



Agreement for IBM Software Support Services

This Agreement for IBM Software Support Services – Support Line for Storage is between the Customer (also called “you” and “your”) and International Business Machines Corporation.

Support Line for Storage

NOTICE: PLEASE CAREFULLY READ THE FOLLOWING TERMS UNDER WHICH IBM WILL PROVIDE SUPPORT LINE FOR STORAGE TO YOU. THE TERMS BELOW WILL GOVERN YOUR PURCHASE OF THIS SERVICE. THESE TERMS ARE THE COMPLETE AND EXCLUSIVE AGREEMENT REGARDING THIS SERVICE AND REPLACE ANY PRIOR ORAL OR WRITTEN COMMUNICATIONS BETWEEN YOU AND IBM CONCERNING THIS SERVICE. BY CLICKING THE "I ACCEPT" BUTTON YOU CONFIRM THAT YOU HAVE READ AND ACCEPT THESE TERMS WITHOUT MODIFICATION. PLEASE READ CAREFULLY THE AGREEMENT BELOW AND PRINT AND STORE IT FOR YOUR RECORDS. ALTHOUGH THE AGREEMENT BELOW SPECIFIES BOTH OF US MUST SIGN IT, YOU AGREE BY CLICKING ON THE “I CONFIRM” BUTTON, YOU HAVE READ THE AGREEMENT AND AGREE TO BE BOUND BY ITS TERMS, AND THAT SUCH ACCEPTANCE WILL BE THE EQUIVALENT OF YOUR SIGNATURE ON THIS AGREEMENT. YOU ALSO AGREE THAT YOU ARE AUTHORIZED TO EXECUTE THIS AGREEMENT FOR THE LEGAL ENTITY ON WHOSE BEHALF YOU ARE ACCEPTING THE TERMS OF THIS AGREEMENT.

You will receive an online confirmation from IBM when you accept the IBM Software Support Services - Support Line for Storage Agreement.

1. IBM Software Support Services – Support Line for Storage

IBM will provide you remote assistance with the operation of Eligible Machines and Programs via the Support Line for Storage (“Service”). Your contract period start date will begin when your Eligible Machines and Programs are installed and operational at your Server Location.

2. Definitions

Eligible Machines and Programs — are those hardware machines and software programs eligible for this Service which apply to storage products only identified at IBM’s Internet address: <http://www-03.ibm.com/services/sl/products>

Full Shift - is 24 hours a day, seven days a week, including national holidays.

Non-United States-based customer representatives — are all customer personnel who do not reside in the United States (“U.S.”) placing calls to the IBM support structure.

Primary Technical Contact (“PTC”) — is your U.S.-based representative to whom IBM may direct general technical information pertaining to the Service. The PTC must have sufficient technical knowledge of the Eligible Machines and Programs within your environment in order to enable effective communication with the IBM support center.

Response Time — is the elapsed time between receipt by IBM technical support of your submission, and the acknowledgement of the submission. Please refer to the IBM Software Support Handbook for call handling process by severity at:

<http://www14.software.ibm.com/webapp/set2/sas/f/handbook/home.html>

Server Location — is the physical location of the Eligible Machines supported under this Service. All Eligible Machines must be physically located within the U.S.

3. IBM Responsibilities

This assistance is not available to your end users. IBM will provide you remote assistance (via telephone from IBM’s support center or via an electronic search and questioning capability), in response to your requests pertaining to the following:

For all Eligible Machines and Programs in your covered support groups:

- a. basic, short duration installation, usage, and configuration questions; and
- b. questions regarding IBM Eligible Machines and Program publications.

For all IBM storage supported products in your covered support groups:

- a. code-related problem questions;
- b. diagnostic information review to assist in isolation of a problem cause; and
- c. for known defects, available corrective service information and program fixes which you are entitled to receive under the terms of the IBM license.

When you report a problem with covered Eligible Machines or Programs, IBM will provide a primary point of contact for all support requests. IBM will assist you with installation usage and configuration questions and provide general guidance on product documentation. IBM will also assist with isolating the problem cause and provide you recovery information. For known defects, IBM will provide corrective service information and program fixes, if available and IBM is authorized to provide such to you. If a new (unknown) defect is identified, IBM will report it as appropriate and notify you of our actions.

This Service is solely for Eligible Machines that are located within the U.S. For calls that originate from outside of the U.S: 1) toll free telephone access is not available, 2) "8:00 a.m. to 5:00 p.m. in the local time zone" is defined as the time zone where your designated U.S.-based Primary Technical Contact resides, Monday through Friday (excluding national holidays), 3) replies or other return communication to the caller will be via electronic means only, 4) software "traps" or other tools that may be necessary to diagnose problems will be sent only to your U.S Server Location, 5) the diagnosis and repair of data encryption will be discussed only with personnel at the U.S. Server Location, and 6) all support will be provided in the English language.

