



# IBM Customer Agreement

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This IBM Customer Agreement (called the "Agreement") governs transactions by which Customer purchases Machines, licenses ICA Programs, obtains Program licenses, and acquires Services (including, without limitation, customized development and support, business consulting, and maintenance Services) from International Business Machines Corporation ("IBM").

## 1. General Terms

### 1.1 Agreement Structure

This Agreement is organized in six Parts:

**Part 1 – General Terms** includes terms regarding Agreement Structure, Definitions, Acceptance of Terms, Delivery, Charges and Payment, Changes to Agreement Terms, IBM Business Partners, Intellectual Property Protection, Limitation of Liability, Compliance Verification, General Principles of Our Relationship, Agreement Termination, and Geographic Scope and Governing Law.

**Part 2 – Warranties** defines applicable Warranties for IBM Machines, ICA Programs, IBM Services, and Systems, and terms regarding Extent of Warranty.

**Part 3 – Machines Terms** includes Machine terms regarding Production Status, Title and Risk of Loss, and Installation.

**Part 4 – Licenses for Machine Code and Other Internal Licensed Code** includes the License for Machine Code and the License for Other Internal Licensed Code.

**Part 5 – License for ICA Programs** includes ICA Program terms regarding License, Distributed System License Option, Program Services, Compliance Verification, and License Termination.

**Part 6 – Services Terms** includes terms regarding Personnel, Materials Ownership and License, Customer Resources, Service for Machines (during and after warranty), Maintenance Coverage, Automatic Service Renewal, and Termination and Withdrawal of a Service.

### 1.2 Attachments and Transaction Documents

Additional terms for Products and Services are in documents called "Attachments" and "Transaction Documents" provided by IBM. In general, Attachments contain terms that may apply to more than one Product or Services transaction, while Transaction Documents (such as a statement of work, supplement, schedule, invoice, exhibit, change authorization, or addendum) contain specific details and terms related to each individual transaction. Customer may receive one or more Transaction Documents for a single transaction. Attachments and Transaction Documents are part of this Agreement only for those transactions to which they apply. Each transaction is separate and independent from other transactions.

If there is a conflict among the terms of this Agreement, Attachments, and Transaction Documents, those of an Attachment prevail over those of this Agreement, and the terms of a Transaction Document prevail over those of both this Agreement and an Attachment.

### 1.3 Definitions

**Authorized Built-in Capacity** -- the Built-in Capacity for a Covered Machine that was Properly Acquired and Activated and is used in accordance with the AUT. For purposes of this definition, "Activated" means when IBM causes, directly or indirectly, the Authorized Built-in Capacity to be made available for Customer's use on a Covered Machine.

**Authorized Use Table (AUT)** -- the "IBM Authorized Use Table for Machines" that is provided at the following address: [www.ibm.com/systems/support/machine\\_warranties/machine\\_code/aut.html](http://www.ibm.com/systems/support/machine_warranties/machine_code/aut.html) and is in effect for a Covered Machine as of the acquisition date of the Covered Machine or, if there are one or more Machine Upgrades on the Covered Machine, then as of the acquisition date of the most recently acquired Machine Upgrade. The AUT is incorporated by reference into this Agreement.

**Built-in Capacity** -- the type and quantity of all resources and capabilities that IBM provides for a Machine, the access or use of which IBM has the ability to restrict by contract or Technological Measures. Built-In Capacity includes, without limitation, the type and quantity of the following: 1) processors, cores, processing capacity, processor performance setting and interactive processing capacity and capabilities; 2) memory; 3) storage; 4) cryptographic capability; 5) input/output ports, and 6) workload-specific resources and capabilities (including, for example, System z mainframe specialty processors such as zIIPs, zAAPs and IFLs, and other limited purpose products (including "appliances"). Built-in Capacity is either Authorized Built-in Capacity or Unauthorized Built-in Capacity.

**Circumvent** -- to, directly or indirectly, by or through any means, alter, avoid, disrupt, subvert, go around, or otherwise interfere with.

**Covered Machine** -- the specific Machine (as identified by serial number or order number on a Transaction Document or other similar contract document issued by IBM) for which use of Machine Code is licensed. A Covered Machine that receives a Machine Upgrade remains a Covered Machine and a Machine that receives a Machine Upgrade becomes a Covered Machine.

**Customer-set-up Machine** – an IBM Machine that Customer is responsible for installing according to instructions provided with it.

**Date of Installation** –

- a. for an IBM Machine that IBM is responsible for installing, the business day after the day IBM installs it or, if Customer defers installation, makes it available to Customer for subsequent installation by IBM;
- b. for a Customer-set-up Machine and a non-IBM Machine, the second business day after the Machine's standard transit allowance period; and
- c. for a Program --
  - (1) basic license, the second business day after the Program's standard transit allowance period,
  - (2) copy, the date (specified in a Transaction Document) on which IBM authorizes Customer to make a copy of the Program, and
  - (3) chargeable component (also called a feature), the date Customer uses the chargeable component or a copy. Customer agrees to notify IBM of the chargeable component's Date of Installation.

**Designated Machine** – a Machine of a type specified in the Mainframe Exhibits provided at the following address: <http://www.ibm.com/systems/z/resources/swprice/reference/exhibits/hardware.html>.

**Engineering Change** – an update to modify certain aspects of the design of an installed Machine, including without limitation the design of a certain Machine part or Machine Code.

**Enterprise** – any legal entity (such as a corporation) and the subsidiaries it owns by more than 50 percent. The term "Enterprise" applies only to the portion of the Enterprise located in the United States.

**IBM Machine** – a Machine bearing an IBM logo.

**IBM Product** – an IBM Machine, ICA Program, or Other IBM Program.

**ICA Program** – an IBM Program licensed under Part 5 of this Agreement.

**Licensed Internal Code (called "LIC")** – another term for Machine Code commonly used for certain IBM product lines, such as for IBM System z Machines. LIC and Machine Code are interchangeable terms that have the same meaning.

**Machine** – a hardware device, including its resources, capabilities, features, conversions, Machine Upgrades, elements, or accessories, or any combination of them. The term "Machine" includes an IBM Machine and any non-IBM Machine (including other equipment).

