



STATE OF UTAH COOPERATIVE CONTRACT AMENDMENT

AMENDMENT #: 3

CONTRACT #: AR2496

Starting Date: Unchanged

Expiration Date: Unchanged

TO BE ATTACHED AND MADE PART OF the specified contract by and between the State of Utah Division of Purchasing and EC America Inc., a wholly owned subsidiary of immixGroup (Referred to as CONTRACTOR).

BOTH PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

Attachment E is amended to incorporate the following attachment:

- Nutanix End User License Agreement

Effective Date of Amendment: Date of the last signature below.

All other terms and conditions of the contract, including those previously modified, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

STATE OF UTAH

11/18/2021

11/19/2021

Contractor's Signature

Date

Director, State of Utah Division of Purchasing

Date

Adam Hyman

Contractor's Name (Print)

Director, Government Programs

Title (Print)

For Division of Purchasing Internal Use

Purchasing Agent	Phone #	E-mail Address	Contract #
Solomon Kingston	801-957-7142	skingston@utah.gov	AR2496

All references to Nutanix in these Terms and Conditions should be read as "Contractor (immixTechnology, Inc.), acting by and through its supplier, Nutanix." NASPO Contract No. AR2496 and this Nutanix Terms and Conditions will govern this agreement between the Vendor and Customer ("Parties"), where terms do not conflict with the NASPO Valuepoint Master Agreement.

TERMS AND CONDITIONS FOR NUTANIX PRODUCTS AND SERVICES

NUTANIX END USER LICENSE AGREEMENT

IMPORTANT – READ CAREFULLY

READ THIS END USER LICENSE AGREEMENT (THE "AGREEMENT") BEFORE DOWNLOADING, INSTALLING, COPYING, CONFIGURING, ACCESSING, DEPLOYING, USING NUTANIX SUPPORT AND/OR USING THE SOFTWARE. BY EXECUTING THIS AGREEMENT, YOU AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. YOU FURTHER AGREE THAT YOU ARE BOUND BY AND ARE A PARTY TO THIS AGREEMENT, AND, IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE TERMS.

YOUR USE OF THE SOFTWARE IS EXPRESSLY CONDITIONED ON YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT:

- **DO NOT ORDER OR PURCHASE THE SOFTWARE**
- **DO NOT DOWNLOAD, INSTALL, COPY, CONFIGURE, ACCESS, DEPLOY, CLICK ON AN "ACCEPT" BUTTON, USE NUTANIX SUPPORT AND/OR OTHERWISE USE THE SOFTWARE**
- **DELETE THE UNUSED SOFTWARE AND RETURN THE UNUSED SOFTWARE TO THE VENDOR FROM WHICH YOU ACQUIRED IT**

This Agreement is between You, on behalf of the company, partnership or business entity that You represent ("You" or "Your") and either (a) Nutanix, Inc. a Delaware corporation, with offices located at 1740 Technology Drive, Suite 150, San Jose, CA 95110, USA if the Software was purchased in the United States, Mexico or Canada; or (b) Nutanix Netherlands, B.V. incorporated and registered in The Netherlands with its registered office at Scorpius 100, 2132 LR Hoofddorp, The Netherlands, if the Software was purchased in any other country ((a) and (b) are referred to herein as "Nutanix").

"Software" means any Nutanix software, library, utility, tool or other computer or program code, in object (binary) or source-code form provided, directly or indirectly to You as well as to any copies (whether complete or partial) made by or on Your behalf, including without limitation firmware. The term "Software" also includes any updates, upgrades or other new features, functionality or enhancements to the Software made available directly or indirectly to You. *"Documentation"* means any on-line read me, help files, or other explanatory materials related to the Software.

This Agreement applies to all Software and Documentation made available by Nutanix to You.

1. **License Grant and Entitlement.** The Software and Documentation are licensed, not sold, to You by Nutanix. This Agreement confers no title or ownership and is not a sale of any rights in the Software. Subject to the terms and conditions of this Agreement, the terms of Your entitlement which evidences Your authorization to use the Software and the authorized scope of use of the Software ("Entitlement"), and payment of the purchase price and/or all fees, You are hereby granted a personal, limited, non-assignable, non-exclusive, non-sublicensable and non-transferable right to run one copy of the object code version of the Software on one authorized Nutanix system during the period of the license and for internal business operations only ("Permitted Use"). The Entitlement shall be specified in writing on the order or equivalent document issued by Nutanix or the party from whom You have lawfully acquired the products. The Entitlement

