



Curvature, Inc. : 2810 Coliseum Centre Drive

Charlotte, NC, 28217, USA

Equipment Schedule

Bill To: AppDynamics LLC
303 Second Street
North Tower, 8th Floor

Pmt Terms: Net 60
Term of Coverage: Annual Bill

Quote #: H6172.1.2
Contact: Wong, Stanly

Billing Period: Jan/01/2020 to Dec/31/2020

Account Executive: Stoddard, Christopher

Equipment Location: AppDynamics LLC
303 Second Street
San Francisco, CA, 94107, USA

Contact: Wong, Stanly
stanly.wong@appdynamics.com

Phone: 000-000-0000

Item #	Model #	Serial #	Device Name	Description	Item Start	Item End	Service Level	Qty.	Month Rate	No. Mos	Billing Amount
1	POWEREDGE R730XD	1JBRRD2		POWEREDGE R730XD SERVER	Jan/01/2020		7244	1	\$ 14.00	12	\$ 168.00
2	POWEREDGE R730XD	1JBQRD2		POWEREDGE R730XD SERVER	Jan/01/2020		7244	1	\$ 14.00	12	\$ 168.00
Location Net Total											\$ 336.00

Service Level Legend

SLA Name	SLA Description	Call Window
7244	7x24, 4HR ONSITE	Monday through Sunday, 24 hours, 365-days, 4hrs Onsite



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Notes:

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Unless otherwise specified within this Equipment Schedule, Curvature assumes that all WINTEL servers contain the original OEM configuration.

Unless otherwise specified within this Equipment Schedule, the Terms and Conditions by and between Curvature and AppDynamics LLC on or about January 9, 2020 shall be the governing agreement.

The prices quoted herein do not include any applicable sales taxes.

Customer is responsible for payment of all applicable sales taxes in addition to the amounts quoted herein.

This quotation is valid for 90 days.

Please note: We are changing our brand name to Curvature.

Tax ID, registration numbers, and remittance addresses remain unchanged.

See <https://www.curvature.com/legal/accounting/entity-names> for more details.



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Cost By Month Summary

Jan-2020	\$ 28.00
Feb-2020	\$ 28.00
Mar-2020	\$ 28.00
Apr-2020	\$ 28.00
May-2020	\$ 28.00
Jun-2020	\$ 28.00
Jul-2020	\$ 28.00
Aug-2020	\$ 28.00
Sep-2020	\$ 28.00
Oct-2020	\$ 28.00
Nov-2020	\$ 28.00
Dec-2020	\$ 28.00

Contract Net Total	<u>\$ 336.00</u>
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Disclaimer: The above Cost by Month Summary provides insight into the economic impact of assets being added or removed at different times during the life of the contract. The invoices you receive will be generated based on the Billing Frequency shown at the top of the Equipment Schedule. If you have questions, please contact your Sales representative.



Terms and Conditions

These TERMS AND CONDITIONS ("**Terms and Conditions**") are agreed to as of November 22, 2019, by and between Curvature, Inc., a Massachusetts corporation, on behalf of itself and its subsidiaries (collectively "**Curvature**"), and AppDynamics LLC, a Delaware limited liability company, on behalf of itself and its affiliates (collectively "**Customer**").