**Machine Code** – all of the following: (i) all code provided for an IBM Machine (including, without limitation, a Machine's firmware and microcode), excluding code that is licensed under a license agreement other than the license agreement governing use of Machine Code (for example, IBM operating system and middleware products); and (ii) records, data, and structures created, used or relied on by the code in item (i) (for example, IBM System z Machine LIC configuration control records and passwords that help restrict access or use of the code in item (i)). The term Machine Code specifically includes any whole or partial copy of Machine Code, and any fix, patch, or replacement provided for Machine Code.

**Machine Upgrade** – the following changes that IBM sells for installation on a Machine: a hardware or Machine Code change to modify, add, remove, enable or disable certain Built-in Capacity or other resources and capabilities. Each such change can be accomplished through a Machine conversion, or through the conversion, addition, removal, or exchange of a Machine's feature(s).

**Materials** – literary works or other works of authorship (such as software programs and code, documentation, reports, and similar works) that IBM may deliver to Customer as part of a Service. The term "Materials" does not include Programs, Machine Code, or other items available under their own license terms or agreements.

**Non-IBM Program** – a Program licensed under a separate third party license agreement.

**Other IBM Program** – an IBM Program licensed under a separate IBM license agreement (e.g., IBM International Program License Agreement).

**Other Internal Licensed Code** – code for a Covered Machine that is separately provided by IBM and licensed by a third party.

**Product** – a Machine or a Program.

**Program** – the following, including the original, any portion thereof, and all whole or partial copies:

- a. one or more sequences of instructions suitable for processing by a computer;
- b. control data (such as control blocks, event logs, configuration files) defined within or generated by the execution of such sequence(s) of instructions. Control data includes without limitation data that is designed to (i) manage or limit the operation of programs, or (ii) help monitor, record, manage, or limit the consumption of software or hardware resources, including, without limitation, data used in IBM's implementation of Technological Measures;
- c. components;
- d. audio-visual content (such as images, text, recordings, or pictures) defined within or generated by the execution of, such sequence(s) of instructions; and
- e. related licensed materials such as publications and other documentation.

The term "Program" includes any ICA Program, Other IBM Program, or Non-IBM Program, and any fix, patch or replacement that IBM may provide for a Program. The term does not include Machine Code or Materials.

**Service** – performance of a task, assistance, support, or access to resources (such as an information database) that IBM makes available to Customer.

**Specifications** – information specific to a Product. IBM Machine Specifications are in a document entitled "Official Published Specifications." ICA Program Specifications are in a document entitled "Licensed Program Specifications."

**Specified Operating Environment** – the Machines and Programs with which an ICA Program is designed to operate, as described in its Licensed Program Specifications.

**Technological Measures** – all means, methods, systems, processes, checks, tests, monitoring, validations, instruments, and other measures that IBM implements for the purpose of: (i) protecting, controlling, limiting, and restricting the use of Machine Code; (ii) protecting, controlling, limiting, and restricting the access to or use of Built-in Capacity (including, for clarity, both Unauthorized Built-in Capacity and Authorized Built-in Capacity); and (iii) monitoring and reporting use of the Machine Code, Authorized Built-in Capacity, and Unauthorized Built-In Capacity, including for the purpose of calculating usage-based charges for IBM Products. Without limiting the generality of the preceding sentence, Technological Measures may be implemented, in whole or in part, in Machine Code, IBM Programs, other code, other IBM technology, and in the data created, used or relied upon by such Machine Code, IBM Programs, other code, and IBM technology.

**Unauthorized Built-in Capacity** -- all Built-in Capacity for a Covered Machine other than Authorized Built-in Capacity. For example and for the avoidance of any doubt, each of the following is Unauthorized Built-In Capacity: (i) in the case of a processor authorized to operate at less than its full processor performance setting, the capability to operate the processor at a greater processor performance setting, and (ii) in the case of a System z Machine specialty processor, the capability to use the specialty processor for anything other than the "Authorized Uses" as such term is defined in the AUT.

## 1.4 Acceptance of Terms

Customer accepts the terms in Attachments and Transaction Documents by i) signing them (by hand or electronically), ii) using the Product or Service, or allowing others to do so, or iii) making any payment for the Product or Service.

A Product or Service becomes subject to this Agreement when IBM accepts Customer's order by i) sending Customer a Transaction Document, ii) shipping the Machine or making the Program available to Customer, or iii) providing the Service.

Any Attachment or Transaction Document will be signed by both parties if requested by either party.

## **1.5 Delivery**

Delivery dates and ship dates are estimates unless otherwise specifically agreed in a Transaction Document. Transportation charges, if applicable, will be specified in a Transaction Document. For Programs IBM provides to Customer in tangible form, IBM fulfills its shipping and delivery obligations upon the delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by Customer and IBM.

## **1.6 Charges and Payment**

### **1.6.1 Charges**

A Transaction Document specifies the amount payable for Products or Services, based on one or more of the following types of charges: one-time, recurring, time and materials, or fixed price. Additional charges may apply (such as special handling or travel related expenses). IBM will inform Customer in advance whenever additional charges apply.

Recurring charges for a Product begin on its Date of Installation. Charges for Services are billed as specified in a Transaction Document, which may be in advance, periodically during the performance of the Service, or after the Service is completed. Unless otherwise provided in this Agreement (including any applicable Attachment or Transaction Document): i) Services for which Customer prepays must be used within the applicable contract period; and ii) IBM does not give credits or refunds for any prepaid or other charges already due or paid.

If a Transaction Document provides an estimated total charge for time and materials or for usage charges, the estimate is for planning purposes only. IBM invoices charges based on actual time and materials expended or Customer's actual or authorized use, subject to any specified minimum commitment.

### **1.6.2 Usage Charges**

One-time and recurring charges may be based on measurements of actual or authorized use (for example, authorized capacity for Machines, number of users or processor size for Programs, or meter readings for maintenance Services). Customer agrees to provide actual usage data as described in an Attachment or Transaction Document.

If Customer makes changes to its environment that impact usage charges, Customer agrees to promptly notify IBM and pay any applicable charges. Recurring charges will be adjusted accordingly. In the event that IBM changes the basis of measurement, its terms for changing charges will apply.

### **1.6.3 Changes to Charges**

From time to time, IBM may change its charges. Customer receives the benefit of a decrease in charges for amounts that become due on or after the effective date of the decrease.

