



Agreement for IBM Software Support Services

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

Enhanced Technical Support for Storage

NOTICE: PLEASE CAREFULLY READ THE FOLLOWING TERMS UNDER WHICH IBM WILL PROVIDE ENHANCED TECHNICAL SUPPORT 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 – Enhanced Technical Support for Storage Agreement.

1. IBM Software Support Services – Enhanced Technical Support for Storage

IBM Software Support Services - Enhanced Technical Support (“ETS”) for Storage comprises four Enhanced Service Modules: Priority Access, Priority Response, Priority Handling and Proactive Support, that will provide you with premium remote voice and electronic entry into and handling within IBM’s support structure and will assist you with managing your product environment. This Service also enhances your support under your IBM Base Support Services for all Eligible Machines and Programs for which you select ETS coverage. It provides a single point of entry into IBM’s support structure for reporting problems relating to your Eligible Machines and Programs and access to a Priority Support Team (“PST”) which includes an ETS Advocate.

You must maintain Base Support Services for all Eligible Programs and storage devices for which you select ETS coverage. Unless changed in this Agreement, the provisions of all the Base Support Services remain in effect.

Your contract period start date will begin when your Eligible Machines and Programs are installed and operational at your Server Location.

1.1 Definitions

Base Support Services – are those Base Support Services which are eligible, including IBM Support Line, IBM Software Maintenance, IBM Passport Advantage, IBM Hardware Maintenance and IBM ServicePac.

Eligible Machines and Programs - are those IBM software and hardware products eligible for this Service as identified at IBM’s Internet address <http://www-03.ibm.com/services/sl/products/> Eligible Machines and Programs for storage devices are grouped by IBM storage classification.

ETS Advocate - is the individual technical support member of the Priority Support Team who is responsible for ensuring the provision of all of the aspects of ETS outlined in the Proactive Support section of this Service description.

Enhanced Service Modules - collectively Priority Access, Priority Response, Priority Handling, and Proactive Support.

Full Shift – is all hours inclusive of Prime Shift and Off Shift.

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

Off Shift - is all hours outside of Prime Shift.

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 Eligible Machines and Programs within your environment in order to enable effective communication with the IBM support center.

Prime Shift - is 08:00 a.m. to 05:00 p.m. in the local time zone where your designated PTC is physically located, Monday through Friday (excluding national holidays).

Priority Access - is a set of services described under the heading “Priority Access” below. It is the process by which you report problems to the Priority Support Team relating to your Eligible Machines and Programs for which you maintain a current IBM Base Support Services.

Priority Handling – is a set of services described under the heading of “Priority Handling” below. For those covered Eligible Machines and Programs, it is the process by which the Priority Support Team will engage and coordinate the appropriate resources to resolve your reported problems.

Priority Support Team (“PST”) - is the group of ETS technical support specialists who are responsible for activities set out in the Priority Access, Priority Response and Priority Handling sections of this Service description. Members of this team will also assist the assigned ETS Advocate with the activities set out in the Proactive Support section of this Service description as appropriate.

Proactive Support – the designation by IBM of an ETS Advocate who will provide and engage in proactive support activities designed to assist your IT staff in managing your Eligible Machines and Programs environment.

Response Time - is the elapsed time between receipt by IBM technical support of a submission, and the acknowledgment of the submission. IBM’s initial response may result in technical resolution of your problem or it may form the basis for determining, if applicable, additional actions which may be required. Please refer to the IBM Software Support Handbook for call handling process by severity at:

<http://techsupport.services.ibm.com/guides/beforecontacting.html>

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

1.2 IBM Responsibilities

ETS Service Modules

This Service is solely for Eligible Machines and Programs 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 point of 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 the 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.

Priority Access

IBM will provide you with direct access to a team of skilled resources known as the Priority Support Team who will provide an initial point of contact for your problem submissions related to your Eligible Machines and Programs and other IBM products associated with IBM storage devices for which you have purchased support under this ETS Service. You may submit problem management records via remote voice or electronic problem reporting. Your remote voice response support is achieved using your Direct Access Code (“DAC”) when you submit a problem.

Priority Response

The PST will use commercially reasonable efforts to respond by telephone within the target Response Times to your problem submissions under this Service for Eligible Machines and Programs as detailed below. These Response Times detail how quickly the PST will respond based on the Severity of the problem and the time that you report it. IBM’s initial response 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. Response Times for Off Shift problem submissions are only valid if you have contracted for coverage for Base Support Services with Off Shift coverage.

- a. For telephone assistance:
 - (1) Severity ("Sev") 1 Calls – 30 minutes Response Time during Prime Shift and 30 minutes during Off Shift. Sev 1 Calls are defined as a system down situation. Customer is unable to use the product which has a critical impact on operations. No backup is available.
 - (2) Sev 2 Calls – One hour Response Time during Prime Shift and two hours during Off Shift. Sev 2 Calls are defined as customer is able to use the product, but operations are severely restricted by the problem.
 - (3) Sev 3 and Sev 4 Calls – Two hours Response Time during Prime Shift and four hours during Off Shift. Sev 3 Calls are defined as customer is able to use the product with some restrictions on the function that is available. These restrictions do have an impact on overall operation. Sev 4 Calls are defined as problems that cause little or no impact to the operations. A way to circumvent the problem has been found.
- b. For electronic assistance:
 - (1) All Sev levels - Two hour Response Time for submissions received during Prime Shift. For submissions received during Off Shift, Response Time is within two hours after the start of Prime Shift on the next business day. IBM is not responsible for delays caused by systems and network problems.

