

Thank you for choosing to work with Nutanix. We look forward to a long and mutually beneficial relationship with your organization. This Agreement is entered into between Nutanix, Inc., Nutanix Netherlands B.V. and, as applicable, their affiliates (“Us”, “We” or “Our”) and your organization (“You or “Your”) and is effective as of the date signed or accepted by You. This Agreement will allow You to license on-premise software, procure internet-based software-as-a-service, as well as support and other professional services any time at Your convenience. It applies if Your contract: (a) indirectly through an authorised Nutanix partner; or (b) directly with Us, regardless of whether We or a Nutanix partner charges You for the products and services or not.

## 1. DEFINITIONS

The following capitalized terms have the following meaning(s):

- 1.1 “Affiliates” means any corporation or other business entity which controls, is controlled by or is under common control by You through the ownership of more than fifty percent (50%) of the outstanding voting stock of the controlled corporation or more than fifty percent (50%) of the equity interests of a non-corporate entity. If You are a public sector entity, an Affiliate is an organization over which You are required to exercise administrative control by applicable laws or regulations.
- 1.2 “Cloud Services” means Our branded offerings made available to You via the internet from equipment owned or operated by or for Us.
- 1.3 “Documentation” means Our operating manuals, user instructions, technical literature and functional materials describing the features and functions of the Software and Cloud Services made available to You by Us.
- 1.4 “Entitlement” means Our record of the SKUs, types, quantities and other use metrics of Your purchases from Us. An Entitlement for: (a) Software, Support Services and Professional Services is provided by Us to You in an order acknowledgement or similar document and (b) Cloud Services is made available in the Nutanix Billing Center.
- 1.5 “Nutanix Billing Center” means the online console made available by Us detailing Cloud Services purchased by You
- 1.6 “Nutanix Partner” means a distributor, reseller or other channel sales participating entity that has been approved by Us and is authorized to provide products or services to You.
- 1.7 “Professional Services” means consulting, implementation and training related to the Software and Cloud Services.
- 1.8 “Software” means: (a) Our Nutanix-branded software specified in the Entitlement; (b) Updates and Upgrades; and (c) tools and utilities related to Cloud Services.
- 1.9 “SOW” means a statement of work issued by Us that describes the Professional Services.
- 1.10 “Support Services” means Our branded offerings described at <https://www.nutanix.com/support-services/product-support/product-support-programs/>, as may be updated from time to time.
- 1.11 “Updates” and “Upgrades” means minor and major releases of the Software provided as part of the Support Services.

## 2. CONTRACT APPROVAL

By clicking the “ACCEPT” button when downloading or installing the Software or by copying, accessing or using the Software, Documentation, Cloud Services, or Support Services and Professional Services, as applicable; or by issuing a purchase order that references this Agreement, You agree that this Agreement governs Your use of the Software and Documentation, receipt of the Cloud Services, Support Services and Professional Services.

## 3. ENTITLEMENT

We shall generate an Entitlement for: (a) Software, Support Services and Professional Services on booking the applicable purchase order placed by a Nutanix Partner or You with Us, as applicable; and (b) Cloud Services on booking a purchase order as specified in 3(a) or receipt of an online order via the Nutanix Billing Center.

## 4. SOFTWARE LICENSE AND USE

- 4.1 License Grant. You are granted a personal, non-exclusive, non-transferable, worldwide, limited and revocable license to install and use the Software specified in the Entitlement for Your internal business purposes only. You may use the Documentation in support of Your use of the Software. The Software licenses are either (i) node-locked to specific hardware and granted for the life of that hardware, or (ii) independent of hardware and granted for a specific term.
- 4.2 Delivery. Delivery of Software occurs when We make an enabling key available to You or when We otherwise make the Software available to You for download and use.
- 4.3 Acceptable Use. Without Our prior written consent, You agree not to: (a) use the Software or Documentation in breach of the Entitlement or this Agreement; (b) transfer, resell or otherwise use Software or Documentation in a service bureau, commercial hosting service or any similar capacity (unless explicitly permitted in the Entitlement); (c) publish the results of any Software benchmark tests or competitive analysis; (d) attempt to gain access to the source code or other proprietary portions of the Software; (e) transfer or use any node-locked Software to hardware other than that on which it was originally installed or use it with grey-market hardware; (f) modify, adapt or create a derivative work of the Software or Documentation; or (g) remove, conceal or alter any product identification, copyright or other proprietary notices in the Software or Documentation.