shall specify the name of the product, the number of Licensed Units and the usage level and feature set authorized. Your Permitted Use is limited to the number of Licensed Units stated in Your Entitlement. "Licensed Unit" means the unit of measure by which Your use of Software is licensed, as described in Your Entitlement. If You have multiple Licensed Units, You may install and use as many copies of the Software as You have Licensed Units, in each case, on an authorized Nutanix system and only as permitted herein. Use of the Software outside the scope of Your Entitlement is unauthorized and shall constitute a material breach of this Agreement and void the warranty and/or support obligations of which You may otherwise be entitled. You agree to use Your best efforts to prevent and protect the contents of the Software and Documentation from unauthorized disclosure or use. Nutanix and its licensors reserve all rights, including but not limited to ownership and intellectual property rights, not expressly granted to You. There are no implied licenses granted by Nutanix under this Agreement. Except as expressly specified above, You shall have no rights to the Software.

2. Use.

2.1 Limitations on Use. You must not use the Software or Documentation except as permitted by this Agreement. You must not:

- (a) alter, decompile, disassemble, modify, unbundle or create any derivative works of the Software, the underlying source code, or the Documentation in any way, including without limitation customization, translation or localization;
- (b) port, emulate the functionality, reverse compile, reverse assemble, reverse engineer, create derivative works, or otherwise reduce to human readable form or attempt to separate any of the components of the Software or derive the source code for the Software;
- (c) copy, redistribute, encumber, sell, rent, lease, license, sublicense, or otherwise transfer rights to the Software or Documentation, use the Software for the benefit of any third party or on a hosted basis;
- (d) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Software or Documentation or any product in which the Software is embedded
- (e) disclose the results of testing, benchmarking or other performance or evaluation information related to the Software or the product to any third party without the prior written consent of Nutanix;
- (f) access or use the Software or Documentation for any competitive purposes (e.g. to gain competitive intelligence; to design or build a competitive product or service, or a product providing features, functions or graphics similar to those used or provided by Nutanix; to copy any features, functions or graphics; or to monitor availability, performance or functionality for competitive purposes);
- (g) use any "locked" or key restricted feature, function or capability without first purchasing the applicable license and obtaining a valid key, even if such feature, function or capability is enabled without a key; or
- (h) distribute any copy of the Software to any third party, including as may be embedded in equipment sold in the secondhand market.

You must not cause, encourage or permit any third party to do any of the foregoing.

If You believe that any of the foregoing restrictions are prohibited by Federal law, You agree to provide Nutanix with at least ninety (90) days advance written notice of Your belief and provide all reasonably requested information from Nutanix to evaluate Your claim. Nutanix may, in its discretion, impose reasonable conditions, including a reasonable fee, on such use of the Software, or offer to provide alternatives to ensure that Nutanix's proprietary rights in the Software are protected and to reduce any adverse impact on Nutanix's proprietary rights.

2.2 **Third Party Software.** You acknowledge that the Software may contain copyrighted software of third parties which are obtained under a license from such parties ("Third Party Software"). All third party licensors retain all right, title and interest in and to such Third Party Software and all copies thereof, including all copyright and other intellectual property rights. Your use of any Third Party Software shall be subject to the terms and conditions of this Agreement, and the applicable restrictions and other terms and conditions set forth in any Third Party Software documentation or printed materials, including without limitation an end user license agreement.

3. **Open Source Components.** Software may use or include one or more of the open source software components listed in the Nutanix open source attribution file, which is available at www.nutanix.com/opensource. Please refer to the open source attribution file for the open source license disclosures and pertinent terms.

4. **Proprietary Rights.** You acknowledge and agree that the Software belongs to Nutanix or its licensors. You agree that You neither own nor hereby acquire any claim or right of ownership to the Software and Documentation or to any related patents, copyrights, trademarks or other intellectual property, including all modifications and derivative works of any of the foregoing. Nutanix and its licensors retain all right, title and interest both tangible and intangible in and to all copies of the Documentation and the Software at all times, regardless of the form or media in or on which the original or other copies may subsequently exist. This license is not a sale of the original or any subsequent copy. The Software and Documentation are protected by copyright and other intellectual property laws and by international treaties. Any and all other copies of the Software or Documentation made by You are in violation of this license. All content accessed through the Software is the property of the applicable content owner and may be protected by applicable copyright law. This license gives You no rights to such content. All trademarks used in connection with the Software and Documentation are owned by Nutanix, its affiliates and/or its licensors and other suppliers, and no license to use any such trademarks is provided hereunder. All suggestions or feedback provided by You to Nutanix with respect to the Software shall be Nutanix's property and deemed Confidential Information of Nutanix. You hereby assign to Nutanix all right, title and interest in and to any feedback provided to Nutanix.

