Kernshell Services Availability Commitment

This Kernshell Services Availability Commitment (the "Commitment") is a policy governing the use of the Services by Customer under the terms of the Kernshell Master Subscription Agreement (the "Agreement") between KERNSHELL TECHNOLOGIES PRIVATE LIMITED ("Kernshell") and the Customer that is a party to the Agreement and is incorporated into the Agreement by reference. These terms apply separately to each account using the Services. Capitalized terms will have the meaning specified in the Agreement. We reserve the right to change the terms of this Commitment at any time by posting a revised version at https://www.kernshell.com/terms-and-conditions/ and notifying Customer. Any changes will become effective 30 days after notifying Customer.

Effective Date: 02-April-2021

1. **Availability Commitment.** Kernshell shall use commercially reasonable efforts to make the Services available 99.5% of the time on a 24x7x365 basis, commencing upon notification from Kernshell that the Services are ready for production use, subject to routine maintenance outages, outages and service interruptions requested by Customer, the other provisions of this Agreement, and the exclusions identified below (the "Availability Commitment"). The Kernshell Technical Support team will address issues with respect to any failure to meet the Availability Commitment brought to their attention as set forth in the Terms and Conditions of Customer Support.

2. **Exclusions.** Issues with respect to any failure to meet the Availability Commitment shall not be deemed the fault of Kernshell and shall not give rise to Customer's right to receive a Fee Credit (defined below) to the extent resulting from the following exclusions,

   - Scheduled maintenance or a scheduled outage of which Kernshell gives at least forty-eight (48) or more hours' notice in accordance with the Agreement or via e-mail. Kernshell shall use commercially reasonable efforts to schedule all planned downtime during hours when such downtime will be least disruptive to its North American customers;
   - Any event beyond Kernshell's reasonable control, including the following events:
     - Periods of emergency maintenance activities;
     - Problems caused by Customer Data (e.g., corruption) or Customer programming errors; system administration, commands, file transfers performed by Customer representatives; work performed at Customer's request that may require the Services to be unavailable for such time as is necessary to perform such work, subject to prior arrangement with Customer, other activities Customer directs;
     - Denial of service attacks, natural disasters, other force majeure events; interruptions, delays or failures in Internet or telecommunications network connectivity, equipment, infrastructure or otherwise; failure of non-Kernshell managed Customer hardware or software;
     - Lack of availability or untimely response of Customer with respect to incidents that require its participation for source identification or problem resolution, including meeting Customer responsibilities with respect to the Services provided herein;
     - Customer's breach of the Agreement;

o   Customer's deferral of maintenance activity or decision not to increase capacity against the advice of Kernshell (including, but not limited to, Customer's refusal to increase capacity where Customer has exceeded any stated pricing assumptions); or

o   Customer's failure to promptly report a problem to Kernshell upon its discovery or unavailability to support Kernshell's diagnosis and resolution of an incident.

3. **Exclusive Remedy.** If Kernshell fails to meet the Availability Commitment during any consecutive thirty (30) day period during the applicable annual Subscription Term (each, a "Contract Month"), Customer's exclusive remedy and Kernshell's exclusive liability for such failure shall be the issuance to Customer of a credit against Customer's prorated Subscription Fee (set forth on the Order Form) for the contract month in which the failure occurred proportionate to the percentage of time such failure (or failures) represents in relation to the total amount of time during such Contract Month reflected in the Availability Commitment ("Fee Credit"), subject to a limit of ten percent (10%) of the prorated monthly Subscription Fee for the applicable Contract Month. Measurement of whether Kernshell has met the availability commitment for any given contract month shall begin anew at the beginning of each Contract Month such that a failure to meet the Availability Commitment during any given contract month shall not carry over into the following Contract Month for purposes of calculating any fee credit. Notwithstanding the foregoing, the total Fee Credit available to Customer shall not exceed ten percent (10%) of Customer's applicable annual Subscription Fee. Should Kernshell fail to meet the Availability Commitment in two of four consecutive calendar months, Customer may terminate the Master Subscription Agreement (in addition to receiving a refund in the amount of the above-described credit, which would otherwise be due to Customer were the Agreement to continue, for the calendar month during which the Customer terminates) by providing notice of termination in accordance with Section 6.3 of the Agreement. The remedies described in this paragraph shall be the sole remedies available to Customer for breach of this Availability Commitment.

4. **Fee Credit.** To receive a Credit, Customer must submit a request by sending an e-mail message to contact@kernshell.com, containing the following within fifteen (15) business days of the last reported incident of such failure by Kernshell to meet the Availability Commitment:

    • Customer's account number (if one is provided by Kernshell) in the subject of the e-mail message; and
    • The dates and times of each incident of Kernshell's failure to meet the Availability Commitment that Customer claims to have experienced, including the environment's web address (i.e., URL) that was running and affected during the time of each incident.

All claims will be verified by Kernshell. The Fee Credit will be issued to Customer applicable to the following annual Subscription Term. Fee Credits shall not entitle Customer to any refund or other payment from Kernshell. Fee Credits related to a single instance of the Services or account may not be transferred or applied to any other instance of the Services or account. Customer's failure to provide the Fee Credit request and other information as required above will disqualify Customer from receiving a Fee Credit.