

IBM License Supplement for IBM Power Systems – Shared Utility Capacity on Enterprise Pools 2.0

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This IBM License Supplement for Power Systems - Shared Utility Capacity on Enterprise Pools 2.0 (License Supplement) between IBM and Client governs Client's use of certain Machine Code on the Authorized Machines that are used in an Enterprise Pool 2.0. In exchange for Client's Capacity Credits, IBM grants Client the licenses herein.

1. Definitions

When used in this License Supplement in capitalized form, the terms listed below have the following meanings. Other capitalized terms have the meaning ascribed to them in the terms incorporated herein.

Authorized Machine – an IBM Power Systems Machine, qualified as specified in Section 2.1 below. Each Authorized Machine may only be assigned to one Enterprise Pool.

Base Capacity – the permanently activated processor cores, memory capacity (gigabytes) and Program capacity of each Authorized Machine acquired and paid for in full by Client.

Base Pool Capacity – the aggregate Base Capacity of all Authorized Machines within an Enterprise Pool.

Capacity Credits – credits that are automatically decremented by the Cloud Management Console on a daily basis to pay for consumption of Metered Capacity on Authorized Machines with IBM hardware and software maintenance as specified in Section 2.1 below. Capacity Credits are purchased from IBM, an IBM Business Partner or on the IBM Entitled Systems Support (ESS) site.

Cloud Management Console (CMC) – A Cloud service that offers an Enterprise Pools 2.0 application which measures consumption of resources above the Base Pool Capacity and debits those minutes of Metered Capacity usage against the pool's Capacity Credits on a daily basis.

Eligible Program – each IBM Program specified in Exhibit 1, or a generally available IBM Program which replaces an IBM Program specified in Exhibit 1.

Enterprise Pool – one to thirty-two interconnected Authorized Machines of the same Machine Type managed by a Cloud Management Console, and qualified as specified in Section 2.2 below.

Hardware Management Console (HMC) -- the IBM hardware management console available for use with Authorized Machines.

Metered Capacity – the remaining processor cores, memory and Program capacity above Base Pool Capacity. Once the Enterprise Pool is started, all Metered Capacity is activated (in addition to Base Capacity). Metered Capacity usage is monitored by the minute and charged by the CMC.

Metered Memory – Gigabytes (GB) of usage by any Authorized Machine above the Base Pool Capacity memory measured in average minutes by the Cloud Management Console.

Memory is considered used based on the assignment of memory to partitions and not based on system utilization of the memory. Only memory assigned to active partitions is tracked and consumed.

Metered Processor Cores -- usage is tracked and consumed by operating system. Pools 2.0 (CMC) has two different types of Base Processor Activation resources, and software license entitlement is monitored and metered independently of processor activations.

Metered Programs – Metered Processor Cores using IBM AIX Programs or IBM i Programs.

2. Qualifying Machines and Enterprise Pools

2.1 Qualifying Machines

To qualify as an Authorized Machine, each Machine must:

- a. be an IBM Power System E980 (9080-M9S), an IBM Power System E950 (9040-MR9), an IBM Power System S922 (9009-22G), or an IBM Power System S924 (9009-42G), with a level of Machine Code designated by IBM as FW 940.10 or later;
- b. have adequate license entitlements for the Programs in Exhibit 1 executing on its Base Capacity;
- c. have at least 1 core of the Machine's processor cores permanently activated via Base Activation features;
- d. have at least 256GB of installed memory;
- e. for each Power System E980 or Power System E950, have at least 256GB of the Machine's memory permanently activated via Base Memory Activation features;
- f. have the same warranty or post-warranty service status as the rest of the Machines in the Enterprise Pool such that all Machines in the Enterprise Pool are serviced by IBM either under warranty or post-warranty maintenance service agreement; and
- g. have any logical partitions (LPARs) configured as shared processor partitions.