## 5. CLOUD SERVICES

- 5.1 Access. If You procure Cloud Services, You receive a non-exclusive, non-transferable right to access and use the Cloud Services specified in the Entitlement. To the extent that the Cloud Services require You to download and install any Software, use of that Software shall be subject to the terms of this Agreement. Geographic limitations may apply to the Cloud Services, as specified in the Documentation.
- 5.2 Credentials. Once We provide You with the means of creating credentials to access and use the Cloud Services, it is Your sole responsibility to provision and control the credentials of Your employees, agents, contractors and other users of the Cloud Services (“User(s)”). You agree to implement best practices with respect to such controls and notify Us immediately of any suspected or actual misuse or compromise of User credentials.
- 5.3. Content. The Cloud Services provide the ability to use, access, load, store, manage or monitor: (a) data belonging to You or third parties; and (b) third-party software, applications and computing environments services, content, data and websites provided in connection with the Cloud Services, including via the Nutanix Marketplace at <https://portal.nutanix.com> (collectively, “Your Content”). Use of Your Content is governed exclusively by separate agreements between You and those third parties providing Your Content. It is Your responsibility to secure and maintain all rights in Your Content necessary for Us to legally provide the Cloud Services.
- 5.4 Acceptable Use. Without Our prior written consent, You shall not, and shall not enable anyone else to use the Cloud Services: (a) in breach of the Entitlement or this Agreement; or (b) as an application services provider, service bureau, commercial hosting service or similar capacity. You shall not use the Cloud Services to: (a) transmit or store any content that may pose threats or otherwise engage in any conduct that may disrupt the operation of the Cloud Services or interfere with any third-party; (b) manage specifically regulated data, including, but

not limited to data subject to the Health Insurance Portability and Accountability Act, Basel II, Graham Leach Bliley and Payment Card Industry regulations; (c) perform performance tests, benchmarking or any competitive analysis; (d) conduct any abusive, harassing, slanderous, fraudulent, illegal, obscene, defamatory, immoral, objectionable or harmful activity; or (e) violate any laws or third-party rights, including any intellectual property rights, personal data and privacy rights; or (f) conduct, directly or indirectly, any activities associated with cryptocurrency mining or similar endeavors. You shall not: (a) attempt to gain access to any Cloud Services You are not authorized to use, including any administrative portions of the Cloud Services; (b) circumvent any security features; or (c) use the Cloud Services in any way that poses security threats or otherwise introduces security or performance vulnerabilities into the Cloud Services.

5.5 Suspension. We may suspend or terminate access to Cloud Services if: (a) You are in violation of this Agreement; (b) Your use poses a security threat or actual or potential violation of any law or this Agreement; (c) it is required by a court order, subpoena or other legal action, or; (d) We believe suspension is required to prevent harm to, or preserve availability of, the Cloud Services or Your Content. No fees will be refundable to You for suspension under this Section 5.5.

**6. THIRD-PARTY AND OPEN SOURCE SOFTWARE.** The Software and Cloud Services may contain copyrighted third-party software as well as open source software. The third-party licensors retain all intellectual property rights in the third-party software. You can use third-party software and open source software in support of Your use of the Software in accordance with the terms of this Agreement. Your right to use open source software shall be subject to the respective terms of the open source licenses, which are provided at <https://www.nutanix.com/opensource>. You may have the right to receive source code for certain open source software included or used in the Cloud Services for a period of three (3) years following Your use of those Cloud Services. You may exercise this right by following the directions provided at <https://www.nutanix.com/opensource> or by writing to Us as specified in Section 18.4 (Notices).