5. **Support.** Nutanix's support obligations for the Software, if any, are set forth in the Support Terms and Conditions, which may be found at <http://www.nutanix.com/support/support-terms/>. Nutanix does not provide any product maintenance or support services under this Agreement. Product maintenance and support services, if any, will be provided under a separate agreement. This Agreement does not entitle You to any product updates at any time in the future.

6. **Term and Termination.** This Agreement and Your right to use the Software and Documentation may be terminated by You at any time upon written notice. Upon expiration or termination of this Agreement for any reason: (a) all licenses granted by Nutanix shall immediately terminate; (b) You shall immediately discontinue use of the applicable Software and products; (c) You shall promptly remove Your confidential data, if any, and immediately return the products and related materials to Nutanix or the party from whom the product was obtained; (d) You shall destroy all copies of the Software and Documentation in Your possession, custody or control; and (e) if requested, You shall certify to Nutanix in writing that such return or destruction has occurred. The preamble as well as Section 2, 4, 6, 7, 8, 10, 12, 14, 15 and 16 shall survive any expiration or termination of this Agreement.

7. **NO WARRANTY.** EXCEPT AS PROVIDED IN THE NUTANIX LIMITED WARRANTY, WHICH MAY BE FOUND AT www.nutanix.com/warranty/ AND ATTACHED AS EXHIBIT B, YOU AGREE THAT THE SOFTWARE AND DOCUMENTATION ARE PROVIDED "AS IS" AND THAT NUTANIX AND ITS LICENSORS MAKE NO OTHER WARRANTIES AS TO THE SOFTWARE OR DOCUMENTATION, INCLUDING WITHOUT LIMITATION UNINTERRUPTED USE, ACCURACY, AND DATA LOSS. NUTANIX AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE (EVEN IF NUTANIX KNOWS OR SHOULD HAVE KNOWN OF SUCH PURPOSE), AND ANY WARRANTIES ARISING BY

STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE, OR THAT THE SOFTWARE WILL BE COMPATIBLE OR WORK WITH ANY THIRD PARTY SOFTWARE OR HARDWARE OR ANY OTHER NUTANIX PRODUCTS. NUTANIX AND ITS LICENSORS DO NOT WARRANT THAT THE SOFTWARE OR DOCUMENTATION OR ANY RESULTS OF USE THEREOF WILL BE FREE OF DEFECTS, ERRORS OR VIRUSES, RELIABLE OR ABLE TO OPERATE ON AN UNINTERRUPTED BASIS OR IN A PARTICULAR ENVIRONMENT OR THAT ERRORS THEREIN, IF ANY, WILL BE CORRECTED. YOU FURTHER ACKNOWLEDGE THAT THE SOFTWARE IS NOT INTENDED OR SUITABLE FOR USE IN SITUATIONS OR ENVIRONMENTS WHERE THE FAILURE OR TIME DELAYS OF, OR ERRORS OR INACCURACIES IN THE CONTENT, DATA OR INFORMATION PROVIDED BY THE NUTANIX SOFTWARE COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

8. **LIMITATION OF LIABILITY.** TO THE FULLEST EXTENT PERMITTED BY LAW, NUTANIX AND ITS LICENSORS SHALL NOT BE LIABLE FOR ANY DAMAGES, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL OR EQUITABLE THEORY, ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INCIDENTAL DAMAGES, EVEN IF NUTANIX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR FOR ANY LOST REVENUES, GOODWILL OR PROFITS, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE HARDWARE, SOFTWARE OR SERVICES, LOST DATA, WORK STOPPAGE, RE-RUN TIME, INACCURATE OUTPUT, COMPUTER FAILURE OR MALFUNCTION. YOU AGREE THAT YOU SHALL HAVE THE SOLE RESPONSIBILITY FOR PROTECTING YOUR DATA, BY PERIODIC BACKUP OR OTHERWISE. IN ANY CASE, NUTANIX'S SOLE LIABILITY AND YOUR EXCLUSIVE REMEDY UNDER ANY PROVISION OF THIS AGREEMENT SHALL BE THE REPLACEMENT OF THE SOFTWARE FOUND TO BE DEFECTIVE, WITH THE EXCEPTION OF DEATH OR PERSONAL INJURY CAUSED BY THE NEGLIGENCE OF NUTANIX TO THE EXTENT APPLICABLE LAW PROHIBITS THE LIMITATION OF DAMAGES IN SUCH CASES. NUTANIX SHALL NOT BE LIABLE FOR ANY CLAIM BROUGHT MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION FOR SUCH CLAIM FIRST AROSE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OR LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATIONS MAY NOT APPLY TO YOU IN WHICH CASE NUTANIX'S LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNT OF THE LICENSE FEES YOU PAID FOR THE SOFTWARE GIVING RISE TO THE CLAIM. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from Nutanix's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