Unless provided otherwise in an Attachment or Transaction Document, IBM may increase recurring charges for Products and Services, as well as labor rates and minimums for Services provided under this Agreement, by giving Customer three months' written notice. An increase applies on the first day of the invoice or charging period on or after the effective date IBM specifies in the notice.

IBM may increase one-time charges without notice. However, an increase to one-time charges does not apply to Customer if i) IBM receives the order before the announcement date of the increase and ii) one of the following occurs within three months after IBM's receipt of the order:

- a. IBM ships Customer the Machine or makes the Program available to Customer;
- b. Customer makes an authorized copy of a Program or distributes a chargeable component of a Program to another Machine; or
- c. a Program's increased use charge becomes due.

### **1.6.4 Payment**

Amounts are due upon receipt of invoice and payable within 30 days or as specified in a Transaction Document. Customer agrees to pay accordingly, including any late payment fee. Payment may be made electronically to an account specified by IBM or by other means agreed to by the parties.

### **1.6.5 Taxes**

If any authority imposes upon any transaction under this Agreement a duty, tax, levy, or fee, excluding those based on IBM's net income, then Customer agrees to pay that amount as specified in an invoice, unless Customer supplies exemption documentation. Customer is responsible for any personal property

taxes for each Product from the date IBM ships it to Customer. For Programs that IBM delivers electronically to Customer and for which Customer claims a state sales and use tax exemption, Customer and IBM agree that no tangible personal property (e.g., media and publications) is transferred to Customer.

Additional taxes and tax related charges may apply if IBM personnel are required to perform Services outside their normal tax jurisdiction. As practical, IBM will work to mitigate such additional tax and tax-related charges and will inform Customer in advance if these additional charges apply and are payable by Customer.

## **1.7 Changes to the Agreement Terms**

In order to maintain flexibility in our business relationship, IBM may change the terms of this Agreement by providing Customer at least three months' written notice. However, these changes are not retroactive. They apply, as of the effective date IBM specifies in the notice, only to new orders, on-going transactions that do not expire, and transactions with a defined renewable contract period. For transactions with a defined renewable contract period, Customer may request that IBM defer the change effective date until the end of the current contract period.

Customer acknowledges its agreement to have these changes apply for such transactions by i) placing new orders for Products or Services after the change effective date, ii) failing to request that the change effective date be deferred until the start of the next renewal period, iii) allowing transactions to renew after receipt of the change notice, or iv) failing to terminate non-expiring transactions prior to the change effective date. Changes to charges are implemented as described in the Charges and Payment section above.

Otherwise, for a change to be valid, both parties must sign it.

## **1.8 IBM Business Partners**

IBM has signed agreements with certain organizations (called "IBM Business Partners") to promote, market, and support certain Products and Services. Customer may order Products or Services that are promoted or marketed to Customer by IBM Business Partners or other suppliers, however, i) this Agreement applies only if a Transaction Document subject to this Agreement is provided for the specific transaction, and ii) such Business Partners and suppliers remain independent and separate from IBM. IBM is not responsible for the actions or statements of IBM Business Partners or other suppliers, any obligations either has to Customer, or any products or services that they supply to Customer under their agreements.

## **1.9 Intellectual Property Protection**

For purposes of this Intellectual Property Protection section, the term "Product" also includes Materials and Machine Code.

### **1.9.1 Third Party Claims**

If a third party asserts a claim against Customer that an IBM Product that IBM provides to Customer under this Agreement infringes that party's patent or copyright, IBM will defend Customer against that claim at IBM's expense and pay all costs, damages, and attorney's fees that a court finally awards against Customer or that are included in a settlement approved in advance by IBM, provided that Customer:

- a. promptly notifies IBM in writing of the claim;
- b. allows IBM to control, and cooperates with IBM in, the defense and any related settlement negotiations; and
- c. is and remains in compliance with the Product's applicable license terms and Customer's obligations under section 1.9.2 (Remedies) below.

### **1.9.2 Remedies**

If such a claim is made or appears likely to be made, Customer agrees to permit IBM, in IBM's discretion, either to i) enable Customer to continue to use the Product, ii) modify it, or iii) replace it with one that is at least functionally equivalent. If IBM determines that none of these alternatives is reasonably available, then on IBM's written request, Customer agrees to promptly return the Product to IBM and discontinue its use. IBM will then give Customer a credit equal to:

- a. for a Machine, Customer's net book value calculated according to generally-accepted accounting principles;

- b. for an ICA Program, the amount Customer paid IBM for the Program's license or 12 months' charges (whichever is less); and
- c. for Materials, the amount Customer paid IBM for the creation of the Materials.

### **1.9.3 Claims for Which IBM is Not Responsible**

IBM has no obligation regarding any claim based on any of the following:

- a. anything provided by Customer or a third party on Customer's behalf that is incorporated into a Product or IBM's compliance with any designs, specifications, or instructions provided by Customer or a third party on Customer's behalf;
- b. a Product's use other than in accordance with its applicable licenses and restrictions or use of a non-current version or release of a Product, to the extent a claim could have been avoided by using the current release or version;
- c. any modification of a Product made by Customer or by a third party on Customer's behalf or the combination, operation, or use of a Product with any other Product, hardware device, program, data, apparatus, method, or process;
- d. the distribution, operation or use of a Product outside Customer's Enterprise;
- e. running or executing an ICA Program on other than a Designated Machine; or
- f. a non-IBM Product or an Other IBM Program.

This Intellectual Property Protection section states IBM's entire obligation and Customer's exclusive remedy regarding any third party intellectual property claims.

## **1.10 Limitation of Liability**

### **1.10.1 Items for Which IBM May Be Liable**

Circumstances may arise where, because of a default on IBM's part or other liability, Customer is entitled to recover damages from IBM. Regardless of the basis on which Customer is 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 each Product or 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 (if recurring, 12 months' charges apply) for the Product or Service that is the subject of the claim. For purposes of this Limitation of Liability section, the term "Product" also includes Materials and Machine Code.

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:

- a. payments referred to in the Intellectual Property Protection section above; and
- b. damages for bodily injury (including death) and damage to real property and tangible personal property for which IBM is legally liable.