## **7. SUPPORT SERVICES.**

7.1 Term. Subject to Your payment of the applicable fees, We shall provide the Support Services specified in the Entitlement and in accordance with the Support Terms available at <https://www.nutanix.com/support-terms/>.

## **8. PROFESSIONAL SERVICES**

8.1 Scope. We shall deliver the Professional Services specified in the Entitlement and any SOW. We do not do any custom development work.

8.2 Your Obligations. You shall provide Us with any equipment, software, information, timely decisions, direction and facilities necessary for Us to perform the Professional Services as specified in the SOW.

8.3 License. You grant Us a non-exclusive, worldwide, royalty-free license to use Your intellectual property for the purpose of performing the Professional Services. You have a license to use any deliverables provided as part of the Professional Services on the terms specified in Section 4 above.

## **9. WARRANTIES**

9.1 Software. The initially-shipped version of the Software shall materially conform to the Documentation for a period of ninety (90) days from the date of delivery ("Software Warranty Period"). The Software is not warranted to be totally error-free. In the event of a material non-conformity in the Software that is reported to Us during the Software Warranty Period, and which is reproducible and verifiable, We shall either promptly repair or replace the Software or refund the amounts received for the non-conforming Software, at Our reasonable discretion. This warranty excludes defects resulting from accidents, abuse, unauthorized repair, modifications, misapplication, or use of the Software in a manner that is materially inconsistent with the Documentation. We agree to screen the Software using commercially available anti-virus software prior to delivery and We warrant, to the best of Our knowledge, at delivery the Software contains no known virus, malware, spyware, trojan horse or other disabling code.

9.2 Cloud Services. We warrant that the Cloud Services shall materially comply with the Documentation under normal use and circumstances. The Cloud Services are not warranted to be totally error free. In the event of a material and verifiable breach of this warranty We will refund to you that portion of any fees that You have pre-paid for services that were not rendered in accordance with this warranty.

9.3 Support Services. We warrant that the Support Services shall be provided in a professional manner with reasonable care and skill. Your sole remedy for breach of this warranty shall be reperformance of the Support Services at no additional cost provided that You notify Us of any non-conformity within thirty (30) days of the provision of the non-conforming Support Services.

9.4 Professional Services. The Professional Services shall be provided in a professional manner with reasonable care and skill. Your sole remedy for breach of this warranty shall be reperformance of the Professional Services at no additional cost, provided that You notify Us of any non-conformity within thirty (30) days of the provision of the non-conforming Professional Services. A breach of one SOW shall not amount to a breach under any other SOW.

9.5 LIMITATIONS AND EXCLUSIONS. TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE FOREGOING WARRANTIES ARE YOUR SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES. EXCEPT FOR THE WARRANTIES SPECIFICALLY DESCRIBED ABOVE, ALL PRODUCTS AND SERVICES ARE PROVIDED "AS-IS" AND ALL OTHER WARRANTIES INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, ACCEPTABLE QUALITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT ARE EXPRESSLY DISCLAIMED.

9.6 Hardware Compatibility. Software shall only be compatible with hardware specified on the Nutanix Hardware Compatibility List available at <https://www.nutanix.com/products/hardware-platforms/> as may be amended from time to time.

## **10. PRICING, PAYMENTS AND TAXES (APPLICABLE TO DIRECT PURCHASES ONLY)**

10.1 Pricing. We may change the prices specified in Our price list and add or remove items at any time. A purchase order received after the effective date of a price change, but pursuant to a valid and unexpired quote shall be invoiced at the price stated on that quote.

10.2 Purchase Orders. You shall issue binding, non-contingent, written or electronic orders consistent with the corresponding price quote for the purchase of Software, Cloud Services, Support Services and Professional Services, as applicable. Your purchase orders shall refer exclusively to this Agreement. All purchase orders that You issue to Us shall be governed by this Agreement.

10.3 Payment Terms. You shall make full payment in the currency specified in the invoice not later than thirty (30) days from the date of Our invoice. The rights to use the Software and Documentation, access the Cloud Services, receive the Support Services and Professional Services are subject to payment in accordance with this Section 10. All fees are non-refundable, non-contingent and non-cancellable.