9. **Infringement.** Subject to the remainder of this section, Nutanix shall defend or settle, at its own expense, any third-party action against You to the extent based upon a claim that the Software infringes any copyright or trademark or misappropriates any trade secret, and will pay such damages or costs as are finally awarded against You attributable to such claim, provided that You (i) notify Nutanix promptly in writing of any such action, (ii) give Nutanix control of the defense and/or settlement of such action to the extent permitted by 28 USC 516, (iii) give Nutanix all reasonable information and assistance, and (iv) are not in material breach of this Agreement. Should the Software become, or in the opinion of Nutanix be likely to become, the subject of such an infringement claim, Nutanix may replace or modify, in whole or in part, the Software to make it non-infringing. Nutanix assumes no liability hereunder for: (a) any method or process in which the Software may be used; (b) its compliance with Your specifically requested specifications; (c) use of software other than a current unaltered release of the Software or use of any older version of the Software when the use of a newer release of the Software made available to You would have avoided the infringement; (d) the combination, operation or use of the Software with non-Nutanix products or services; or (e) use of the Software in a manner or for a purpose for which it was not intended.

THIS SECTION SETS FORTH NUTANIX'S ENTIRE LIABILITY AND OBLIGATION AND YOUR SOLE REMEDY FOR ANY CLAIMS OR ACTIONS RELATED TO INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS.

10. **Confidentiality.** "*Confidential Information*" shall mean the Software and Documentation and all other information disclosed to You that Nutanix characterizes as confidential at the time of its disclosure either in writing or orally, except for

information which You can demonstrate: (a) is previously rightfully known to You without restriction on disclosure; (b) is or becomes, from no act or failure to act on Your part, generally known in the relevant industry or public domain; (c) is disclosed to You by a third party as a matter of right and without restriction on disclosure; or (d) is independently developed by You without access to the Confidential Information. You shall use Your best efforts to preserve and protect the confidentiality of the Confidential Information at all times. You shall not disclose, disseminate or otherwise publish or communicate Confidential Information to any person, firm, corporation or other third party without the prior written consent of Nutanix. You shall not use any Confidential Information other than in the course of the activities permitted hereunder. You shall notify Nutanix in writing immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement, and will cooperate with Nutanix in every reasonable way to regain possession of Confidential Information and prevent any further unauthorized use. If You are legally compelled to disclose any of the Confidential Information, then, prior to such disclosure, You will (i) immediately notify Nutanix prior to such disclosure to allow Nutanix an opportunity to contest the disclosure, (ii) assert the privileged and confidential nature of the Confidential Information, and (iii) cooperate fully with Nutanix in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event such protection is not obtained, You shall disclose the Confidential Information only to the extent necessary to comply with the applicable legal requirements. The foregoing obligations shall survive any termination or expiration of this Agreement.

11. **Technical Information.** You agree that Nutanix may collect or process technical and related information arising from Your use of the Software which may include but may not be limited to internet protocol address, hardware identification, operating system, application software, peripheral hardware, and non-personally identifiable Software usage statistics to facilitate the provisioning of updates, support, invoicing or online services.

12. **Inspection/Acceptance.** The Contractor (EC America, Inc.) can only, and shall only tender for acceptance those items that substantially conform to the software manufacturer's ("Nutanix") published specifications. Therefore, items delivered shall be considered accepted upon delivery. The Government reserves the right to inspect or test any supplies or services that have been delivered. The Government may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. If repair/replacement or re-performance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights-

(1) Within the warranty period; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

13. **Compliance with Laws; Export Control.** Each Party shall comply with all laws applicable to the actions contemplated by this Agreement. You acknowledge that the Software is of United States origin, and is subject to the U.S. Export Administration Regulations, and may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. You represent that (1) You are not, and are not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Department lists of Specially Designated Nationals, Foreign Sanctions Evaders, Sectoral Sanctions Identifications, or Palestinian Legislative Council; or the U.S. Commerce Department Denied Persons List, Entity List, or Unverified List; or the U.S. State Department Nonproliferation Sanctions, or Debarred List; and (2) You will not permit the Software, directly, or indirectly, to be used for any purposes prohibited by law, including any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. The Software and Documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFARS

Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of Software and Documentation by or for the U.S. Government shall be governed solely by the terms and conditions of this Agreement. You agree that the Software may not be exported/re-exported to Cuba, Iran, North Korea, Sudan and Syria. Furthermore, You agree not to resell, transfer, or re-export products without prior authorization from Nutanix or the U.S. government to any military entity of: Albania, Armenia, Azerbaijan, Belarus, Cambodia, China (PRC), Georgia, Iraq, Kazakhstan, Kyrgyzstan, Laos, Macau, Moldova, Mongolian P.R., Russia, Tajikistan, Turkmenistan, Uzbekistan, Ukraine, Vietnam.