3.2 Response Criteria

IBM provides severity 1 assistance 24 hours a day, every day of the year. A 24x7 (every day of the year) all severity option is available at extra charge.* During Prime Shift, IBM's response time objective is two hours for voice and electronic problem submissions. For voice problem submissions during other than Prime Shift hours, IBM's response time objective for (Severity 1) is two hours and if you select the 24x7 all severity option, four hours for non-critical problems. For electronic problem submissions during other than Prime Shift, IBM's response time objective is within two hours of the start of Prime Shift on the next business day. IBM's initial response (either voice or electronic) may result in resolution of your problem or it will form the basis for determining what additional actions may be required to achieve technical resolution of your problem. IBM is not responsible for delays in electronic response delivery caused by systems and network problems.

3.3 Electronic Support

You will also be able to electronically submit Support Line Service requests for Eligible Machines and Programs provided you have Internet access. IBM will use commercially reasonable efforts to respond to each electronic Service request from you within two hours of receipt during Prime Shift. For electronic Service requests received during Off Shift, IBM will use commercially reasonable efforts to respond within two hours of the start of Prime Shift on the next business day. IBM is not responsible for delays in response delivery caused by systems and network problems.

3.3.1 Your Responsibilities

You agree to:

- a. ensure you are properly licensed to all Eligible Programs and have IBM hardware maintenance coverage (where required) for the Eligible Machines and Programs for which you request assistance;
- b. retrieve and review the latest list of Eligible Machines and Programs on a regular basis to verify whether there have been any additions or deletions within your covered support groups;
- c. ensure that any access codes IBM provides to you are used only by your authorized personnel;
- d. designate a technically qualified representative (called "Primary Technical Contact") who will be your focal point to whom IBM may direct general technical information pertaining to your Eligible Machines and Programs;
- e. acknowledge that IBM is permitted to use global resources (non-permanent residents used locally and personnel in locations worldwide) for the delivery of Services;
- f. provide IBM with all relevant and available diagnostic information (including product or system information) pertaining to software problems for which you request assistance;

- g. if necessary, provide IBM with appropriate remote access to your system to assist you in isolating the software problem cause. You will remain responsible for adequately protecting your system and all data contained therein whenever IBM remotely accesses it with your permission; and
- h. provide IBM with written notice of changes to your Machine inventory within one month after the change occurs. Such changes may cause a revision to your charges for this Service. (Note: This responsibility does not apply for Enterprise Support.)

4. Termination

You may terminate this Service on one month's written notice to IBM after it has been contracted for at least one year.

IBM may withdraw Service on the Eligible Machines and Programs list on three months' written notice to you. Other changes to the Eligible Machines and Programs list (for example, addition of new products or deletion of products at their end of currency date) will be posted to the Eligible Machines and Programs list at: <http://www.ibm.com/services/sl/products> as they occur.

5. Charges and Payment

Service acquired from an IBM Business Partner

When you acquire this Service from an IBM Business Partner, the IBM Business Partner sets the charges and the terms governing charges. You will pay your IBM Business Partner directly.

6. General Principles of Our Relationship

- a. As reasonably required by IBM to fulfill its obligations under this Agreement, you agree to provide IBM with sufficient and safe access (including remote access) to your facilities, information, personnel, and resources, all at no charge to IBM. IBM is not responsible for any delay in performing or failure to perform caused by your delay in providing such access or performing your other responsibilities under this Agreement.
- b. Neither of us grants the other the right to use its (or any of its enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent.
- c. The exchange of any confidential information will be made under a separate, signed confidentiality agreement. However, to the extent confidential information is exchanged in connection with any product or the Services under this Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this Agreement.
- d. This Agreement does not create an agency, joint venture, or partnership between you and IBM. Each party is free to enter into similar agreements with others to develop, acquire, or provide competitive products and services.
- e. Each party grants only the licenses and rights specified in this Agreement. No other licenses or rights (including licenses or rights under patents) are granted either directly, by implication, or otherwise. The rights and licenses granted to you under this Agreement may be terminated if you fail to fulfill your applicable payment obligations.
- f. Neither of us is responsible for failure to fulfill any non-monetary obligations due to causes beyond its control.
- g. You agree that this Agreement will not create any right or cause of action for any third party, nor will IBM be responsible for any third party claims against you except as permitted by the Limitation of Liability section below for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable.
- h. You authorize International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors and IBM Business Partners) to store and use your business contact information wherever they do business, in connection with IBM products and services or in furtherance of IBM's business relationship with you.
- i. Where approval, acceptance, consent or similar action by either party is required under this Agreement, such action will not be unreasonably delayed or withheld.
- j. Each of us will each comply with applicable export and import laws and regulations, including those of the United States that prohibit or limit export for certain uses or to certain end users, and each of us will cooperate with the other by providing all necessary information to the other, as needed for

compliance. Each of us shall provide the other with advance written notice prior to providing the other party with access to data requiring an export license.

6.2 Notices and Communication

Written communications, including notices to the receiving party's designated representative, are to be sent to the address (physical, e-mail or facsimile) provided by each party to the other. The parties consent to the use of electronic means and facsimile transmissions to send and receive communications in connection with our business relationship arising out of this Agreement, and such communications are acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity.