10.4 FlexCredits. You may use FlexCredits, as specified below, to purchase Professional Services. FlexCredits, identified by SKU FLEX-CST-CR on Our price list, or such other SKU as We may determine from time to time, may only be used for packaged or custom Professional Services, technical account manager or resident consultant resources, education offerings, including certifications or any additional services as We may determine at Our discretion. Additional information on Professional Services against which FlexCredits may be utilised is available at: (a) for consulting services <https://www.nutanix.com/services/consulting-services/>; and (b) for education and certification <https://www.nutanix.com/services/education/>. The cost of FlexCredits is as per the then current price list. FlexCredits expire twelve (12) months from the purchase date, are non-refundable and can be applied to any Professional Services made available by Us at the time of

redemption. Balances can be pooled toward a single redemption and may be purchased upfront. You don't have to select in advance the Professional Services against which FlexCredits are to be redeemed.

10.5 Taxes and Duties. You are solely responsible for the payment of taxes, fees, duties and charges and all related penalties and interest that arise from utilization of or provision of the Software, Cloud Services, Support Services and Professional Services. If You are tax-exempt, provide Us with tax exemption certificates or other documentation acceptable to the taxing authorities not later than thirty (30) days from the date You give Us an Order. If You don't, We may include such taxes in the invoice and You are obligated to pay them.

10.6 Credit Cards. Cloud Services may also be purchased via a credit card through the Nutanix Billing Center in accordance with the terms that You shall find there.

#### **11. EARLY ACCESS, EVALUATION, TRIAL AND OTHER NO-CHARGE SERVICES.**

11.1 Evaluation Software and Early Access Software. If You are acquiring generally available products for the purposes of evaluation ("Evaluation Software"), or Software specifically identified as alpha, beta, pre-release, demonstration or preview ("Early Access Software"), Evaluation Software and Early Access Software may be used for a period not exceeding 90 days from delivery or access being granted ("Evaluation Period") and up to the maximum amounts of usage as specified in the Entitlement and Documentation or as otherwise agreed by Us in writing. Evaluation Software may only be used in non-production environments and not for commercial purposes or the processing of any production data. You agree to uninstall, delete and cease using the Evaluation Software at the end of the Evaluation Period. You agree to cooperate with Us in testing and providing feedback in relation to the Early Access Software. Any feedback provided shall be deemed proprietary and confidential to Us and may be used by Us without restriction.

11.2 No-Charge Services. We may offer certain Cloud Services, or certain features or functions of Cloud Services, to You at no charge, including some which are not generally available and are identified as alpha, beta, pre-release, demonstration or preview ("Early Access Services"), as well as free or trial accounts to generally available Cloud Services for a designated period of time, quantity, or other use metrics ("Trial Services" and, together with Early Access Services, "No-Charge Services"). This Agreement applies to No-Charge Services. We can modify or discontinue No-Charge Services at any time. We are entitled to invoice You for fees calculated in accordance with Our then current price list if You use the No-Charge Services beyond the permitted period of use or in excess of the permitted quantities or metrics.

11.3 Early Access Services. You agree and acknowledge that Early Access Services are still under development, may be inoperable or incomplete, and You are using the Early Access Services at Your own risk. You may not rely, or base purchasing decisions, on Early Access Services becoming generally available. You agree to cooperate with Us in testing and providing feedback in relation to the Early Access Services. Any feedback provided shall be deemed proprietary and confidential to Us and may be used by Us without restriction.

11.4 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE TERMS, EVALUATION SOFTWARE, EARLY ACCESS SOFTWARE, AND NO-CHARGE SERVICES ARE PROVIDED "AS IS" WITHOUT ANY WARRANTIES OR REPRESENTATIONS EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, MERCHANTABILITY, AVAILABILITY, ACCEPTABLE QUALITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. WE DISCLAIM ALL LIABILITIES TO THE MAXIMUM EXTENT PERMITTED BY LAW. Section 12.2 (Indemnification) and Section 9 (Warranties) of this Agreement do not apply to Your use of the Evaluation Software, Early Access Software, or No-Charge Services.