2.2 Qualifying Enterprise Pools

To qualify for use as an Enterprise Pool 2.0, each Authorized Machine in the pool must:

- a. be located in the same Enterprise and the same country as all other Machines in the pool;
- b. be in Client's possession;
- c. be connected to one or more Hardware Management Consoles (HMC), at least one of which is connected to a Cloud Management Console (CMC) provided via subscription to IBM Power Systems with an IBM AIX, Linux, or IBM i operating system;
- d. have an HMC at Machine Code level 940 or later with Network Time Protocol (NTP) enabled to provide time synchronized reporting of resource usage; and
- e. be the same IBM Machine Type.

A maximum of 1000 logical partitions (LPARs) with up to 500 LPARs per HMC may be supported on Authorized Machines by a single instance of Cloud Management Console managing one or more Enterprise Pools.

3. Machine Code License

Client acknowledges that each Authorized Machine contains Machine Code. Client agrees that although it may acquire Authorized Machines from IBM Business Partners or another party, (i) such IBM Business Partner or other party does not own and does not have the right to sell, license, sublicense or otherwise transfer rights to the Machine Code provided with the Authorized Machine, and (ii) absent a license from IBM to use IBM Machine Code, Client has no right to use the Machine Code. **IBM is the only party who has the right to license IBM Programs and Machine Code.**

By executing this License Supplement, IBM grants Client a license to the Machine Code of each Authorized Machine within an Enterprise Pool under the terms of the applicable IBM License Agreement for Machine Code for only such Authorized Machine, as provided at http://www.ibm.com/servers/support/machine_warranties/support_by_product.html (Machine Code License), which is hereby incorporated by reference into this License Supplement, and as modified herein.

Additional Machine Code License Terms

The terms of this License Supplement specify rights and obligations associated with use of Machine Code which are in addition to or modify the Machine Code License (Additional Machine Code License Terms), which apply solely to each Authorized Machine used by Client within an Enterprise Pool. In the event of a conflict between the terms of this License Supplement and the Machine Code License, the terms of this License Supplement shall prevail with respect to any conflict

4. Access to Metered Capacity in Power Enterprise Pools 2.0

IBM authorizes Client to utilize the active capacity of any Authorized Machine within a Power Enterprise Pool 2.0.

Client agrees that any minutes of Metered Capacity usage may be decremented from Power Capacity Credits Client has purchased at the consumption rates provided in Section 5.2.

If the remaining balance of Capacity Credits reaches zero, Client may continue to use Metered Capacity for up to 30 days, after which access to Metered Processor Cores on each Authorized Machine will be restricted.

Any balance of Capacity Credits owed for Metered Capacity usage will be deducted when additional Capacity Credits are purchased.

5. Tracking and Consumption of Capacity Credits

5.1 Tracking

Metered Processor Cores and Metered Memory usage are tracked and consumed by the minute. Both are based on the average usage for one minute and not the peak usage during the minute.

- a) Metered Processor Core usage is tracked based on actual consumption by partitions.
- b) Metered Memory usage is tracked based on the assignment of memory to partitions and is not tracked based on the operating system usage of the memory. Only memory assigned to active partitions is tracked and consumed.

Metered Processor Core usage is tracked and consumed by operating system. Pools 2.0 has two different types of Base Processor Activation resources, and Program license entitlement is monitored and metered independently of processor activations; therefore, there are four different types of core-related Metered Capacity consumption:

- 1) A core that may run any operating system supported on Power
- 2) A core that may run only Linux/VIOS
- 3) IBM AIX software (licensed per core)
- 4) IBM i software (licensed per core)

No Capacity Credits are consumed for license entitlement of cores executing Linux or VIOS partitions. Linux license entitlement must be procured separately as required to support the appropriate cores/sockets activated and available for use by Pools 2.0.