### **1.10.2 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.

## **1.11 Compliance Verification**

Upon reasonable notice, IBM may verify the usage data and other information affecting the calculation of charges under this Agreement. Such verification will be conducted in a manner that minimizes disruption to Customer's business and may be conducted on Customer's premises, during Customer's normal business hours. Customer agrees to i) provide records, system tools outputs, and other electronic or hard copy system information reasonably necessary for such verification, and ii) promptly pay any additional, valid charges and other liabilities determined as a result of such verification.

IBM's right to verify Customer's usage data and other information affecting the calculation of charges also includes the right to verify Customer's compliance with all other terms of this Agreement (including

applicable Attachments and Transaction Documents). IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

Customer agrees to create, retain, and provide to IBM and its auditors written records, system tools outputs, and other system information sufficient to provide auditable verification that Customer's installation and running or executing ICA Programs complies with the Agreement terms, including IBM's applicable licensing and pricing terms. IBM will notify Customer in writing if any such verification indicates that Customer is not in compliance with Agreement terms. The rights and obligations in this section remain in effect during the period any ICA Programs are licensed to Customer and for two years thereafter.

#### **1.11.1 Circumvention of Technological Measures**

Customer will not (i) Circumvent or attempt to Circumvent any Technological Measures in an IBM Product or use a third party or third party product to do so, or (ii) in any way access, use, or attempt to access or use, Unauthorized Built-in Capacity.

### **1.12 General Principles of Our Relationship**

#### **1.12.1 Notices and Communications**

Written communications, including notices to the receiving party's designated representative, are to be sent to the address (physical, e-mail or facsimile) specified in an applicable Attachment or Transaction Document. 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.

#### **1.12.2 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 Customer's 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.

Customer agrees not to resell any Service without IBM's prior written consent. Any attempt to do so is void.

Customer agrees to acquire each Machine with the intent to use it as designed and in the form it was sold within Customer's Enterprise and not for reselling, leasing, or transferring it, in whole or in part, to a third party, unless either of the following applies:

- a. Customer is arranging lease-back financing for the Machine; or
- b. Customer has paid IBM's list price or reference price, as applicable for the Machine, and does not remarket it in competition with IBM or IBM's authorized remarketers.

#### **1.12.3 Compliance with 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 Customer's business, including those relating to Products and Services that Customer acquires under this Agreement, or that IBM's provision of or Customer's receipt of particular Products or Services under this Agreement meets the requirements of such laws. Neither party is obligated to take any action that would violate applicable law.

Each party will comply with all applicable export and import laws, regulations, and associated embargo and sanction regulations, including prohibitions on export for certain end uses or to certain end users.

#### **1.12.4 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.

### **1.12.5 Other Principles of Our Relationship**

- a. Neither party 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.
- b. 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 Service under this Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this Agreement.
- c. This Agreement and any transaction under it do not create an agency, joint venture, or partnership between Customer and IBM. Each party is free to enter into similar agreements with others to develop, acquire, or provide competitive products and services.
- d. 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 Customer under this Agreement may be terminated if Customer fails to fulfill its applicable payment obligations.
- e. Customer agrees that IBM may process the business contact information of Customer's employees and contractors and information about Customer as a legal entity (contact information) in connection with IBM Products and Services or in furtherance of IBM's business relationship with Customer. This contact information can be stored, disclosed internally and processed by International Business Machines Corporation and its subsidiaries, Business Partners and subcontractors wherever they do business, solely for the purpose described above provided that these companies comply with applicable data privacy laws related to this processing. Where required by applicable law, Customer has notified and obtained the consent of the individuals whose contact information may be stored, disclosed internally and processed and will forward their requests to access, update, correct or delete their contact information to IBM who will then comply with those requests.
- f. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is IBM responsible for any third party claims against Customer except as described in the Intellectual Property Protection section above or as permitted by the Limitation of Liability section above for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable to that third party.
- g. Customer is responsible for selecting the Products and Services that meet its needs and for the results obtained from the use of the Products and Services, including Customer's decision to implement any recommendation concerning Customer's business practices and operations.
- h. Where approval, acceptance, consent or similar action by either party is required under this Agreement, such action will not be unreasonably delayed or withheld.
- i. Neither party is responsible for failure to fulfill any non-monetary obligations due to events beyond its control.
- j. As reasonably required by IBM to fulfill its obligations under this Agreement, Customer agrees to provide IBM with sufficient and safe access (including remote access) to Customer's facilities, systems, 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 Customer's delay in providing such access or performing other Customer responsibilities under this Agreement.

### **1.13 Agreement Termination**

Either party may terminate this Agreement on written notice to the other following the expiration or termination of the terminating party's obligations under this Agreement, including any applicable Attachment or Transaction Document.

Either party 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. License termination and termination of a Services transaction are described in Parts 5 and 6, respectively.

Any terms of this Agreement that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

### **1.14 Geographic Scope and Governing Law**

The rights, duties, and obligations of each party are valid only in the United States except that all licenses are valid as specifically granted.



Both parties agree to the application of the laws of the State of New York to govern, interpret, and enforce all of Customer's 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.

## **2. Warranties**

### **2.1 The IBM Warranties**

#### **2.1.1 Warranty for IBM Machines**

IBM warrants that each IBM Machine is free from defects in materials and workmanship and conforms to its Specifications.

The warranty period for an IBM Machine is a fixed period, specified in a Transaction Document. For Machines, unless otherwise specified, the Date of Installation is the Warranty Start Date.

During the warranty period, IBM provides repair and exchange Service for the IBM Machine, without charge, under the type of Service IBM designates for the IBM Machine. If an IBM Machine does not function as warranted during the warranty period and IBM is unable to either i) make it do so or ii) replace it with one that is at least functionally equivalent, Customer may return it to IBM for a refund.

Additional terms regarding Service for Machines during and after the warranty period are in Part 6.

#### **2.1.2 Warranty for ICA Programs**

IBM warrants that each warranted ICA Program, when used in the Specified Operating Environment, will conform to its Specifications.

During the warranty period, IBM provides defect-related Program Services without charge. Program Services are available for a warranted ICA Program for at least one year following its general availability. The warranty period for an ICA Program expires when its Program Services are no longer available.