14. **Governing Law.** To the extent permitted by applicable law, this Agreement is governed by and construed in accordance with the substantive Federal laws of the United States. This Agreement will not be governed by the conflict of laws rules of any jurisdiction or the U.N. Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

15. **Miscellaneous.** If any part of this Agreement is held invalid or unenforceable, that part shall be construed to reflect the parties' original intent, and the remaining portions remain in full force and effect. The controlling language of this Agreement is English. If You have received a translation into another language, it has been provided for Your convenience only. A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof. You may not assign, delegate any performance, or otherwise transfer by operation of law or otherwise this Agreement or any rights or obligations herein. You agree not to copy, sell, give or assign the Software or any part thereof to a third party. You represent and warrant that the performance of any activities contemplated by this Agreement do not and shall not conflict with any other agreement or obligation to which You are a party or by which You are bound. This Agreement shall be binding upon and shall inure to the benefit of the Parties, their successors and permitted assigns. This Agreement, together with the purchase order, constitutes the entire and sole agreement between You and Nutanix with respect to the Software and Documentation and supersedes all prior and contemporaneous agreements relating to the Software and Documentation, whether oral or written (including any inconsistent terms contained in a purchase order). This Agreement may be amended only in writing signed by authorized representatives of both Parties and specifically referring to this provision. This Agreement will be interpreted without being construed for or against either Party. The words "includes" and "including" and the abbreviation "e.g." will be deemed to be followed by the words "without limitation".

16. **User Outside the U.S.** If You are using the Software or Documentation outside the U.S., then the following shall apply: (a) You confirm that this Agreement and all related documentation is and will be in the English language; (b) You are responsible for complying with any local laws in Your jurisdiction which might impact Your right to import, export or use the Software and Documentation, and You represent that You have complied with any regulations or registration procedures required by applicable law to make this license enforceable.

EXHIBIT A – SUPPORT TERMS AND CONDITIONS

1. **SUPPORT.** Customer is not entitled to support unless Customer has ordered and paid for Support as provided in the Order. Nutanix will use reasonable efforts to provide support services as described in these Support Terms and Conditions ("Support") at the level Customer has purchased (e.g., Basic, Production or Mission Critical) for the term Customer has purchased, which commences upon Product shipment. Nutanix's Support contact information is at www.nutanix.com/support. Support is contacted primarily through Nutanix's web support portal (generally accessible on a 24x7x365 basis excepting periodic maintenance or network unavailability) and secondarily through telephone and email support. Nutanix's Support obligation is limited to using reasonable efforts to remedy a reported failure of the Products to

substantially operate in accordance with Nutanix's official specifications (a "problem"). Support does not include Hardware or Software installation, training, consulting services or preventative maintenance.

