

# **Basement Supercomputing Software Support Terms and Conditions**

The following terms and conditions apply to all support services sold by Seagrove LLC, DBA Basement Supercomputing, ("BSC") to our customers. Version 8/19/06.

## **Support Definitions**

"Support" means answers to questions, guidance, and other assistance to help the user in resolving problems that may be encountered with covered products. It also means to provide assistance with updating software. A "Severity 1 emergency" means a catastrophic problem with covered products which (a) severely impacts your ability to service your customers, (b) will result in a material loss of income, and/or (c) causes a material breach of your system security. The customer will be responsible for performing operations on their computer system and BSC shall have no responsibility to perform operations on their computer system. The customer agrees to provide BSC all information reasonably requested by BSC to enable BSC to provide Support. Information may include, but not be limited to, the type of hardware that is in use, a description of the problem for which support is needed, and additional information regarding other software being used (Other software falls outside the Support Scope of Coverage.) The customer understands and agrees that the completeness and accuracy of the information you provide to BSC may affect BSC's ability to provide Support.

## **Scope of Coverage**

BSC will provide Support for one installation of the official version of its BSC Linux Cluster Software product running on all computer systems comprising the cluster. BSC will also support future official versions of its BSC Linux Cluster Software product released by BSC during the Term of this Agreement. BSC will not provide Support for software that is not included as part of its official BSC Linux Cluster Software product, or for any portion of its BSC Linux Cluster Software product that has been modified or changed by you in any way, except as directed by BSC pursuant to this agreement. Support coverage does not extend to BSC products used in any manner for which they are not intended.

## **Compatibility**

The customer understands and agrees that BSC Linux Cluster Software may not function with certain hardware systems and components. Such hardware is considered unsupported hardware. BSC will have no obligation to provide Support for any system that is or that includes unsupported hardware. In order to receive support under this agreement, you may not add/replace/modify/reconfigure hardware within the Cluster without prior authorization from BSC. Upgrade or replacement hardware must be pre-qualified by BSC.

## **Contacting Support**

The purchaser of Standard Hours Support from BSC is entitled to seek Support, including Severity 1 emergencies, during normal business hours, throughout the Term of this Agreement. BSC normal business hours are as follows: Monday Through Friday 9:00AM EST until 8 PM EST. Normal business hours do not include national holidays.

Severity 1 Emergency:

**Call 888.237.8058**

All other Support Issues:

**Email: [support@basement-supercomputing.com](mailto:support@basement-supercomputing.com)**

**Web: <http://basement-supercomputing.com/otrs/customer.pl>**

## **Support Authorization**

The customer agrees to designate one (1) person as the technical support contact who is authorized to seek Support from BSC. If a technical support contact has previously been designated to BSC under a similar Support agreement for the same location, that person must be designated as technical support contact for the purposes of this Agreement. BSC shall not be obligated to provide Support to anyone other than a designated technical support contact.

## **Response**

A response to a request for Support may consist of receipt of and acknowledgment by BSC of a customer's request for Support and may not include resolution of that request. The customer acknowledges and understands that no software is perfect or error free and that, despite BSC's commercially reasonable efforts, BSC may be unable to provide answers to or resolve some or all requests for Support. BSC makes no promises, guarantees, or assurances of any kind that it will be able to resolve all of your Support requests.

BSC will provide usage and configuration support for certain open source third party parallel applications and tools. BSC will assist the customer with locating and reporting any software bugs, but BSC is under no obligation to provide a remedy to such software bugs. Use of "open source software" has been shown to be robust and stable and BSC will strive to support the customer's needs, but BSC cannot guarantee bug fixes, upgrades, suitability, performance, remedies, or warrant the software in any way. The list of supported packages includes: RHEL Red Hat Linux, Fedora Core, and Open Suse Linux distributions, GNU Compilers (gcc, g++, g77, gfortran), GNU Tools (e.g. gdb, binutils, etc.), PVM, MPICH, MPICH2, LAM/MPI, OPEN MPI, ATLAS/BLAS, FFTW, SUN GRID ENGINE, TORQUE, GANGLIA, WAREULF (including component tools), Beowulf Performance Suite, and Userstat. This agreement does not cover software conversion support for parallel computers.

## **Term and Termination**

The Term for Support commences on the date this Agreement is fully executed and continues for one (1) year. Support may be renewed for additional terms of one (1) year. BSC may terminate this Agreement (a) in the event you fail to pay the invoice for service when due, (b) in the event you commit a material breach of this Agreement and fail to remedy that breach within fifteen (15) days of receipt of notice of material breach, or (c) as otherwise provided in this Agreement. You may terminate this Agreement in the event BSC commits a material breach of this Agreement and fails to remedy that breach within fifteen (15) days of receipt of notice of material breach.