If an ICA Program does not function as warranted during the first year after Customer obtains its license and IBM is unable to make it do so, Customer may return the ICA Program and the charges Customer paid for the license will be refunded. To be eligible, Customer must have obtained its license while Program Services (regardless of the remaining duration) were available for the ICA Program. Additional terms regarding Program Services are contained in Part 5.

#### **2.1.3 Warranty for IBM Services**

IBM warrants that it performs each IBM Service using reasonable care and skill and according to its current description (including any completion criteria) contained in this Agreement, an Attachment, or a Transaction Document. Customer agrees to provide timely written notice of any failure to comply with this warranty so that IBM can take corrective action.

#### **2.1.4 Warranty for Systems**

When IBM specifies in an Attachment or Transaction Document that it is providing Products to Customer that are intended to operate together as a system, IBM warrants that those Products are compatible and, when installed in accordance with their Specifications, will operate with one another. This warranty is in addition to IBM's other applicable warranties.

### **2.2 Extent of Warranty**

If a Machine is subject to federal or state consumer warranty laws, IBM's statement of limited warranty included with the Machine applies in place of these Machine warranties.

The warranties stated above will not apply to the extent that there has been misuse (including, but not limited to, use of any Unauthorized Built-in Capacity or Circumvention of Technological Measures), accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by Customer or a third party, or failure or damage caused by a product for which IBM is not responsible. The warranty for IBM Machines is voided by removal or alteration of Machine or parts identification labels.

For a Machine that IBM is responsible to install, if Customer elects to install the Machine itself or have a third party install the Machine, IBM may inspect the Machine at Customer's expense before providing warranty Service on the Machine. If the Machine is not in an acceptable condition for warranty Service, as

solely determined by IBM, Customer may request that IBM restore it to an acceptable condition for Service or Customer may withdraw its request for warranty Service. IBM, at its sole discretion, will determine if restoration is possible. Restoration is provided as a billable Service.

**THESE WARRANTIES ARE CUSTOMER'S EXCLUSIVE WARRANTIES AND REPLACE 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 AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT.**

### **2.2.1 Items Not Covered by Warranty**

IBM does not warrant uninterrupted or error-free operation of a Product or Service or that IBM will correct all defects.

IBM will identify IBM Machines and ICA Programs that it does not warrant.

IBM's Warranty for ICA Programs does not extend to an ICA Program that is run or executed on other than a Designated Machine.

Unless otherwise specified in an Attachment or Transaction Document, IBM provides Materials, non-IBM Products (including those provided with, or installed on, an IBM Machine at Customer's request), and non-IBM Services **WITHOUT WARRANTIES OF ANY KIND**. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to Customer. Warranties, if any, for Other IBM Programs and Non-IBM Programs may be found in their license agreements.

## **3. Machines Terms**

### **3.1 Production Status**

Each IBM Machine is manufactured from parts that may or may not be new. In some cases, a Machine may not be new and may have been previously installed. Regardless, IBM's applicable warranty terms described in Part 2 apply.

### **3.2 Title and Risk of Loss**

When IBM accepts Customer's order, IBM agrees to sell Customer the Machine described in a Transaction Document. IBM transfers title to Customer or, if applicable, Customer's lessor when the Machine is shipped to Customer or its designated location. However, IBM reserves a purchase money security interest in the Machine until IBM receives the amounts due. For a feature, conversion, or Machine Upgrade involving the removal of parts that become IBM's property, IBM reserves a security interest until IBM receives payment of all the amounts due and the removed parts. Customer authorizes IBM to file appropriate documents to permit IBM to perfect its security interest.

For each Machine, IBM bears the risk of loss or damage up to the time it is delivered to the IBM-designated carrier for shipment to Customer or Customer's designated location. Thereafter, Customer assumes the risk. Each Machine will be covered by insurance, arranged and paid for by IBM for Customer, covering the period until it is delivered to Customer or Customer's designated location. For any loss or damage, Customer must i) report the loss or damage in writing to IBM within 10 business days of delivery and ii) follow the applicable claim procedure.

### **3.3 Installation**

#### **3.3.1 Machine Installation**

Customer agrees to provide an environment meeting the requirements for the Machine as specified in its published documentation.

Within 30 calendar days of the shipment of a Machine, Customer agrees to install the Machine or, if IBM is responsible for the installation, to allow IBM to install the Machine. IBM has standard installation procedures. IBM will successfully complete these procedures before it considers an IBM Machine (other than a Machine for which Customer defers installation or a Customer-set-up Machine) installed. For a Machine that IBM is responsible to install, if the Machine is not made available for IBM to install within six months from shipment, installation will be subject to an installation charge.

Customer is responsible for installing a Customer-set-up Machine and a non-IBM Machine according to instructions provided by IBM or the Machine's manufacturer.

#### **3.3.2 Machine Upgrades and Engineering Changes**

IBM sells Machine Upgrades for installation on Machines, and, in certain instances, only for installation on a designated, serial-numbered Machine. Within 30 calendar days of the shipment of a Machine Upgrade, Customer agrees to install the Machine Upgrade or, if IBM is responsible for the installation, to allow IBM

to install the Machine Upgrade. Certain Machine Upgrade orders may be terminated at IBM's discretion if not made available for IBM to install within 30 calendar days of shipment, in which case Customer must return the Machine Upgrade to IBM at Customer's expense. In all cases, if the Machine Upgrade is not made available for IBM to install within six months from the date IBM ships the Machine Upgrade, installation will be subject to an installation charge.

Customer agrees to allow IBM to install mandatory Engineering Changes (such as those required for safety) on a Machine within 30 calendar days of IBM's notice to Customer unless otherwise agreed to by the parties.

Many Machine Upgrades and Engineering Changes require the removal of parts and the transfer of ownership and possession of the removed parts to IBM. Customer is responsible for the return of all removed parts to IBM upon installation of the Machine Upgrade or Engineering Change. As applicable, Customer represents that Customer has permission from the owner and any lien holders to i) install Machine Upgrades and Engineering Changes and ii) transfer ownership and possession of removed parts to IBM. Customer further represents that all removed parts are genuine, unaltered, and in good working order. A part that replaces a removed part will assume the warranty or maintenance Service status of the replaced part.

#### **4. Licenses for Machine Code and Other Internal Licensed Code**

Customer acknowledges that each Covered Machine contains Machine Code and may also contain Other Internal Licensed Code. Regardless of the source from which Customer acquires an IBM Machine, IBM's license terms regarding Machine Code and Other Internal Licensed Code included with the Machine apply.