1. **Services.** Curvature will provide the maintenance services (the "**Services**") indicated on the equipment schedule (the "**Equipment Schedule**") attached hereto and any other Equipment Schedules (or statements of work or other similar documents) subsequently agreed upon by Curvature and Customer that reference these Terms and Conditions. The Equipment Schedule (or statements of work or other similar documents) and these Terms and Conditions are referred to together as the "**Agreement**".
2. **Fees.** Maintenance and other recurring fees shall be set forth in the Equipment Schedule and shall be invoiced annually in advance (unless otherwise noted) and are due on the first day of the service period for which the invoice is rendered. Any increase in maintenance or other recurring fees after the current Term of Coverage must be disclosed in writing at least thirty (30) days prior to the effective date of the increase and will become effective if agreed by the parties in writing through an executed Equipment Schedule. Curvature reserves the right to suspend or terminate maintenance and recurring services if such fees are not timely paid. Fees and expenses other than maintenance and other recurring fees shall be payable net 30 days.
3. **Limited Warranty and Limitation of Liabilities.**
 - a. Curvature warrants that the Services will be provided by properly supervised and qualified staff in a good and workmanlike manner. Customer warrants that its operations related to the Covered Equipment (as defined below) will be provided by properly supervised and qualified staff in a good and workmanlike manner. Each party warrants that it will obey all applicable laws in performing pursuant to this Agreement. Curvature will not be liable for any reinstatement, relicensing or recertification fees imposed by any entity or person on the Covered Equipment.
 - b. **THE WARRANTIES STATED ABOVE ARE THE SOLE WARRANTIES PROVIDED BY THE PARTIES. THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE PROVIDED PURSUANT TO THIS AGREEMENT.**
 - c. **IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR FOR ANY DIRECT OR INDIRECT LOSS OF USE, DATA, SOFTWARE, REVENUE OR PROFITS, EVEN IF ADVISED OF THE PROBABILITY OF SUCH DAMAGES.**
 - d. **CURVATURE'S AND CUSTOMER'S LIABILITY (WHETHER IN CONTRACT, WARRANTY OR TORT, INCLUDING NEGLIGENCE) FOR DAMAGES OF ANY NATURE SHALL NOT EXCEED THE TOTAL COMPENSATION RECEIVED FROM CUSTOMER BY CURVATURE DURING THE TERM OF THIS AGREEMENT.**
 - e. Reserved.
4. **Term and Termination.**
 - a. This Agreement shall become effective when it has been executed by both parties and it shall remain in effect unless earlier terminated as set forth herein.
 - b. [reserved].



- c. This Agreement may be terminated immediately for cause by either party in the event the other party fails to materially perform any of its obligations under this Agreement and fails to cure such default within twenty (20) days after receipt of written notice thereof or, with respect to payment defaults, fifteen (15) days after receipt of written notice thereof.
- d. Either party may immediately terminate this Agreement in the event that the other party (a) becomes insolvent or unable to pay its debts as they mature; (b) makes an assignment for the benefit of its creditors; (c) seeks relief, or if proceedings are commenced against such other party or on its behalf, under any bankruptcy, insolvency or debtors relief law and such proceedings have not been vacated or set aside within seven (7) days from the date of commencement thereof.

5. **Confidentiality.** If either party received from the other party written information which is marked "Confidential" or "Proprietary" or any other information the receiving party knows or should know is confidential or proprietary, the receiving party agrees not to use such information except in the performance of this Agreement, and to treat such information in the same manner as it treats its own confidential information and at least use commercially reasonable efforts to protect such information. The obligation to keep information confidential shall not apply to any such information that has been disclosed in publicly available sources; is in the rightful possession of the party receiving the confidential information without an obligation of confidentiality; or is required to be disclosed by operation of law; provided that notice is first given to the disclosing party. Except as otherwise provided herein, the obligations not to disclose or use and to maintain the confidence of information shall be for a period of two (2) years after the termination or expiration of this Agreement.

6. **Indemnification.** Each party (the "***Indemnifying Party***") agrees that it will indemnify, defend, and hold the other party (the "***Indemnified Party***") harmless from and against any liabilities, losses, damages, and costs (including reasonable legal fees and expenses), that are finally awarded by a court of competent jurisdiction, arising out of any third party claim that the

Indemnifying Party infringed upon any patent, copyright, trademark, or other intellectual property right of any third party. Indemnified Party must promptly notify Indemnifying Party in writing of any claim for which indemnification is sought and provide Indemnifying Party with all assistance, information, and authority reasonably required for the defense and settlement of such claim. Indemnifying Party shall have control of the defense or settlement of such claim; provided, however, that Indemnifying Party shall not enter into any settlement that obligates Indemnified Party to take any action, admit any wrong doing, or incur any expense, without Indemnified Party's prior written consent.

