

**NEXENTA Systems, Inc.**

**Customer Service Terms and Conditions**

These Customer Service Terms and Conditions ("**Service Terms**") supplement all other terms and conditions of the applicable End User License Agreement ("**EULA**") are incorporated by reference. In the event of a conflict between the EULA and these Service Terms, the EULA shall govern. Capitalized terms that are not defined herein shall have the same meaning as in the EULA.

**1. DEFINITIONS.**

"**Error**" shall mean a failure of the Product to substantially conform to the published Nexenta product specifications that is reproducible by NEXENTA with an unmodified Product.

"**Error Correction**" shall mean a permanent modification or addition to the Product that, when made or added to the Product brings the Product into substantial conformance with its Documentation, or otherwise corrects the Error.

"**Customer Service**" means the provision by NEXENTA of:

- (a) Updates, if any, and appropriate Documentation for such Updates;
- (b) Telephone or email assistance with respect to Products licensed by Customer, within the hours of service for the Support Level paid for by Customer, such telephone assistance including (i) clarification of functions and features of the Product, (ii) clarification of Documentation pertaining to the Product, (iii) guidance in the operation of the Product and (iv) Error verification, analysis and correction.

"**Release**" means an updated version of the Product with a limited number of functional enhancements and improvements, as determined by NEXENTA (e.g., version 1.0 to 2.0).

"**Standard Business Hours**" means 8:00 AM through 5:00 PM local standard time worldwide (excluding holidays and weekends).

"**Support Level**" means the level of support and maintenance for a particular Product, typically designated as Silver, Gold or Platinum, for which Customer has paid the applicable fees.

"**Supported Versions**" means the current and immediately preceding Release of the Product.

"**Update**" means a version of the applicable Product containing minor functional enhancements, modifications, extensions, bug fixes or corrections. Updates shall not include any new or different product or plug-in to the applicable Product, as determined by NEXENTA.

"**Workaround**" shall mean either (i) a temporary set of procedures that Customer may follow to circumvent or mitigate the impact of an Error, notwithstanding that the Error still exists; or (ii) a temporary patch designed to mitigate the impact of an Error, notwithstanding that the Error still exists.

- 2. SCOPE.** Subject to payment of all license and other fees, and so long as Customer is not otherwise in breach of any obligation under the EULA or these Terms, Customer is entitled to receive Customer Service, as described herein. NEXENTA shall use its reasonable efforts to (i) to achieve the anticipated response times as stated for Customer's Support Level, and (ii) correct any Error in the Product attributable to NEXENTA other than the Exclusions (as defined below) whether by providing an Error Correction or Workaround; provided, however, that Customer acknowledges that there are some conditions under which NEXENTA will not be able to provide definitive solutions or workarounds to Errors. Upon identification of any Error, Customer shall promptly notify NEXENTA of such Error and provide NEXENTA a description of the Error as well as any pertinent log file, configuration, environment and other information as requested by NEXENTA. If Customer fails to provide the requested information, or access to the systems on and environment in which the Product is installed, NEXENTA will likely not be able to provide any Customer Service as to such reported Error.

**3. EXCLUSIONS TO CUSTOMER SERVICE.**

**A. Exclusions.** Errors do not include, and NEXENTA will have no responsibility for providing any Customer Service or other services with respect to or arising out of, any one or more of the following circumstances ("**Exclusions**"):

- (i) The Product has been altered or modified in any manner by any person or entity, including, without limitation, any customizations performed by or on behalf of NEXENTA;
- (ii) The Product has been used outside the scope of the license granted under the EULA;

- (iii) Customer's computer hardware (which should be directed to Customer's hardware vendors or support agency), computer operating system and/or any other third party software or Third Party Software utilized by Customer;
- (iv) The Product has been installed or operated other than in accordance with the NEXENTA installation and operations instructions, including, without limitation, on computer hardware, operating systems or environments other than for which it was designed or on hardware or with firmware that has not been tested and certified by NEXENTA;
- (v) The failure to use the Supported Versions made available; or,
- (vi) Architecture recommendations or Product performance tuning.