##### **4.1 License for Machine Code**

Customer's use of Machine Code on a Covered Machine is governed by the terms of the applicable IBM License Agreement for Machine Code provided at [http://www.ibm.com/systems/support/machine\\_warranties/machine\\_code.html](http://www.ibm.com/systems/support/machine_warranties/machine_code.html)

##### **4.2 License for Other Internal Licensed Code (OILC)**

OILC is licensed under, and Customer's use is governed by, the terms of the applicable license agreement(s) for such OILC provided at: [http://www.ibm.com/servers/support/machine\\_warranties/support\\_by\\_product.html](http://www.ibm.com/servers/support/machine_warranties/support_by_product.html)

#### **5. License for ICA Programs**

##### **5.1 License**

When IBM accepts Customer's order, IBM grants Customer a nonexclusive license to use the ICA Program only within Customer's Enterprise in the United States. ICA Programs are owned by International Business Machines Corporation, one of its subsidiaries, or a third party and are copyrighted and licensed (not sold).

###### **5.1.1 Authorized Use**

Under each license, IBM authorizes Customer to:

- a. run or execute the ICA Program only on the Designated Machine specified by the Customer to IBM under the terms of Section 5.1.2 below;
- b. use the ICA Program to the extent of authorizations Customer has obtained;
- c. solely in support of the level of use authorized by IBM, make and install copies of the ICA Program on the following: (i) the Designated Machine, and (ii) on an additional Designated Machine, for backup purposes, if the ICA Program is not performing productive work (including, without limitation, production, development, test, program maintenance, mirroring, etc.) on such additional Designated Machine; provided that Customer reproduces the copyright notices and any other legends of ownership on each copy or partial copy; and
- d. use any portion of the ICA Program IBM i) provides in source form, or ii) marks restricted (for example, marked "Restricted Materials of IBM") only to:
  - (1) resolve problems related to the use of the ICA Program, and
  - (2) modify the ICA Program so that, while not otherwise violating the terms of this Agreement, it will work together with other products.

### **5.1.2 Customer's Additional Obligations**

For each ICA Program, Customer agrees to:

- a. provide its IBM representative with the type/model and serial number of the Designated Machine, and provide advance written notice and the effective date of any change from one Designated Machine to another Designated Machine;
- b. comply with any additional or different terms in its Licensed Program Specifications or another Attachment or Transaction Document;
- c. ensure that anyone who uses it (accessed either locally or remotely) does so only for Customer's authorized use and complies with IBM's terms regarding ICA Programs; and
- d. maintain a record of all copies and provide it to IBM at its request.

### **5.1.3 Actions Customer May Not Take**

For each ICA Program, Customer agrees not to:

- a. modify the ICA Program except as IBM expressly allows in this Agreement;
- b. reverse assemble, reverse compile, otherwise translate, or reverse engineer the ICA Program unless expressly permitted by applicable law without the possibility of contractual waiver; or
- c. sublicense, assign, rent, or lease the ICA Program or transfer it outside Customer's Enterprise.

## **5.2 Distributed System License Option**

For some ICA Programs, Customer may make a copy under a Distributed System License Option (called a "DSLO" copy). IBM charges less for a DSLO copy than for the original license (called the "Basic" license). In return for the lesser charge, Customer agrees to do the following while licensed under a DSLO:

- a. have a Basic license for the ICA Program;
- b. provide problem documentation and receive Program Services (if any) only through the location of the Basic license; and
- c. distribute to, and install on, the DSLO's Designated Machine, any release, correction, or bypass that IBM provides for the Basic license.

## **5.3 Program Services**

IBM provides Program Services for warranted ICA Programs. If IBM can reproduce Customer's reported problem in the Specified Operating Environment, IBM will issue defect correction information, a restriction, or a bypass. IBM provides Program Services for only the unmodified portion of a current release of an ICA Program.

IBM provides Program Services i) on an on-going basis (with at least six months' written notice before IBM terminates Program Services), ii) until the date IBM specifies, or iii) for a period IBM specifies.

## **5.4 License Termination**

Customer may terminate the license for an ICA Program at any time on 30 calendar days' written notice to IBM.

IBM may terminate Customer's license for an ICA Program if Customer fails to comply with:

- a. the terms of this Section 5,
- b. the license terms for Machine Code applicable to the Designated Machine to which the ICA Program is licensed, or
- c. Section 1.11 of this Agreement as such Section pertains to the ICA Program or the Designated Machine to which the ICA Program is licensed.

For each ICA Program license that Customer acquired for a one-time charge, a replacement license may be acquired for an upgrade charge, if available. When Customer obtains a license for such replacement ICA Program, the license of the replaced ICA Program is terminated when charges become due, unless IBM specifies otherwise.

If an ICA Program's license is terminated, Customer's authorization to use the ICA Program is also terminated.

Customer agrees to promptly destroy all copies of the Program after either party has terminated the license.

## **6. Services**

### **6.1 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 Services.

### **6.2 Materials Ownership and License**

An Attachment or Transaction Document will specify Materials to be delivered to Customer and identify them as "Type I Materials," "Type II Materials," or otherwise as both parties agree. If not specified, Materials will be considered Type II Materials.

Customer will own the copyright in Materials created as part of a Service that are identified as "Type I Materials" and each such Material will constitute a "work made for hire" to the extent permissible under U.S. copyright law. If any such Materials are not works made for hire under applicable law, IBM assigns the ownership of copyrights in such Materials to Customer. Customer grants IBM an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works based on, Type I Materials.

IBM or its suppliers will own the copyright in Materials created as part of a Services transaction that are identified as Type II Materials. IBM grants Customer an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute (within Customer's Enterprise only) copies of Type II Materials.

IBM or its suppliers retains ownership of the copyright in any of IBM's or its suppliers' works that pre-exist or were developed outside of this Agreement and any modifications or enhancements of such works that may be made under this Agreement. To the extent they are embedded in any Materials, such works are licensed in accordance with their separate licenses provided to Customer, if any, or otherwise as Type II Materials.

Each party agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the licenses granted in this section.