#### **12. INTELLECTUAL PROPERTY OWNERSHIP AND INDEMNIFICATION**

12.1 Proprietary Rights. We and Our licensors retain all worldwide intellectual property rights, including copyrights, trademarks, service marks, patents, trade secrets, know-how, moral rights and all other proprietary rights, including registrations, applications, renewals and extensions of such rights existing anywhere in the world, whether registered or unregistered ("Intellectual Property Rights") in the Software and all derivatives thereof and any Cloud Services We provide to You. Subject to any third-party claims or licenses, You retain ownership of all of Your pre-existing Intellectual Property Rights.

12.2 Indemnification. If a third-party sues You claiming that the Software or Cloud Services infringes a valid third-party patent, copyright, trademark or trade secret, We shall indemnify and defend You from: (a) any fees, fines and costs actually incurred; and (b) damages and costs finally awarded by a court of competent jurisdiction in relation to that claim. Our obligation to indemnify is contingent on You giving Us (a) prompt written notice of and all available information about any such claim; (b) control and direction of the defence and any settlement of the claim, provided that such settlement does not require admission of wrongdoing or payment of damages by You; and (c) reasonable cooperation in such defence. We shall not indemnify You and shall have no responsibility for third-party claims arising out of: (a) any modification of the Software or Cloud Services; (b) any failure to implement Updates and Upgrades provided under Support Services; (c) or the combination, operation, or use of the Software or Cloud Services with or damages based on the value of third-party programs, data or documentation, to the extent that the claims would not have occurred but for such combination, operation or use; (d) any use of the Software or Cloud Services that is not expressly permitted under this Agreement; (e) continued use of infringing Software or Cloud Services after termination or after We give You modified or replacement non-infringing Software or Cloud Services, as specified below; or (f) if the infringement comes from materials developed by Us in accordance Your instructions. If the Software or Cloud Services become the subject of a third-party infringement claim, or if We think that this may happen in the future, We can at Our own expense and sole reasonable discretion: (a) modify the Software or Cloud Services to be non-infringing without a material diminution in functionality; (b) obtain for You a license to continue using the Software or Cloud Services; or (c) terminate this Agreement and refund a pro rata portion of the fee paid for the applicable portion of the Software or Cloud Services. For Software, the refund shall be based on a straight-line amortization over a five (5) year term beginning on the date of initial delivery of the Software. For Cloud Services, the refund shall be the prepaid fees related to unexpired periods. The remedies in this Section 12.2 represent Our entire liability and obligation and Your sole and exclusive remedy with respect to third-party Intellectual Property Rights infringement claims related to the Software or Cloud Services.

#### **13. LIABILITY LIMITS**

13.1 Limitations. Regardless of the basis of the claim (e.g. contract, tort or statute), the total liability of Us and Our licensors or You shall not exceed the amounts actually received by Us for the Software or Professional Services at issue or the pro-rata fees for the previous 12 months of Cloud Services or Support Services immediately preceding the event that gave rise to the liability, or the minimum amounts permitted by applicable laws, if greater.

13.2 Exclusions. We and Our licensors are not liable for any: (a) indirect, consequential, incidental, exemplary or special damages; (b) any loss or corruption of data; or (c) interruption to Your business.

13.3 Exceptions. The limitations and exclusions Sections 13.1 and 13.2 above shall not apply to a breach of: (a) Our intellectual property rights; (b) liability for an indemnified claim under Section 12.2; (c) death or bodily injury caused by negligence; or (d) any claim arising from wilful misconduct or fraud.

## **14. CONFIDENTIALITY**

14.1 General. "Confidential Information" means any information disclosed by one party to the other party in connection with this Agreement that is marked "confidential" or "proprietary" at the time of disclosure; if disclosed orally or visually, is designated "confidential" or "proprietary" at the time of disclosure; or (c) by its nature or the circumstances surrounding its disclosure or content should be considered confidential or proprietary to a reasonable recipient. "Confidential Information" includes copies of such information, but excludes information that: (a) is or becomes a part of the public domain through no action or omission of the receiving party; (b) was in the receiving party's lawful possession prior to the disclosure and had not been obtained by the receiving party from the disclosing party; (c) is lawfully disclosed to the receiving party by a third-party without restriction on the disclosure; or (d) is independently developed by the receiving party.