- A. **SOFTWARE SUBSCRIPTION.** Support may include a subscription to new releases of the Software that are commercially released by Nutanix during Customer's term of Support which may include bug fixes, patches releases, and major updates ("Releases"), but does not include enhancements or upgrades licensed by Nutanix for a separate fee at Nutanix's discretion. Any Releases may only be installed as an update to the Customer's original Software on the original Hardware. All Releases will be subject to the terms and conditions set forth in the Purchase Terms and Conditions of which these Support Terms and Conditions are a part, and the EULA or Click-wrap. Customer can download Releases from <http://support.nutanix.com>. Notwithstanding the foregoing, Nutanix has no obligation to deliver Release(s) to Customer. In addition, Nutanix does not guarantee that future Releases will be compatible with the Hardware Customer has purchased.
- B. **HARDWARE SUPPORT.** If Nutanix determines that replacement parts are required for Support, and Hardware Support is included in the Support services purchased by Customer, then Nutanix will use reasonable efforts to deliver them to Customer, at no charge, by the target delivery time ("TDT"), which begins after Nutanix has diagnosed the problem. For critical parts, Nutanix's TDT is 4 hours for Platinum Plus Service, and next business day for Gold and Platinum Service if the problem is diagnosed by Nutanix before 3pm Pacific Standard Time (PST). For non-critical parts, Nutanix TDT is within a reasonable time after the problem is diagnosed by Nutanix. Nutanix actual delivery times may vary if Customer's location is remote and/or if common carriers encounter delays or require special transportation arrangements reaching Customer's site, or if customs clearances impose delays. Platinum Plus Service is not available in all locations. Replacement parts may be new or refurbished at Nutanix's option. Defective parts must be returned following Nutanix's RMA policy set forth at www.nutanix.com/support. If Customer does not follow Nutanix's RMA policy, Nutanix may invoice Customer the full cost of the replacement part. If Customer has purchased Nutanix no-return-disk option, then Customer will not be invoiced for a replacement disk drive if Customer does not return a failed drive. All Products that are replaced become Nutanix property. Unless Customer requests otherwise, Nutanix or a Nutanix subcontractor will typically provide on-site installation of the replacement part with Customer's reasonable assistance.
- C. **SOFTWARE SUPPORT.** Nutanix may provide Customer with Software Support as part of the Support Services package purchased by Customer. All problem classifications shall be determined by Nutanix in its sole and absolute discretion. Nutanix classifies Software problems as either: P1—Customer's production use is stopped or so severely impacted that Customer cannot reasonably continue use of the Products; P2—important Product features are unavailable with no acceptable workaround, but Customer's production use is continuing; P3 — important Product features are unavailable but a workaround is available, or less significant Product features are unavailable with no reasonable workaround, but Customer's production use is continuing; P4 —all other problems. Customer must expeditiously provide Nutanix with notice of any problem. Once notice is received, Nutanix will use reasonable efforts to acknowledge Customer's problem report and commence Support efforts to resolve the problem(s). When it becomes necessary (and in Nutanix's sole discretion), Nutanix will provide on-site technical support in Nutanix's discretion, and if so provided in Nutanix's discretion, Nutanix will be responsible for travel and related expenses incurred in providing the on-site Support. If Nutanix determines that Customer's problem was not caused by Nutanix Products and if the on-site Support was requested by Customer, then Nutanix may invoice Customer Nutanix's then-current daily time and materials rate plus reasonable travel and lodging expenses for the on-site Support.
2. **EXCLUSIONS.** Nutanix will have no Support obligations for any conditions attributable to: (i) negligence or misuse or abuse of the Products; (ii) use of the Products other than in accordance with Nutanix's official specifications; (iii) modifications, alterations or repairs to the Products made by a party other than Nutanix or a party authorized by Nutanix; (iv) any failure by Customer or a third party to comply with environmental and storage requirements for the Products specified by Nutanix, including, without limitation, temperature or humidity ranges; or (v) use of the Product with any non-
- EC America, Inc.

Nutanix apparatus, data or programs outside the typical, recommended or reasonably anticipated use of the Products within their specifications.