### **6.3 Customer Resources**

If Customer is making available to IBM any facilities, software, hardware or other resources in connection with IBM's performance of Services, Customer agrees to obtain any licenses or approvals related to these resources that may be necessary for IBM to perform the Services and develop Materials. IBM will be relieved of its obligations that are adversely affected by Customer's failure to promptly obtain such licenses or approvals. Customer agrees to reimburse IBM for any reasonable costs and other amounts that IBM may incur from Customer's failure to obtain these licenses or approvals.

Unless otherwise agreed in an Attachment or Transaction Document, 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. IBM's responsibilities regarding such data or database, including any confidentiality and security obligations, are governed by the Attachments and Transaction Documents applicable to the particular Services Transaction (which prevail over the terms of any separate confidentiality agreements) and subject to the Limitation of Liability and other terms in this Agreement.

### **6.4 Service for Machines (during and after warranty)**

#### **6.4.1 Service for Machines**

IBM provides certain types of Service to keep Machines in, or restore them to, conformance with their Specifications. IBM will inform Customer of the available types of Service for a Machine. At its discretion, IBM will i) either repair or exchange the failing Machine and ii) provide the Service either at Customer's location or a service center. IBM manages and installs selected Engineering Changes that apply to IBM Machines and may also perform preventive maintenance.

Any feature, conversion, or Machine Upgrade IBM Services must be installed on a Machine which is i) the designated, serial-numbered Machine, if applicable, and ii) at an Engineering-Change level compatible with the feature, conversion, or Machine Upgrade.

When the type of Service requires that Customer deliver the failing Machine to IBM, Customer agrees to ship it suitably packaged (prepaid unless IBM specifies otherwise) to a location IBM designates. After IBM has repaired or exchanged the Machine, IBM will deliver it to Customer at IBM's expense unless IBM specifies otherwise. IBM is responsible for loss of, or damage to, Customer's Machine while it is i) in IBM's possession or ii) in transit in those cases where IBM is responsible for the transportation charges.

Customer agrees:

- a. to obtain authorization from the owner to have IBM service a Machine that Customer does not own;
- b. where applicable, before IBM provides Service, to --
  - (1) follow the problem determination and service request procedures that IBM provides,
  - (2) secure all programs, data, and funds contained in a Machine, and
  - (3) inform IBM of changes in a Machine's location.
- c. to follow the Service instructions that IBM provides (which may include installing Machine Code and other software updates either downloaded from an IBM Internet Web site or copied from other electronic media); and
- d. when Customer returns a Machine to IBM for any reason --
  - (1) to securely erase from any Machine all programs not provided by IBM with the Machine and data, including without limitation, the following: i) information about identified or identifiable individuals or legal entities ("Personal Data") and ii) Customer's confidential or proprietary information and other data. If removing or deleting Personal Data is not possible, Customer agrees to transform such information (e.g., by making it anonymous) so that it no longer qualifies as Personal Data under applicable law;
  - (2) to remove all funds from Machines returned to IBM. IBM is not responsible for any funds, programs not provided by IBM with the Machine, or data contained in a Machine that Customer returns to IBM; and
  - (3) IBM may ship all or part of the Machine or its software to other IBM or third party locations around the world to perform its responsibilities under this Agreement, and Customer authorizes IBM to do so.

#### **6.4.2 Replacements**

When Service involves the exchange of a part or Machine, the item IBM replaces becomes IBM's property and the replacement becomes Customer's. Customer represents that all removed items are genuine and unaltered. The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty or maintenance Service status of the replaced item. Before IBM exchanges a part or Machine, Customer agrees to remove all features, parts, options, alterations, and attachments not under IBM's service. Customer also agrees to i) ensure that the part or Machine is free of any legal obligations or restrictions that prevent its exchange and ii) transfer ownership and possession of removed parts to IBM.

Service for some IBM Machines involves IBM providing Customer with an exchange replacement for installation by Customer. Such exchange replacements may be i) a part of a Machine (called a Customer Replaceable Unit, or "CRU," e.g., keyboard, memory, or hard disk drive), or ii) an entire Machine. Customer may request IBM to install the replacement CRU or Machine, however, Customer may be charged for the installation. IBM provides information and replacement instructions with Customer's Machine and at any time on Customer's request. IBM specifies in the materials shipped with a replacement whether the failing CRU or Machine must be returned to IBM. When return is required, return instructions and a container are shipped with the replacement, and Customer may be charged for the replacement if IBM does not receive the failing CRU or Machine within 15 calendar days of Customer's receipt of the replacement.

#### **6.4.3 Items Not Covered**

Repair and exchange Services do not cover:

- a. accessories, supply items, consumables (such as batteries and printer cartridges), and structural parts (such as frames and covers);

- b. Machines damaged by misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by Customer or a third party;
- c. Machines with removed or altered Machine or parts identification labels;
- d. failures caused by a product for which IBM is not responsible;
- e. service of Machine alterations; or
- f. service of a Machine on which Customer is using capacity or capability, other than that authorized by IBM in writing.

### **6.5 Warranty Service Upgrade**

For certain Machines, Customer may select a Service upgrade from the standard type of warranty Service for the Machine. IBM charges for the Service upgrade during the warranty period.

Customer may not terminate the Service upgrade or transfer it to another Machine during the warranty period.

When the warranty period ends, the Machine will convert to maintenance Service at the same type of Service Customer selected for warranty Service upgrade.

### **6.6 Maintenance Coverage**

When Customer orders maintenance Service for Machines, IBM will inform Customer of the date on which maintenance Service will begin. IBM may inspect the Machine within one month following that date. If the Machine is not in an acceptable condition for service, Customer may have IBM restore it for a charge or Customer may withdraw its request for maintenance Service. However, Customer will be charged for any maintenance Service that IBM has performed at Customer's request.

### **6.7 Automatic Service Renewal**

Renewable Services renew automatically for a same length contract period unless either party provides written notification (at least one month prior to the end of the current contract period) to the other of its decision not to renew.

During an automatic renewal period, Customer may terminate the Service on one month's written notice, and IBM will provide Customer a prorated credit for any unused Services for which Customer has paid in advance.

### **6.8 Termination and Withdrawal of a Service**

Either party may terminate a Service transaction if the other materially fails to meet its obligations concerning the Service.