Priority Handling

The PST will provide priority handling of your voice and electronic reported problems related to Eligible Machines and Programs which you have covered by this Service. The PST will:

- a. perform initial problem determination and problem source identification;
- b. engage the appropriate specialist support resources when required;
- c. monitor the progress of your problem submissions for Eligible Machines and Programs;
- d. coordinate service resources as necessary for Eligible Machines and Programs; and
- e. ensure provision of follow-up status for Eligible Machines and Programs that is appropriate to the severity level assigned to the submitted problem. This includes invoking IBM's predefined escalation guidelines until the problem is resolved. Target status update intervals are as follows:
 - (1) Sev 1: Follow up with the customer every four hours, or as mutually agreed.
 - (2) Sev 2: Follow up with the customer (during Prime Shift) daily or as mutually agreed.
 - (3) Sev 3 and Sev 4: Follow up with the customer (during Prime Shift) when progress has been made.

If the reported problem is for Eligible Machine(s) and Program(s) under hardware for which you have purchased support under this Service, or if the reported problem is related to another IBM software or hardware product associated with the IBM storage device, the PST will engage the appropriate specialist team on your behalf and will advise you when that is complete. The PST role will be limited to providing an escalation path as required.

Proactive Support Services

IBM will designate an ETS Advocate who is a member of the PST to provide support for your Eligible Machines and Programs. The ETS Advocate and PST will perform the proactive support activities designed to assist your IT staff in managing your Eligible Machines and Programs environment. The ETS Advocate will also work with your PTC to establish and maintain a framework for technical communications and contractual activity reporting.

Additionally the ETS Advocate will:

- a. remotely, via conference call, conduct an initial welcome call. The purpose of this call is to verify your ability to access the Priority Access, Priority Response, and Priority Handling aspects of this Service. The ETS Advocate will also provide information relating to the proactive aspects of the Service and schedule the initial operational review meeting;
- b. remotely, via conference call, conduct an operational review meeting (on a mutually agreed upon date) with your designated PTC and personnel to accomplish the following:

- (1) review this Agreement and any associated documents,
 - (2) review any documentation sent to you as part of the ETS operational review process,
 - (3) document the Eligible Machines and Programs and associated product inventory to be supported under ETS based upon your completed initial review documentation,
 - (4) review your documented backup and recovery processes,
 - (5) review the current support structure within your organization; and
 - (6) schedule the initial setup of the applicable tools, if applicable under this Service;
- c. create and deliver one copy of the Technical Support Plan to your PTC within 30 days of the initial remote operational review meeting. The Technical Support Plan will include information about your Eligible Machines and Programs and ETS deliverables as applicable;
 - d. conduct annual reviews of the Technical Support Plan during the course of the ETS Service period;
 - e. maintain an inventory listing of your Eligible Machines and Programs and associated software and their release levels for those storage machines and programs for which you have purchased this Service;
 - f. create and deliver monthly to your PTC one copy of an ETS Monthly Review Package which summarizes all of your service reports and provide an update from the previous monthly call. The ETS Monthly Review Package will include one copy of a service activity report which summarizes your Eligible Machines and Programs problem submissions;
 - g. schedule monthly status conference calls with your PTC to review your account status in terms of the monthly documentation provided by IBM as part of ETS and any of your planned changes in your Eligible Machines and Programs;
 - h. provide proactive notification concerning technical information, related to your Eligible Machines and Programs and ETS supported environment, both as it becomes available and as determined by the PST to be applicable and not otherwise available to you. This includes updates and tips and techniques associated with your ETS supported environment;
 - i. provide problem isolation on your reported problems that relate to Eligible Machines and Programs; and
 - j. upon request, remotely assist U.S.-based customer representatives via telephone with your installation of generally available fixes for your Eligible Machines and Programs under this Service.

1.2.2 Your Responsibilities

You agree to:

- a. maintain, for the duration of this Service, the appropriate Base Support Contracts (including coverage hours) for all products to be covered by this Service. Refer to the product group unique sections below for the specific Base Support Services requirements applicable for each product group. If you terminate any of these Base Support Services (or change the coverage hours), you must immediately notify the IBM ETS Advocate who will help to determine the appropriate changes to your coverage under this Service;
- b. obtain any licenses or approvals necessary for IBM or its subcontractors to use, access and modify such resources to the extent necessary for IBM to perform the Service prior to making available to IBM any facilities, software, hardware or other resources. Where approval, acceptance, consent or similar action by either party is required under this Agreement, such action will not be unreasonably delayed or withheld;
- c. ensure you have all appropriate rights and licenses for all ETS Eligible Machines and Programs for which you request this Service;
- d. acknowledge that IBM is permitted to use global resources (non-permanent residents used locally and personnel in locations worldwide) for the delivery of Services;
- e. designate a PTC in the U.S. who will be the focal point for all communication with IBM's ETS Advocate relative to this Service and who will have the authority to act on your behalf in matters regarding ETS. Your PTC will:
 - (1) participate in the ETS welcome call;