3. **CONDITIONS TO NUTANIX'S SUPPORT OBLIGATIONS.** Customer needs to do the following as a condition to Nutanix's provision of Support: (i) pay all applicable fees; (ii) designate from time to time a reasonable number of authorized persons trained by Nutanix who can contact Nutanix for Support, which persons are Customer's only personnel entitled to contact Nutanix for Support; (iii) register all Products with Nutanix, and provide notice to Nutanix of all sites and site moves; (iv) provide Nutanix access to Customer's site and/or network and personnel as Nutanix reasonably requests to assist Nutanix in performing the Support; (v) enable Nutanix's automated alert system on the Products which sends regular system status reports and alerts to Nutanix when certain critical system events occur in the Product at Customer's site; (vi) use the Products in a supported configuration and maintain the Software within the then-current prior two Releases; (vii) install recommended replacement parts in the Products as reasonably directed by Nutanix; (viii) refrain from arbitrarily changing Product settings or configurations reasonably recommended by Nutanix; (ix) ensure that proper licenses have been obtained for all Software and adhere to all licensing terms and conditions; and (x) make available to Nutanix any of Customer's systems data, information and other materials reasonably required by Nutanix for the Support ("Customer Materials"), the accuracy of which is Customer's responsibility. Subject to Customer's rights in the Customer Materials, Nutanix will exclusively own all rights, title and interest in and to any software programs or tools, utilities, technology, processes, inventions, devices, methodologies, specifications, documentation, techniques and materials of any kind used or developed by Nutanix or Nutanix's personnel in connection with performing Support ("Nutanix Materials"), including all worldwide patent rights (including patent applications and disclosures), copyright rights, moral rights, trade secret rights, know-how and any other intellectual property rights therein. Customer will have no rights in the Nutanix Materials except as expressly agreed to in writing by Nutanix and Customer. Nothing in these Purchase Terms and Conditions will be deemed to restrict or limit Nutanix's right to perform similar services for any other party or to assign any employees or subcontractors to perform similar services for any other party. Customer agrees that it may be necessary for Nutanix to collect, process and use Customer's data in order to perform Nutanix obligations to provide Support. Customer consents to these activities and to the transfer of the data to Nutanix affiliated companies and service providers located throughout the world who are subject to confidentiality agreements with Nutanix. Nutanix will not be responsible for Customer's or any third party's software, firmware, information, or memory data contained in, stored on, or integrated with any Products returned to Nutanix for repair.
4. **REINSTATEMENT OF SUPPORT.** If Customer has not continuously purchased and complied with the terms and conditions of Support, Customer may request that Nutanix perform an inspection of the Products and any professional services Nutanix reasonably determines are required for the Products to be certified as substantially operating within their official Product specifications. After Nutanix's certification, Customer may reinstate Support if Nutanix then offers it in general commercial availability and upon payment to Nutanix of: (i) for any Products that have been off Support for more than ninety (90) days; (ii) the pro rata Support fees that would have been payable at Nutanix's then applicable annual rate of Support for the period the Products were not covered by Support; and (iii) the Support fees for the annual period commencing upon the reinstatement of Support.
5. **NON-TRANSFERABILITY.** If Customer sells or otherwise transfers any Hardware to any third party, Customer will either de-install and remove the Software from such Hardware prior to sale or transfer, or provide Nutanix with reasonable notice and an opportunity to remove or disable such Software prior to any sale or transfer of the Hardware. Subject to availability of resources, Nutanix will provide de-installation services to Customer at Nutanix's then current time and materials rates provided Customer has complied with these Purchase Terms and Conditions and entered into a separate agreement with Nutanix to receive such de-installation services. Subject to availability of resources, Nutanix will provide re-installation and re-certification services to a third party purchaser or transferee of Nutanix Hardware, in each case at Nutanix's then current time and materials rates provided the purchaser or transferee has: (i) met Nutanix credit requirements; (ii)

obtained a Software license from Nutanix; (iii) entered into a separate agreement with Nutanix to receive re-installation and re-certification services; (iv) obtained re-certification of the Products as installed; and (v) paid any Support reinstatement fees and purchased at least a one (1) year term of annual Support from Nutanix commencing upon the date of Product transfer. Customer's remaining outstanding term of Support is not transferable. Notwithstanding the foregoing, Nutanix reserves the right to refuse to grant a Software license or provide Services to a proposed purchaser or transferee as determined in Nutanix's sole and absolute discretion.

6. **RELATIONSHIP OF THE PARTIES.** Nutanix is performing Support as an independent contractor, and not as an employee, agent, joint venturer or partner of Customer, and neither of the parties has the authority to bind the other by contract or otherwise. Nutanix acknowledges and agrees that Nutanix personnel are not eligible for or entitled to receive any compensation, benefits or other incidents of employment that Customer makes available to its employees. Nutanix is solely responsible for all taxes, expenses, withholdings, and other similar statutory obligations arising out of the relationship between Nutanix and Nutanix personnel and the performance of Support by Nutanix personnel.
7. **ENGLISH.** All Support will be provided in the English language unless agreed otherwise. The parties confirm that they have requested that the Purchase Terms and Conditions of which these Support Terms and Conditions are a part and all related documents be drafted in English at the express wishes of the parties. Les parties ont exigé que le présent contrat et to Nutanix les documents connexes soient rédigés en anglais selon la volonté expresse des parties.
8. **CAPITALIZED TERMS.** Capitalized terms not defined herein shall have the meaning set forth in the Purchase Terms and Conditions of which these Support Terms and Conditions are a part, which may be found at www.nutanix.com/support.

EXHIBIT B – LIMITED WARRANTY

1. **EQUIPMENT.** Nutanix warrants solely to Customer that the Hardware will be substantially free from material defects in material and workmanship for the one (1) year period from the date of shipment of the Products (the "Hardware Warranty Period"). Nutanix's entire liability, and Customer's sole and exclusive remedy, under this warranty will be for Nutanix, at Nutanix's option: (i) to use reasonable efforts to repair the defective Hardware within a reasonable period of time; (ii) to replace the defective Hardware; or (iii) if, after reasonable efforts Nutanix is not able to correct the deficiencies, to accept return of the Product for a refund of the amount paid for the Product and the pre-paid and unused portion of any remaining term of Support for the Product. Defective parts must be returned under Nutanix RMA policy at www.nutanix.com/support, and if the defective part is not returned Nutanix may invoice Customer for the replacement part. If Customer has purchased Nutanix's no-return-disk option, then Customer will not be invoiced for a replacement disk drive if Customer does not return a failed drive. All Products that are replaced become Nutanix's property. Nutanix will not be responsible for Customer's or any third party's software, firmware, information, or memory data contained in, stored on, or integrated with any Product returned to Nutanix for repair, whether under warranty or not. This Limited Warranty applies only to Nutanix-branded products. Third party products resold by Nutanix may have separate warranty terms, which can be found at www.nutanix.com/support.

