISE, SHALL BE LIMITED TO A REFUND OF THE PRO RATA CHARGES PAID FOR THE SPECIFIC SUPPORT SERVICES INVOLVED IN THE CLAIM, OR \$1000, WHICHEVER IS LESS. IRON SHALL NOT BE LIABLE TO CUSTOMER NOR TO ANY THIRD PARTY FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, USE, DATA, SOFTWARE, GOODWILL OR PROPERTY DAMAGE), WHETHER FORESEEABLE OR NOT, EVEN IF IRON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE INSTALLATION, ACCEPTANCE, PERFORMANCE, POSSESSION, OPERATION OR USE OF THE PRODUCT, HARDWARE, SOFTWARE OR SERVICES FURNISHED HEREUNDER.

## **I. GENERAL PROVISIONS**

1. Force Majeure. IRON shall not be liable for its failure to perform its obligations under this Agreement for causes beyond its reasonable control.
2. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, excluding its choice of law rules. In the event that any dispute or controversy between the parties arises out of or is related to this Agreement, and/or the performance or termination thereof, such dispute or controversy shall be subject to the exclusive jurisdiction of the California state courts in and for Santa Clara County, California (or, if there is federal jurisdiction, the U.S. District Court for the Northern District of California) and the prevailing party shall recover all of its costs, including reasonable attorneys' fees.
3. Transferability. IRONs' Limited Warranty Depot Service, Advance replacement service plan and Premium Technical Support Service Contracts are extended to the original purchaser or the original End User only. Proof of purchase is required. The warranty and contract are personal to the purchaser or End User and are non-transferable. Sale of the product terminates the Limited Warranty and all service contracts.
4. Complete Agreement; Amendments. This Agreement is the complete and exclusive agreement between Customer and IRON regarding Support Services of your Product(s) and supersedes all proposals, oral or written, all negotiations, conversations or discussions between the parties relating to this Agreement or industry custom.
5. Unenforceable Provisions. If any term of this Agreement is found to be illegal or unenforceable, the remaining portions of this Agreement shall remain in effect.
6. Compliance with Export Control Laws and Regulations. The Products, the Operating System, the Software Services and the Hardware Services are subject to the export regulations of the United States, including but not limited to regulation under the U.S. Export Administration Regulations. Customer agrees that you will not directly or indirectly export, re-export, transfer or disclose any Product except in strict compliance with applicable U.S. laws and regulations.