7. **Data Protection.**

- a. If, due to the nature of the specific Services to be provided under this Agreement (as detailed in the Equipment Schedule attached hereto), the parties hereto enter into a data processing agreement, such agreement shall prevail in the event of a conflict between this Agreement and the data processing agreement.
- b. Otherwise, in the context of the provision of the Services, Curvature will not access or otherwise process any personal identifiable information – meaning information relating to identified or identifiable natural persons – aside from the names and contact details of individuals employed or otherwise engaged by Customer or the customers of Customer (such as on-site contact persons and representatives), as strictly necessary to provide the Curvature Services.
- c. In so doing, Curvature will act as a data processor on behalf of Customer and/or the customers of Customer, and hereby undertakes to comply with all obligations applicable to Curvature under any and all data protection laws, including Regulation (EU) 2016/679 – the General Data Protection Regulation – regarding the safeguarding and lawful processing of Personal Data which may be applicable to the provision of the Services.

8. **General.**

- a. **Assignment, Amendment, Etc.:** This Agreement may not be assigned by either party without the prior written consent of the other, which shall not be unreasonably withheld, except that either party may assign this Agreement to an affiliate or a



successor as a result of a merger, acquisition or sale of substantially all of the party's assets. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns. Any assignment made in contravention of this section shall be void and of no effect. This Agreement may not be changed, modified or amended except by writing signed by the parties hereto which expressly references this Agreement.

- b. Notices: Any legal or formal notice provided for or permitted in this Agreement shall be sent by personal service, by certified return receipt requested or registered mail, postage prepaid, or by Federal Express or other nationally recognized commercial courier, charges prepaid, addressed as set forth herein. Any such notice, demand, request, or other communication shall be deemed to have been given upon the earlier of personal delivery thereof, or three (3) business days after having been mailed as provided above, or one (1) business day after delivery through a commercial courier, as the case may be.
- c. Relationship of the Parties. The parties agree that the relationship established by this Agreement is that of independent contractors. Nothing contained in this Agreement shall be construed as creating a partnership, joint venture or agency relationship between the parties or, except as otherwise expressly provided in this Agreement, as granting either party the authority to make any statements, representations, warranties, or commitments on behalf of the other party.
- d. Enforcement Costs: In the event of any litigation between the parties hereto to enforce any provisions or rights hereunder, the unsuccessful party to such litigation shall pay to the successful party therein all costs and expenses expressly including, but not limited to, reasonable attorneys' fees and court costs incurred therein by such successful party, which costs, expenses, and attorneys' fees shall be included in and as a part of any judgment rendered in such litigation.
- e. Entire Agreement: This Agreement and, as applicable, any related attachments, amendments, data processing agreement, or confidentiality agreement, contain the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements between them.
- f. No Implied Waivers: The failure of either party at any time to require performance by the other of

any provision hereof shall not affect the right of such party to require performance at any time thereafter, nor shall the waiver of either party of a breach of any provision hereof be taken or held to be a waiver of a provision itself.

- g. Governing Law; Jurisdiction: This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflict of law provisions thereof.
- h. Force Majeure: Neither party shall be liable for failure to fulfill its obligations under this Agreement or any purchase order issued hereunder or for delays in delivery or services due to causes beyond its reasonable control, including, but not limited to, acts of God, acts of terrorism, man-made or natural disasters, material shortages, strikes, or delays in transportation ("**Force Majeure**"). The time for performance of any such obligation shall be extended for the time period lost by reason of the delay.
- i. Severability: Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof in that jurisdiction or affecting the validity or unenforceability of such provision in any other jurisdiction.
- j. Survival: Sections 2, 3(b)-(e), 5, 6, 7, and 8 hereof shall survive and remain in effect beyond any expiration or termination hereof. Any provisions of this Agreement that by their nature are intended to survive expiration or termination of this Agreement will survive any expiration or termination.
- k. Incorporation by Reference; Conflicts: These Terms and Conditions can be made part of subsequent documents by reference. The parties agree that these Terms and Conditions shall prevail over and supersede any contrary or additional terms in any purchase order, sales acknowledgment, confirmation, invoice, or any other document issued by either party, in every case, except as expressly provided herein.
- l. Restrictive Covenant. Each party hereto acknowledges and agrees that during the term of