14.2 Treatment. Confidential Information shall remain the property of the disclosing party. Each Party shall have the right to use the other's Confidential Information solely for the purpose of fulfilling its obligations under this Agreement. Each party agrees: (a) to hold the other party's Confidential Information in confidence for a period of three (3) years from the date of disclosure; and (b) to disclose the other party's Confidential Information only to those employees or agents on a need to know basis provided that they are required to protect such Confidential Information against unauthorized disclosure under terms no less restrictive than those specified herein. The receiving party shall protect the Confidential Information from unauthorized use, access or disclosure in the same manner as it protects its own confidential or proprietary information of a similar nature, and in any event with at least a reasonable degree of care. The receiving party may disclose the other party's Confidential Information to the extent that such disclosure is required pursuant to a judicial or administrative proceeding, provided that, prior to such disclosure, the receiving party gives the disclosing party prompt written notice thereof and the opportunity to seek a protective order or other legal remedies.

14.3 Return or Destruction. Upon termination of this Agreement or the disclosing party's written request, all Confidential Information (including all copies thereof) of the disclosing party shall be returned or destroyed, unless the receiving party is required to retain such information by law, and the receiving party shall certify its compliance with this Section 14.3.

## **15. DATA PROTECTION AND PRIVACY**

15.1 We may collect and use data and other information pertaining to You and Your Users or related to You and Your Users' use of the Cloud Services for purposes of facilitating the Cloud Services, including securing, managing, measuring and improving the Cloud Services as well as to enable Us to develop and market additional products and services and for other purposes specified in Our Privacy Statement. We collect and use all such data and information in accordance with Our Privacy Statement, which You acknowledge.

15.2 To the extent that We process any personal data (as defined in the EU General Data Protection Regulation 2016/679 of the European Parliament and the Council ("GDPR") of Users (or any other individuals) on Your behalf and that personal data relates to Users or other individuals subject to the territorial scope of the GDPR or any successor legislation, We and You agree to be bound by the provisions of the Nutanix Data Processing Agreement, a copy of which is available upon request or may be found Our website.

15.3 You represent and warrant that: (a) You have obtained all necessary rights, consents, releases and permissions to submit all Your Content to the Cloud Services and to grant the rights granted to Us in these Terms; and (b) Your submission and use of Your Content as authorized in these Terms shall not violate any laws, any third-party intellectual property, privacy, publicity or other rights, or any of Your or third-party policies or terms governing Customer Content.

## **16. COMPLIANCE WITH LAWS, EXPORT CONTROL AND U.S. GOVERNMENT**

16.1 Compliance with Laws. We and You shall comply with all applicable laws and regulations anywhere in the world including but not limited to those relating to anti-corruption or anti-bribery e.g. the U.S. Foreign Corrupt Practices Act, as amended, the U.K. Bribery Act and legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or those pertaining to use of any Cloud Services provided via this Agreement.

16.2 Export Control. The Software, Cloud Services, Support Services and Professional Services supplied under this Agreement are subject to export controls under the laws and regulations of the United States and other countries as applicable. You agree to comply with such laws and regulations, and in particular, represent and warrant that You: (a) are not, and are not acting on behalf of (i) 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 (ii) 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 Non-proliferation Sanctions, or Debarred List; and (b) shall not permit the Software, Cloud Services Support Services or Professional Services to be used, directly or indirectly, for any purposes prohibited by law, including any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. You agree that the Software may not be exported or re-exported to Cuba, Iran, North Korea, Sudan, Syria, or the region of Crimea. You won't resell, transfer, or re-export products to any legally denied entity (including but not limited to Armenia, Azerbaijan, Belarus, Cambodia, China (PRC), Georgia, Iraq, Kazakhstan, Kyrgyzstan, Laos, Libya, Macau, Moldova, Mongolian P.R., Russia, Tajikistan, Turkmenistan, Uzbekistan, Ukraine or Vietnam). You shall provide Us with end user information upon request. You shall obtain all required authorizations, permits, or licenses to export, re-export or import, as required pursuant to 18.3 U.S. Government. 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.