5.2 Capacity Credits Consumption Rates

Metered Capacity consumed will be debited against 1 Capacity Credit at the following rates:

<u>Power E980 Metered Capacity (resource type)</u>	Consumption Rate (Quantity of Metered Minutes that consume 1 Capacity Credit)
Core Activation - any OS	20,000
Core Activation - Linux/VIOS only	40,000
AIX software license entitlement	30,000
IBM i software license entitlement	1,500
1GB Memory Activation	1,500,000

<u>Power E950 Metered Capacity (resource type)</u>	Consumption Rate (Quantity of Metered Minutes that consume 1 Capacity Credit)
Core Activation - any OS	60,000
Core Activation - Linux/VIOS only	90,000
AIX software license entitlement	50,000
1GB Memory Activation	5,000,000

<u>Power S922 and S924 Metered Capacity (resource type)</u>	Consumption Rate (Quantity of Metered Minutes that consume 1 Capacity Credit)
Core Activation - any OS	130,000
AIX software license entitlement	50,000
IBM i software license entitlement	2,000

Consumption Rates for Metered Capacity include applicable IBM hardware maintenance and software maintenance.

6. Charges, Taxes and Payment

The Charges, Taxes, and Payment terms of the agreement apply; however, Client will be responsible for any tax adjustments that result from using Capacity Credits in a different taxing jurisdiction than where originally ordered. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid for Capacity Credits.

7. IBM Business Partner Acquisition

Acquisition by an IBM Business Partner (BP) for remarketing to another Business Partner or to a Client is subject to the terms of the IBM Business Partner Agreement. This License Supplement governs Client's use of IBM Power Systems Enterprise Pools 2.0.

8. Capacity Entitlement Restoration and Transfer

Upon removal of an Authorized Machine from an Enterprise Pool 2.0, all Metered Processor Cores and Metered Memory activation resources exceeding the Base Processor and Memory Activation capacity will be automatically deactivated on the removed Machine.

Upon transfer of an Authorized Machine to another party (including return to a leasing company), only Base Capacity will transfer with the Machine. The additional Machine Code license terms granted under this License Supplement are not transferable and can only be granted to a party by IBM.

9. Program Licensing and Software Maintenance

Client is authorized by IBM to execute an Eligible Program on all active cores on an Authorized Machine for each Eligible Program that is licensed adequately for its Base Capacity. Client is otherwise responsible at all times to ensure sufficient license authorizations have been obtained for all Programs executing on an Authorized Machine.

Each Authorized Machine in an Enterprise Pool must also have a valid IBM software maintenance agreement for any Eligible Program executing on the Base Capacity of the Authorized Machine.

IBM software maintenance for Metered Programs is included in Consumption Rates.

10. IBM Maintenance Service Charges

For each Authorized Machine that is under contract with IBM for maintenance Service, the charges for such maintenance Service will be based on the purchased configuration of the Authorized Machine.

IBM hardware maintenance for Metered Processor Cores is included in Consumption Rates.

11. Modification to an Enterprise Pool

Client will add to or remove Authorized Machines from an Enterprise Pool using the Cloud Management Console.

12. Verification

Client is responsible for remaining in compliance with the terms of this License Supplement and all of IBM's applicable Machine Code and IBM Program licensing terms (independently or collectively the "Offering Terms"). Upon reasonable notice IBM may verify Client's compliance with the Offering Terms at all sites and for all environments in which Client uses or has used an Authorized Machine. Such verification will be conducted in a manner that minimizes disruption to Client's business and may be conducted on Client's premises, during normal business hours. IBM may use an independent auditor to assist with such verification provided IBM has a written confidentiality agreement in place with such auditor. Client agrees to provide to IBM and its auditors accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that Client's use of an Authorized Machine and IBM Programs licensed to an Authorized Machine is in compliance with the Offering Terms. The rights and obligations set forth in this paragraph remain in effect during the term of this License Supplement and for two years thereafter. IBM will notify Client in writing if any such verification indicates that Client has used an Authorized Machine or IBM Program in excess of its use authorizations or is otherwise not in compliance with the Offering Terms. In addition to Client's obligations to pay for any excess use, Client agrees to promptly pay directly to IBM the charges that IBM specifies in an invoice for other charges and other liabilities determined as a result of such verification.