2. **REPLACEMENT PARTS.** All replacement parts carry a warranty on the terms and conditions set forth immediately above of the following duration: (i) if the replacement part is installed with more than ninety (90) days remaining on the Hardware Warranty Period, then the warranty on the replacement part shall be until the expiration of the Hardware Warranty Period; (ii) if the replacement part is installed during the Hardware Warranty Period but with fewer than ninety (90) days remaining on the Hardware Warranty Period, then the warranty on the replacement part shall be ninety (90) days from the date of installation of the replacement part; and (iii) if the replacement part is installed after the expiration of the Hardware Warranty Period under the terms and conditions of Support, then the warranty on the replacement part shall be the earlier of ninety (90) days from the date of installation of the replacement part and the last day of Support. Replacement parts may be new or refurbished.

3. **SOFTWARE.** Nutanix warrants to Customer that the Software will substantially perform in accordance with Nutanix's official Product specifications for the ninety (90) day period from the date of shipment of the Products. Nutanix does not warrant that the operation of the Software will be uninterrupted or error free, or that all defects can be corrected. Nutanix's entire liability, and Customer's exclusive remedy, under this warranty will be for Nutanix, at Nutanix's option: (i) to use reasonable efforts to remedy the defective Software within a reasonable period of time so as to cause it to operate as warranted; (ii) to replace the affected Software; or (iii) if, after reasonable efforts Nutanix is not able to correct the deficiencies, to accept return of the affected Software for a refund of the amount paid by Customer for the affected Software and the pre-paid and unused portion of any remaining term of Support for the affected Software.

4. **SERVICES.** Nutanix will use reasonable efforts to provide Services in a workmanlike manner. Customer must notify Nutanix of any failure to so perform within ten (10) days after the date on which such failure first occurs. Nutanix's entire obligation, and Customer's exclusive remedy, under this warranty will be for Nutanix, at Nutanix option: (i) to use reasonable efforts to re-perform the deficient Services within a reasonable period of time; or (ii) if, after reasonable efforts Nutanix is not able to correct the deficiencies, refund the portion of any Services fee that corresponds to the failure to perform.

5. **EXCLUSIONS.** Nutanix will have no obligation under these Limited Warranties to the extent that any problem with a Product results from or is otherwise attributable to: (i) negligence or misuse or abuse of the Product; (ii) use of the Product other than in accordance with Nutanix's official specifications; (iii) modifications, alterations or repairs to the Product made by a party other than Nutanix or a party authorized by Nutanix; (iv) any failure by Customer or a third party to comply with environmental and storage requirements for the Product specified by Nutanix, including, without limitation, temperature or humidity ranges; or (v) use of the Product in combination with any non-Nutanix apparatus, data or programs outside Nutanix's typical, recommended or reasonably anticipated use of the Products within their official Product specifications. Customer shall be solely liable for all freight, storage, and repair costs associated with any return that, in Nutanix's sole discretion, is not eligible for return hereunder, and Nutanix may invoice Customer for any of the foregoing costs.

6. **WARRANTY DISCLAIMER.** EXCEPT PURSUANT TO THE LIMITED WARRANTIES EXPRESSLY DESCRIBED ABOVE, NUTANIX DOES NOT MAKE, AND HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE PRODUCTS OR SERVICES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF Limited Warranties Page 2 MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, ACCURACY, RELIABILITY, AND NON-INFRINGEMENT. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS SO THE FOREGOING LIMITATIONS MAY NOT APPLY TO CUSTOMER. NUTANIX DOES NOT WARRANT THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE.

7. **HAZARDOUS USE RESTRICTION.** THE PRODUCTS ARE NOT DESIGNED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAILSAFE PERFORMANCE, INCLUDING OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS, OR ANY OTHER SYSTEM WHOSE FAILURE COULD LEAD TO INJURY, DEATH, ENVIRONMENTAL DAMAGE, OR MASS DESTRUCTION. 8. **CAPITALIZED TERMS.** Capitalized terms not defined herein shall have the meaning set forth in the Purchase Terms and Conditions of which these Limited Warranties are a part, which may be found at www.nutanix.com/support.