this Agreement and for one (1) year thereafter, neither party will hire or solicit to hire the other party's employees, contractors, or agents without the other party's prior written consent; provided, however, that the foregoing will not prevent the solicitation or employment of any such person: (a) resulting from any general advertisement for employment or similar notice conducted by or on behalf of the hiring party that is not targeted specifically at such person; (b) that approaches the hiring party on an unsolicited basis; or (c) following the cessation of such person's employment with the non-hiring party without any solicitation or encouragement by the hiring party.

- accessories or attachments, or services and goods necessary due to improper usage of Covered Equipment, or damage arising from an unsuitable environment (including improper electrical power, air conditioning, or humidity) or Force Majeure.
- e. Customer agrees that Curvature may act as Customer's agent to the extent that Customer requests that Curvature download OEM software, patches, updates, microcode, operating systems,

9. **Standards of Services - General**

- a. Curvature will provide the Services noted on the Equipment Schedule during the initial term of coverage indicated on the Equipment Schedule and any extensions thereof (the "**Term of Coverage**"). Curvature will only provide the Services for the equipment set forth on the Equipment Schedule (the "**Covered Equipment**").
- b. All Covered Equipment must be in good working condition at the beginning of the Term of Coverage and meet the manufacturers' minimum equipment configuration requirements and specifications. Any costs associated with correcting deficiencies to the aforementioned requirement are the responsibility of the Customer.
- c. Customer may remove Covered Equipment from coverage if such equipment is decommissioned; provided, however, that such removals shall not represent more than 20% of the total value of the applicable Equipment Schedule during the term thereof. Customer will receive a pro rata credit for any fees paid in advance for such removed Covered Equipment. Customer may also add equipment to coverage for an additional fee. Curvature generally requires at least fourteen days' advance notice to add or remove equipment from coverage.
- d. The Services exclude: manufacturer proprietary firmware or microcode, electrical work external to the Covered Equipment, maintenance of goods (other than the Covered Equipment) and equipment accessories, alterations, attachments not listed on the Equipment Schedule, platens, supplies or accessories, specification changes, equipment relocation, removal or relocation of



fixes, repairs or similar matters (the “Software”) and load such Software on such Covered Equipment. Customer represents and warrants that it has all rights necessary to authorize and allow Curvature to download such Software and load it onto such Covered Equipment. Customer agrees to indemnify, defend and hold harmless Curvature regarding any claims made against Curvature relating to Curvature’s activities and actions relating to such Software and such Covered Equipment in reliance upon Customer’s representations, warranties, and authorizations provided herein. By way of clarification, it is solely within Curvature’s discretion to accept such a request and provide such services.

- f. Curvature will have no obligation to provide the Services for Covered Equipment that malfunctions as a result of (i) misuse or neglect by Customer or any third party acting on Customer’s behalf or (ii) software problems or problems caused by external hardware due to Customer’s breach of Section 3(a).
- g. In the event that Customer experiences problems with Replacement Equipment (as defined below) upon delivery, Customer must make a technical representative available for a call with a Curvature engineer so that a root-cause analysis can be performed on such equipment to determine whether it is defective. Curvature shall not be obligated to provide additional Replacement Equipment until such analysis has been performed and it has been determined that such Replacement Equipment is in fact defective.
- h. The Services do not include access to “License to Use” (LTU) updates, software updates, firmware updates, or bug fixes, or replacement of any advanced or optional licensed features. Curvature is not responsible for the replacement or reassignment of any advanced license key and can only provide Replacement Equipment with base licensing.
- i. Ramp Up Period. For any Covered Equipment that is being placed under coverage for the first time, Curvature will use commercially reasonable efforts to provide Replacement Equipment and field engineers for such equipment in accordance with the applicable Service Level as defined on the Equipment Schedule for a period of time at the beginning of the contract term (the “Ramp Up Period”). But Curvature shall not be liable for any failure to meet the applicable Service Level for such equipment until the end of the Ramp Up