## **Pricing, Invoicing and Taxes**

All prices are stated and must be paid in United States Dollars. Services will be invoiced at the time of execution of this Agreement, with payment due within thirty (30) days of the invoice date. All prices and rates quoted by BSC are exclusive of any foreign, federal, state, or local sales, excise, use, or similar taxes, but not including any taxes levied solely on the net taxable income of BSC. You agree to pay such taxes, when applicable, regardless of whether such taxes appear on BSC's original invoice or are later levied on BSC or you by a taxing authority.

## **Payment**

Any and all payments made by the customer pursuant to this Agreement are non-refundable. In the event the customer fails to make payment to BSC in the manner provided by this Agreement, BSC may (a) suspend Support until BSC receives full payment from the customer for all fees, including late fees and interest, due BSC, or (b) terminate this Agreement without notice.

## **Audit**

The customer expressly grants BSC the right to audit its facilities and records from time to time in order to verify your compliance with the terms and conditions of this Agreement. Any such audit shall only take place during normal business hours and upon no less than ten (10) days prior written notice from BSC. BSC shall conduct no more than one such audit in any twelve-month period except for the express purpose of assuring compliance by the

purchaser where non-compliance has been established in a prior audit. BSC shall give the purchaser written notice of any non-compliance, and the purchaser shall have fifteen (15) days from the date of such notice in which make payment to BSC for Support rendered which was not included under the terms of this Agreement.

### **Non-Transferable**

This Agreement, and all Support provided by BSC pursuant to this Agreement, may not be transferred, assigned or distributed without the prior written consent of BSC. Any attempt to transfer, assign or distribute without BSC's prior written consent shall terminate this Agreement, and BSC shall have no further obligation hereunder.

### **NO WARRANTY/LIMITATION OF LIABILITY**

THE SUPPORT SERVICES PROVIDED TO THE CUSTOMER BY BSC ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS OR A PARTICULAR PURPOSE OR A WARRANTY OF NON-INFRINGEMENT. NEITHER THE PURCHASER NOR BSC SHALL BE IN BREACH OF THIS AGREEMENT DUE TO ANY FAILURE OF PERFORMANCE THAT ARISES OUT OF CAUSES BEYOND ITS REASONABLE CONTROL. IN NO CASE SHALL BSC BE LIABLE TO THE PURCHASER OR TO ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR BSC'S PERFORMANCE HEREUNDER, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR LOST DATA, EVEN IF BASEMENT SUPERCOMPUTING HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BSC WILL NOT BE LIABLE TO YOU ON ACCOUNT OF ERRORS, OMISSIONS, DELAYS OR LOSSES UNLESS CAUSED BY ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

### **General**

This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Pennsylvania, U.S.A., without regard to choice of law provisions. Any dispute arising out of this Agreement shall be adjudicated solely in the federal or state courts within the State of Pennsylvania. The parties each agree that they are subject to the personal jurisdiction of the state and federal courts within the State of Pennsylvania, and each waives the right to challenge the personal jurisdiction of those courts over it. This Agreement, including all Schedules attached hereto, constitutes the entire understanding of the parties with respect to the subject matter hereof. This Agreement supersedes and terminates all prior representations, warranties and agreements, written or oral, regarding the subject matter of this Agreement. Any modification to this Agreement must be in a writing signed by both parties. If one or more of the provisions contained in this Agreement is held invalid, illegal or unenforceable in any respect by any court of competent jurisdiction, such holding will not impair the validity, legality, or enforceability of the remaining provisions. Failure or delay on the part of any party to exercise any right, remedy, power or privilege hereunder will not operate as a waiver. Any waiver must be in writing and signed by the party granting such waiver in order to be effective. Any provision of this Agreement which may be reasonably expected to survive the termination of this Agreement, including, but not limited to, the section entitled NO WARRANTY/LIMITATION OF LIABILITY, shall survive such termination. Any notice to be given pursuant to this Agreement shall be deemed given when sent to the address for such party set forth in this Agreement (a) three (3) business days after being deposited with the U.S. Postal Service, postage prepaid, first class, certified, return receipt requested, (b) upon receipt when delivered in person, (c) or two (2) business days after being deposited with a reputable international overnight delivery service.

(8/19/06)