**B. Additional Services for Exclusions.** Customer Service requests for any Exclusions shall be billed to Customer at NEXENTA's then current rates for Professional Services. Support and other services for any unsupported versions of the Product, customized Product or for other problems not covered under the Customer Service Program may be obtained from NEXENTA then current rates for Professional Services pursuant to a quote issued by NEXENTA or a separate writing signed by the parties.

**4. CUSTOMER RESPONSIBILITIES.** Customer's receipt of Customer Service is subject to Customer complying with the following obligations:

- A.** Customer shall properly train its personnel in the use and application of the Product and the hardware on which the Product is loaded or operating.
- B.** Customer shall provide supervision, control and management of the use of the Product. In addition, Customer shall implement procedures for the protection of information and the implementation of backup procedures in the event of errors or malfunction of the Product or hardware upon which the Product is loaded or operating.
- C.** Customer shall document and promptly report all Errors or malfunctions of the Product to NEXENTA in accordance with the specified escalation path. NEXENTA will provide Customer with a trouble ticket number which should be used to track the status of each issue. Customer shall take all reasonable steps necessary to carry out procedures for the rectification of such Errors or malfunctions within a reasonable time after such procedures have been provided by NEXENTA. NEXENTA reserves the right to close the trouble ticket if Customer does not provide feedback or status to NEXENTA within thirty (30) calendar days of receiving new Product and/or a workaround for the problem or fails to respond to request for additional information
- D.** Customer shall maintain a current backup copy of all programs, data, and licenses.
- E.** Customer shall appoint two (2) individuals within Customer's organization to serve as primary contacts between Customer and NEXENTA and to receive support through the NEXENTA telephone support center. Customer's support inquiries will be initiated exclusively through these two primary contacts.
- F.** NEXENTA and Customer's personnel should each comport themselves with civility and respect at all times, particularly in high priority, high severity Error situations. In the event the behavior of Customer's personnel becomes abusive or threatening in terms of language, tone, or mannerisms, as reasonably determined by NEXENTA, NEXENTA reserves the right to change personnel involved in resolving the issue, change support venue to other communications modes as necessary (i.e. from phone or interactive GoToMeeting Session to email), or at its sole discretion to discontinue attempting to resolve the Error.
- G.** Customer will avoid abuse of Customer Service resources resulting from (i) submitting questions or Error reports that could be easily resolved or are readily apparent or discernable from the Documentation, (ii) submitting questions or Error reports that are not directly related to the Customer's environment, use case, or an Error the Customer is experiencing, (iii) engaging in excessive interaction to resolve simple issues, or (iv) submitting questions or Error reports that are more properly handled by training.
- H.** In the course of troubleshooting or Error determination, NEXENTA may require hardware diagnostics or troubleshooting be performed by Customer's hardware vendor or support agency. If Customer is unable to request or produce the results of those diagnostics, NEXENTA may discontinue support prior to Error resolution.

**5. NO WARRANTIES.**

Other than its obligations to use reasonable efforts to correct Errors as expressly set forth in Section 2 above, NEXENTA does not guarantee that the Errors will be resolved or that any Product or software will be error-free. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, ALL SERVICES (CUSTOMER SERVICE, PROFESSIONAL SERVICES OR OTHERWISE) ARE PROVIDED "AS IS". NEXENTA EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY AS TO ANY ASPECTS



OF THE ANY SERVICES RENDERED INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NEXENTA DOES NOT WARRANT THE OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED OR ERROR FREE.

**6. DISCONTINUANCE.**

NEXENTA may discontinue offering Customer Service, or any portion thereof, for any particular Product or revise the Documentation at any time without prior notice.

**7. MISCELLANEOUS.**

These Service Terms and the EULA into which it is incorporated constitute the entire agreement between the parties with respect to the subject matter hereof, and supersede all prior agreements or representations, oral or written, regarding such subject matter. These Service Terms may not be amended, nor any obligation waived, except by a writing signed by both parties hereto.