Period. The Ramp Up Period shall not apply to Covered Equipment for which coverage is being renewed. The length of the Ramp Up Period varies depending upon the zone in which the Covered Equipment is located. A table of the various zones, with the corresponding length of the Ramp Up Period, can be viewed at <https://www.curvature.com/assets/pdf/Curvature-NetSure-Ramp-Up-Period.pdf>. The Ramp Up Period begins on the latter of (i) the Start Date indicated on the Equipment Schedule and (ii) the date on which Customer provides Curvature with the Equipment Information for all Covered Equipment.

- j. Equipment Information. If Customer has not already done so, Customer must promptly provide Curvature with the following "Equipment Information" for each item of Covered Equipment: its exact location (including name and contact information of Customer technical project manager) and complete hardware configuration details, including correct original equipment manufacturer (OEM) model numbers, manufacturer part numbers, and serial numbers of all internal components, including FRUs (field replaceable units). Failure to do so may prevent Curvature from meeting the applicable Service Level and Curvature shall not be responsible for any such failure resulting from Customer's failure to provide the Equipment Information.

10. Services Description – Server and Storage Maintenance Services

- a. Curvature shall maintain the Covered Equipment in good operating condition and furnish scheduled maintenance based on the needs of the Covered Equipment and of Customer during the time period for performance excluding locally observed holidays unless otherwise stated. Subject to Customer's prior written approval, Services required to be initiated beyond service hours contracted for will be billed at Curvature's per call rates and terms then in effect. Maintenance will include labor and replacement of all parts deemed necessary for proper operation of Covered Equipment.
- b. Customer shall retain ownership, possession, and responsibility of all defective drives, storage media, and any other part that may contain personal identifiable information at no additional charge. Curvature will not take possession of any

such items. Curvature shall take possession of all other defective parts replaced by Curvature. If Customer wishes to retain any such defective parts, Customer may do so for a fee equal to the cost to Curvature to replace the defective part.

- c. Customer shall timely notify Curvature of Covered Equipment failure and shall allow Curvature staff all necessary access to the Covered Equipment and use of any other necessary equipment, machines, and devices in Customer's possession, to the extent necessary to provide the Services.
- d. Customer shall maintain accurate and current logs and records concerning the operation of the Covered Equipment and provide such logs and records to Curvature upon request, to the extent necessary for Curvature to perform the obligations under this Agreement.
- e. Customer shall not move the Covered Equipment or cause it to be moved by another person without prior written notice to Curvature. The Services do not include the repair of any Covered Equipment damaged in a move performed by anyone other than Curvature personnel. Curvature can, however, provide restoration services for such equipment at its then current time and materials rate. At Customer's request, Curvature can move Covered Equipment subject to an additional fee to be negotiated at such time (PCs and small printers excepted).
- f. Services required, in the reasonable opinion of Curvature, because of problems external to the Covered Equipment or due to causes other than normal wear and tear, are not covered. If agreed by Customer in writing prior to being performed, such Services will be billed at Curvature's per call rates and terms then in effect. The Services do not include operating supplies, consumable items (such as laser maintenance kits, printer bands, etc.), or electrical work external to the Covered Equipment. Curvature will use commercially-reasonable efforts to replace standard batteries, if and to the extent they are commercially available.
- g. Curvature's service liability shall be limited to restoring the Covered Equipment covered to good and operating condition. Only authorized Curvature staff shall service the Covered Equipment and should the Covered Equipment sustain any damage as a result of service by persons other than Curvature personnel, Curvature's restoration of the equipment will be billable at Curvature's then current time and materials rates.

Service Number: 877-405-0330

Email: info@curvature.com

www.curvature.com



- h. Service Level. The Equipment Schedule indicates which Service Level will apply to each piece of Covered Equipment. The applicable Service Levels are described in the applicable service description. Service Levels are measured from the time at which Curvature receives the request for Services.