6.3 Assignment and Resale

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other. Any attempt to assign without consent is void. The assignment of this Agreement, in whole or in part, within the enterprise of which either party is a part or to a successor organization by merger or acquisition does not require the consent of the other. IBM is also permitted to assign its rights to payments without obtaining your consent. It is not considered an assignment for IBM to divest a portion of its business in a manner that similarly affects all of its customers. You agree not to resell the Service or use it to provide support to third parties without IBM's prior written consent. Any attempt to do so is void.

6.4 Compliance and Laws

IBM will comply with laws applicable to IBM generally as a provider of information technology products and services. IBM is not responsible for determining the requirements of laws applicable to your business, including those relating to the Service that you acquire under this Agreement, or that IBM's provision of or your receipt of the Service under this Agreement meets the requirements of such laws. Notwithstanding anything in this Agreement to the contrary, neither party is obligated to take any action that would violate law applicable to that party. Each party will comply with applicable export and import laws and regulations, including those of the United States that prohibit or limit export for certain uses or to certain end users.

7. Services

7.1 Dispute Resolution

Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation: i) neither party will bring a legal action, regardless of form, arising out of or related to this Agreement or any transaction under it more than two years after the cause of action arose; and ii) after such time limit, any legal action arising out of this Agreement or any transaction under it and all respective rights related to any such action lapse.

Each party waives any right to a jury trial in any proceeding arising out of or related to this Agreement.

7.2 Personnel

Each party will assign personnel that are qualified to perform the tasks required of such party under this Agreement and is responsible for the supervision, direction, control, and compensation of its personnel. Subject to the foregoing, each party may determine the assignment of its personnel and its contractors.

IBM may engage subcontractors to provide or assist in providing Services, in which case IBM remains responsible for the fulfillment of its obligations under this Agreement and for the performance of the Service.

7.3 Customer Resources

If you are making available to IBM any facilities, software, hardware or other resources in connection with our performance of the Service, you agree to obtain any licenses or approvals related to these resources that may be necessary for IBM to perform the Service and develop materials. IBM will be relieved of its obligations that are adversely affected by your failure to promptly obtain such licenses or approvals. You agree to reimburse IBM for any reasonable costs and other amounts that IBM may incur from your failure to obtain these licenses or approvals.

Customer is responsible for: i) any data and the content of any database Customer makes available to IBM in connection with a Service under this Agreement; ii) the selection and implementation of

procedures and controls regarding access, security, encryption, use, and transmission of data; and iii) backup and recovery of the database and any stored data.

8. Warranty for Service

IBM warrants that it will perform the Service using reasonable care and skill and according to its current description contained in this Agreement. You agree to provide timely written notice of any failure to comply with this warranty so that IBM can take corrective action.

THIS WARRANTY IS YOUR EXCLUSIVE WARRANTY AND REPLACES ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

IBM does not warrant uninterrupted or error-free operation of the Service.

9. Limitation of Liability

Circumstances may arise where, because of a default on IBM's part or other liability, you are entitled to recover damages from IBM. Regardless of the basis on which you are entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM's entire liability for all claims in the aggregate arising from or related to the Service or otherwise arising under this Agreement will not exceed the amount of any actual direct damages up to the greater of \$100,000, or the charges (12 months' charges apply).

This limit also applies to any of IBM's subcontractors and program developers. It is the maximum for which IBM and its subcontractors and program developers are collectively responsible. The following amounts are not subject to a cap on the amount of damages: Damages for bodily injury (including death) and damage to real property and tangible personal property for which IBM is legally liable.

Items for Which IBM Is Not Liable

Except as expressly required by law without the possibility of contractual waiver, under no circumstances is IBM, its subcontractors, or program developers liable for any of the following even if informed of their possibility:

- a. loss of, or damage to, data;
- b. special incidental, exemplary or indirect damages or for any economic consequential damages; or
- c. lost profits, business, revenue, goodwill, or anticipated savings.

10. Changes to Agreement Terms

For a change to the Agreement terms to be valid, both of us must acknowledge acceptance of the change. Additional or different terms in any written communication from you (such as a purchase order) are void.

11. Termination and Withdrawal

Either of us may terminate this Agreement if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time to comply.

IBM may change Service for a storage support group on the Supported Products list on three month's written notice to you. Other changes to the Supported Products list (for example, addition of new products or deletion of products at their end of currency date) will be posted to the Supported Products list as they occur.

IBM may withdraw this Service in its entirety on six months' written notice to you by letter or e-mail.

If IBM withdraws or either of us terminates the Service as provided in this section, upon your request IBM or your IBM Business Partner will provide a prorated refund. This does not apply for support withdrawn for individual storage products on the Supported Products list.

Any terms of this Agreement which by their nature extend beyond the Agreement termination or withdrawal remain in effect until fulfilled, and apply to respective successors and assignees.

12. Geographic Scope and Governing Law

The rights, duties, and obligations of each of us are valid only in the United States.

Both parties agree to the application of the laws of the State of New York to govern, interpret, and enforce all of your and IBM's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.