- (2) supply the eligible environment details per the documentation that you will receive as part of the ETS operational review process;
 - (3) participate in the initial remote operational review meeting to review the information you have provided relative to your Eligible Machines and Programs and associated product inventory, backup and recovery processes, software change control processes, and current support structure;
 - (4) inform the ETS Advocate of any hardware or software changes to your Eligible Machines and Programs environment within 30 days of the change occurring. Failure to provide timely updates may result in ETS service delays or lack of coverage;
 - (5) identify enhanced support applications and critical outage scenarios;
 - (6) provide IBM with all relevant and available diagnostic information (including product or system information), decision and approvals pertaining to problems with Eligible Machines and Programs for which you request assistance within three business days of IBM's request, unless both parties mutually agree to an extended response time;
 - (7) designate a U.S Prime Shift contact who will be the focal point for problem submissions by you to the PST; and
 - (8) participate in monthly status calls with the ETS Advocate or assign a back-up to do so;
- f. utilize the established ETS procedures for problem submissions, as detailed in the Technical Support Plan, for all ETS Service requests. You may submit problem requests using the procedures of your base maintenance contract, however, if you do so, the Priority Access, Response Times and Priority Handling terms of ETS will not apply to such problem submissions;
 - g. ensure the appropriate personnel for activities, set out in this Service description, are made available by your organization. This includes your being able to help resolve issues via escalation within your organization;
 - h. download and install any tools that the PST recommends to your organization and that both parties mutually agree are necessary for the efficient implementation of this Service. Details of these tools will be discussed during the initial operational review meeting. Tools supplied by IBM are to be used only for purposes of ETS;
 - i. have an electronic connection capable of sending the data report to IBM and permit it to do so in order to allow the effective use of the service tools referenced above;
 - j. be responsible for the installation of fixes and for adequately protecting your ETS Eligible Machines and Programs and data contained therein whenever IBM remotely accesses them; and
 - k. provide an appropriate electronic connection (such as an Internet connection) meeting the prerequisites IBM specifies and sign up for an IBM registration ID at: <https://www.ibm.com/account/profile/us?page=reg>

Termination

You may terminate this Service on one month's written notice to IBM after the initial contract year. Termination of this Service does not terminate or modify any of your Base Support Services. You may not terminate the associated Base Support Services during the initial contract year; thereafter, if you terminate the associated Base Support Services, you must also terminate the applicable ETS Service.

Reports

IBM grants you an irrevocable, nonexclusive, worldwide paid up license to use, execute, reproduce, display, perform and distribute within your Enterprise only copies of the Technical Support Plan, and other reports ("Materials") that will be delivered under this Agreement. IBM or its suppliers will own all rights, title and interest including ownership of the copyright in the Materials. All of your pre-existing materials remain your sole property.

Storage Machines

ETS for Storage Devices is available for a selection of Storage devices. With ETS for Storage, you will receive an enhancement to your Base Support Contracts for Eligible Machines and Programs for storage devices.

Priority Handling for Storage Hardware

The following amendments are in effect for Priority Handling as applied to Storage hardware.

For reported Sev 1 Storage Hardware problems, the PST will:

- a. route any reported problems that should be handled by local IBM service representatives to those resources and advise you of this course of action. The local service specialists will take ownership of these routed problems. The PST will provide an escalation path as needed for routed problems;
- b. provide Priority Handling for all other Sev 1 hardware problems; and
- c. handle non-Sev 1 Storage Hardware problems reported to the PST per the description for non-eligible reported product problems.

At your discretion you may utilize the standard problem reporting procedures for hardware problems associated with your Eligible Machines/storage devices per the procedures detailed in your base maintenance contract.

Proactive for Storage Hardware

The following amendments are in effect for Proactive Handling as applied to Storage hardware.

For reported Sev 1 Storage Hardware problems only, the PST will include the status of reported Sev 1 storage problems which were reported using your Direct Access Code (DAC) as identified above in the Priority Handling for Storage Hardware in your ETS Monthly Review Package.

1.2.3 Your Storage Responsibilities

You agree to:

- a. have a 24x7, Full Shift Support Line or ServicePac for those Storage Machines and Programs which require this type of support;
- b. have a SWMA for those Storage Programs which require this type of support; and
- c. have a 24x7, Full Shift IBM Hardware Maintenance for those Eligible Machines to be covered under this Agreement.

2. 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.

3. 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.

3.2 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.

3.3 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.

3.4 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.

4. Services

4.1 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.

4.2 Personnel

Each party will assign personnel that are qualified to perform the tasks required of such party under this Agreement and are 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.

4.3 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.

You are responsible for: i) any data and the content of any database you make 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.