11. Services Description – NetSure Network Maintenance

- a. Technical Assistance Center. Curvature will provide technical support for the Covered Equipment via its Technical Assistance Center (TAC) which is available twenty-four hours per day, seven days a week. Notwithstanding the foregoing, Curvature will not provide technical support or remote trouble shooting for any Covered Equipment for which Customer has purchased the Hardware Only support option.
- b. Opening a Support Ticket. If Customer experiences problems with Covered Equipment, Customer may open a support ticket to request Services from Curvature.
- c. Support Ticket Response Times. Curvature will respond to the initial support inquiry within 30 minutes of receipt of the request.
- d. Technical Support. Curvature will first verify that the equipment at issue is Covered Equipment. If it is Covered Equipment, a TAC engineer will attempt to diagnose and solve the problem remotely.
- e. Replacement Equipment. If the TAC engineer is unable to resolve the problem in a timely manner, Curvature will ship a replacement unit ("**Replacement Equipment**") to Customer in accordance with the applicable Service Level. All Replacement Equipment will be in new or like-new condition. Replacement Equipment will be the same model as the unit being replaced unless the same model is unavailable, in which case Curvature will provide an upgraded model with comparable functionality. Title and risk of loss for Replacement Equipment shall pass to Customer upon delivery.
- f. Replaced Covered Equipment. Customer will ship all faulty Covered Equipment back to Curvature once it has been replaced ("**Replaced Equipment**"), excluding any Covered Equipment which may contain personal identifiable information, regarding which Customer shall retain

sole title, possession, and responsibility. Customer shall ship Replaced Equipment in accordance with the procedure described in Curvature's NetSure Shipping Instructions which will be provided to Customer upon delivery of the Replacement Equipment. Curvature is responsible for the shipping costs and any applicable duties or taxes levied on the shipment of Replaced Equipment to Curvature. Title and risk of loss shall pass to Curvature upon delivery. Should Customer fail to ship Replaced Equipment to Curvature within thirty (30) days of receipt of the corresponding Replacement Equipment, Customer will be required to pay Curvature its then-current, full list price for such equipment.

- g. NetSure Service Level. The Equipment Schedule indicates which NetSure Service Level will apply to each piece of Covered Equipment. The applicable NetSure Service Levels are described in the applicable NetSure service description. NetSure Service Levels are measured from the time at which Curvature determines that Covered Equipment is faulty and requires replacement.
- h. Relocation of Covered Equipment. The pricing set forth in the Equipment Schedule is based upon all Covered Equipment remaining at the same location throughout the Term of Coverage. Customer may relocate Covered Equipment to a new location provided that Curvature offers the Services at such new location. Any such relocation of Covered Equipment requires at least thirty (30) days advance written notice and there may be additional fees depending upon the new location. Curvature will provide a quote for any such additional fees when Customer notifies Curvature of Customer's intent to relocate Covered Equipment. Curvature will not be responsible for providing the Services for any Covered Equipment that is damaged during relocation or fails to function properly when initially re-installed at the new location. Upon Curvature's request, Customer must provide output logs for the relocated equipment so that Curvature can verify that the equipment was functioning properly following relocation.



IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement effective as of the latest date set forth below:

Accepted by:

AppDynamics LLC

(Company Name)

DocuSigned by:

George Karamanos

EADD3AC1FF6B486...
(Authorized Signature)

George Karamanos

(Printed Name)

General Counsel

(Title)

January 9, 2020

(Date)

303 2nd Street
North Tower, 8th Fl
San Francisco, CA 94017

(Address)

Curvature, Inc.

(Company Name)

Patrick G. Barry

(Authorized Signature)

Patrick G. Barry

(Printed Name)

General Counsel

(Title)

Jan 9, 2020

(Date)

2810 Coliseum Centre Drive, Suite 600
Charlotte, NC 28217

(Address)

The quotation provided is valid for 90 days from the date of issue.