## **17. TERM AND TERMINATION**

17.1 Term. This Agreement is effective until expiration or termination. The term of any Software license, Cloud Services, Support Services or Professional Services FlexCredits is as specified in the Entitlement.

17.2 Termination or Suspension for Cause. Either party has the right to suspend or terminate this Agreement upon written notice to the other party if the other party: (a) is in default of any material obligation and the default has not been cured within thirty (30) days of receipt of written notice specifying the default; or (b) becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law domestic or foreign, or has been liquidated. Use of the Software or Cloud Services outside the scope of this Agreement (including but not limited to the Entitlement) is unauthorized and is a material breach that shall void the warranty and/or support obligations.

17.3 Consequences of Termination. Upon termination, all outstanding amounts payable shall become immediately due and Your rights to use the Software, access the Cloud Services or receive the Support Services and Professional Services end immediately. You shall certify to Us in writing that You have stopped using the Software and/or accessing the Cloud Services within five (5) days of termination and that You have destroyed all copies of the Software.

17.4 Survival. Sections 4.3, 5.4, 10.3, 12, 13, 14, 16, 18.2, 18.4, and 18.6 shall survive the expiration or termination of this Agreement.

## **18. MISCELLANEOUS**

18.1 Affiliates and Service Providers. The Software, Documentation, Cloud Services, Support Services and deliverables provided as part of the Professional Services may be used by Your Affiliates and service providers acting on Your behalf, provided that they comply with the terms of this Agreement. You remain liable for the any breach of this Agreement by any Affiliate or service provider.

18.2 Audit. Upon reasonable notice, We or Our independent accountants can examine Your Software usage once per year to verify compliance with this Agreement. If this audit discloses over-usage or any other material non-compliance, then You shall promptly pay to Us any additional fees owed and the reasonable costs of conducting the audit. You shall promptly provide all information reasonably requested in this process. We shall conduct the audit in a manner that is designed to minimize inconvenience and interruption to Your business.

18.3 Insurance. We shall maintain adequate insurance during the term of this Agreement. Upon request, We shall send You proof of coverage.

18.4 Notice. Our notice address is: Nutanix, Inc., 1740 Technology Drive, Suite 150, San Jose, CA 95110, Attn: Chief Legal Officer.

18.5 Assignment. You may not assign this Agreement or any rights that We have given You under it unless We provide consent, which We shall not unreasonably withhold. Either party can assign this Agreement to a successor in interest in the context of a change of control.

18.6 Severability. If any provision in this Agreement is found to be unenforceable by a judge, the remainder of this Agreement will remain in full force and effect.

18.7 Waiver. Failure to enforce any provision of this Agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.

18.8 Sub-Contractors. We may use subcontractors, but We shall remain liable to You for all Our obligations under this Agreement.

18.9 Amendments. Any amendment to this Agreement must be executed by both parties in writing.

18.10 Entire Agreement. Unless We and You have entered into a separate written agreement for the supply of Software, Cloud Services, Support Services and/or Professional Services (in which case that separate written agreement would take precedence over this Agreement), this Agreement represents the entire agreement between Us and You. Any other communication, either oral or in writing, shall not form a part of this Agreement. Any conflicting terms and conditions contained in Your purchase order shall not have any effect.

18.11 Governing Law and Enforcement Rights. If You are located in the Americas or in a country in which We have no local sales subsidiary, this Agreement shall be construed pursuant to the laws of the State of California, with venue in the Northern District of the State of California, United States, excluding conflicts of law provisions. If You are located in any other country in which We have a local sales subsidiary, then this Agreement shall be construed pursuant to the laws of England and Wales with the exclusive jurisdiction of English and Welsh courts for any disputes arising under or in connection with the Agreement. It is possible that a third-party licensor will be a direct and intended third-party beneficiary of this Agreement and may enforce it directly.