13. Term and Termination

- a. The term of this License Supplement commences upon its acceptance by both parties, and terminates as specified below.
- b. Client may terminate all rights and obligations specified in this License Supplement for any reason by providing written notice to IBM. The effective date for such termination will be the later of (i) IBM's receipt of such notice, or (ii) any effective date later than item (i) specified by Client in such notice.
- c. Either party may terminate this License Supplement if the other fails to comply with any of the terms, provided the party who is not complying is given written notice and reasonable time, not to exceed 30 days, to comply.
- d. Any terms of this License Supplement which by their nature extend beyond termination remain in effect until fulfilled, and apply to both of our respective successors and assignees.

14. Data Privacy Protection

IBM's Data Processing Addendum (DPA) at <http://ibm.com/dpa> and the DPA Exhibit at www.ibm.com/mysupport/s/article/support-privacy apply to the processing of Client's personal data by IBM on behalf of Client in order to provide IBM Services, if and to the extent i) the European General Data Protection Regulation (EU/2016/679) (GDPR); or ii) other data protection laws identified at www.ibm.com/dpa/dpl apply.

15. Incorporated Information; Relationship to Other Agreements

By signing this License Supplement, Client represents and warrants that by acquiring an Authorized Machine, Client has reviewed and agrees to all of the IBM terms and conditions that are applicable to the Authorized Machine and incorporated by reference into this License Supplement, and agrees that such terms and conditions are enforceable between the parties.

As specified in Section 3 above, the Machine Code License is incorporated by reference into this License Supplement. In addition, if an IBM Client Agreement or an equivalent master agreement is in effect between Client and IBM, such agreement is incorporated by reference into this License Supplement; otherwise, the terms under the following headings in Part 1 and Part 2 (as applicable) of the IBM Statement of Limited Warranty (provided at the following address: http://www.ibm.com/systems/support/machine_warranties/index.html) are incorporated by reference into this License Supplement: "Limitation of Liability", "Governing Law" and "Jurisdiction". In the event of a conflict between the incorporated terms and the terms of this License Supplement, the terms of this License Supplement prevail.

16. General Terms

Client may not assign, or otherwise transfer, this License Supplement or Client's rights under this License Supplement, or delegate Client's obligations, without IBM's prior written consent. Any attempt to do so is void.

In the event that any provision of this License Supplement is held to be invalid or unenforceable, the remaining provisions of this License Supplement will remain in full force and effect.

This License Supplement (including all terms and conditions incorporated herein by reference), each Addendum, and the Client Relationship Agreement (CRA) or equivalent agreement in place between us are the complete agreement regarding Client's right to use Power Enterprise Pools 2.0 Metered Capacity on each Authorized Machine, and replace all prior communications, representations, undertakings, warranties, promises, covenants, and commitments between Client and IBM regarding use of Metered Capacity. In entering into this License Supplement, neither party is relying on any representation that is not specified in the License Supplement, including terms incorporated by reference. Additional or different terms in any written communication from Client (such as a purchase order) are void.

Exhibit 1 – List of Eligible Programs

The IBM Programs specified below are Eligible Programs under terms of the License Supplement.

IBM Program Number	Description
5765-G62	AIX V6.1 Standard Edition
5765-AEZ	AIX V6.1 Enterprise Edition
5765-G98	AIX V7.1 Standard Edition
5765-CD1	AIX V7.1 Enterprise Edition
5765-CD3	AIX V7.2 Enterprise Edition
5765-CBA	IBM Power Systems Enterprise Cloud Edition with AIX V7
5765-ECB	IBM Power Systems Enterprise Cloud Edition
5770-SS1	IBM i V7.2, V7.3, V7.4
5765-PSE	PowerSC Standard
5765-PVE	PowerVM Enterprise
5765-VE3	PowerVM Enterprise Edition V3
5770-HAS	PowerHA SystemMirror for i
5765-H23	PowerHA for AIX V6 Standard
5765-H24	PowerHA for AIX V6 Enterprise
5765-H39	PowerHA for AIX V7 Standard
5765-SLE	PowerVP Standard Edition
5765-VCS	PowerVC Standard Edition V1.4
5765-VCD	Cloud PowerVC Manager V1.4