Customer may terminate a Service, on notice to IBM provided Customer has met all minimum requirements and paid any adjustment charges specified in the applicable Attachments and Transaction Documents.

For a maintenance Service, Customer may terminate without adjustment charge, provided any of the following circumstances occur:

- a. Customer permanently removes the eligible Product, for which the Service is provided, from productive use within Customer's Enterprise;
- b. the eligible location, for which the Service is provided, is no longer controlled by Customer (for example, because of sale or closing of the facility); or
- c. the Machine has been under maintenance Service for at least one year and Customer gives IBM one month's written notice prior to terminating the maintenance Service.

Customer agrees to pay IBM for i) all charges for Services IBM provides and any Products and Materials IBM delivers through Service termination, and ii) reimbursable expenses IBM incurs through Service termination. If Customer terminates without cause, Customer also agrees to pay any applicable adjustment or termination charges and for expenses IBM incurs as a result of such termination (which IBM will take reasonable steps to mitigate).

IBM may withdraw a Service or support for an eligible Product on three months' written notice to Customer. If IBM withdraws a Service for which Customer has prepaid and IBM has not yet fully provided it to Customer, IBM will give Customer a prorated refund.

Any terms that by their nature extend beyond termination or withdrawal remain in effect until fulfilled and apply to respective successors and assignees.

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This Agreement, including its applicable Attachments and Transaction Documents, is the complete agreement regarding transactions by which Customer purchases Machines, licenses ICA Programs, obtains Program licenses, and acquires Services from IBM, and replaces all prior oral or written communications, representations, understandings, warranties, promises, covenants, and commitments between Customer and IBM. In entering into this Agreement, including each Attachment and Transaction Document, neither party is relying on any representation that is not specified in this Agreement. Additional or different terms in any written communication from Customer (such as a purchase order) are void.

Each party accepts, on behalf of its Enterprise, the terms of this Agreement by signing this Agreement (or another document that incorporates it by reference) by hand or electronically. Once signed, i) any reproduction of this Agreement, an Attachment, or Transaction Document made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original and ii) all Products and Services ordered under this Agreement are subject to it.

Agreed to:

**Customer Company Name:**

Agreed to:

**International Business Machines Corporation**

By \_\_\_\_\_

Authorized signature

By \_\_\_\_\_

Authorized signature

Title:

Title:

Name (type or print):

Name (type or print):

Date:

Date:

Customer number: 02728837

Agreement number:

Enterprise number: 02734100

Customer address: 360 Fair Lane  
Placerville, CA 95667

IBM address: 7100 Highlands Parkway  
Smyrna, GA 30082

Contract Administrator: Kelly Webb, Interim Director of Information Technologies, or successor.



## Attachment for EWLC, TWLC, zELC, and z/OS.e License Charges

These terms are in addition to those of the IBM Customer Agreement or any equivalent agreement in effect between us (the "Agreement"). Customer accepts the terms of this Attachment by signing below or making any payment for IBM Programs utilizing the charging structures described below.

This Attachment provides additional terms for (1) Programs running on an Eligible Machine with zSeries Entry License Charges ("zELC"), Entry Workload License Charges ("EWLC"), or Tiered Workload License Charges ("TWLC"); and (2) terms for z/OS.e. When running on an Eligible Machine, z/TPF, z/OS, or z/OS.e must be running in z/Architecture (64-bit) mode.

**NOTE:** If z/OS.e is not running and the only charges for operating systems on an Eligible Machine are zELC, TWLC, or Full-Capacity EWLC charges, then this Attachment need not be signed. IBM System z Machines Exhibit (Z125-3901-55 or later) applies.

### 1. Definitions

**Eligible Machine** – A Machine to which an Eligible Operating System is licensed. Any copies of Eligible Operating Systems that run on an Eligible Machine must run in zArchitecture (64-bit) mode. Eligible Machines are specified in the Exhibit for EWLC, TWLC, zELC and z/OS.e License Charges, Z125-6588-11 or later ("Exhibit").

**Eligible Operating Systems** – An Operating System specified in the Exhibit

**Full Capacity** – EWLC pricing of Programs based on the total MSUs of the Eligible Machine.

**Full Logical Model Capacity** – The total MSU capacity of the Logical Model.

**Guest (LPAR)** – An Eligible Operating System when running on z/VM.

**MSUs** – Millions of Service Units per hour. Units of Workload capacity of an Eligible Machine.

**Native (LPAR)** – An Eligible Operating System when not running on z/VM.

**Operating System Family** – An IBM operating system and the IBM middleware that runs under it. The applicable IBM operating systems are z/OS, z/TPF, and z/VSE V4 or higher.

**Product LPAR Utilization Capacity** – The highest number of MSUs utilized by the combined logical partitions ("LPARs") in which an EWLC IBM Program runs concurrently during a Reporting Period. The number of MSUs is based on a 4-hour rolling average utilization.

**Reporting Period** – The period that begins on the second day of a month and ends on the first day of the following month.

**Sub-Capacity** – EWLC pricing of Programs based on less than the total MSUs of the Eligible Machine.

**Sub-Capacity Report** – A report generated by the IBM-provided Sub-Capacity Reporting Tool. The tool analyzes System Management Facilities ("SMF") data and SCRT89 data and calculates the Product LPAR Utilization Capacity for most EWLC IBM Programs. The Sub-Capacity Report includes these calculations. Customer is required to submit the report to IBM only if Sub-Capacity pricing is in effect.

**Mainframe Exhibits section of the System z Software Contracts Web site** –

<http://ibm.com/systems/z/swprice/reference/exhibits/hardware.html>

### 2. LPAR Limitations

Customer may not use more than 15 LPARs on a zSeries 890 Capacity Setting 110

### 3. Charges for Programs running on an Eligible Machine

#### 3.1 Logical Models:

For determining the basis for certain software license charges, an Eligible Machine may be divided into two Logical Models, one running z/OS.e and the other running some other operating system(s). If the Eligible Machine is running only z/OS.e, or is not running z/OS.e, then there is only one Logical Model and it is equal to the physical Eligible Machine model. (**Note:** Integrated Facility for Linux ("IFL") engines are not part of Logical Models or the physical Eligible Machine model.)

Logical Models may be calculated as follows

- a. If the only charges for Programs on an Eligible Machine are zELC, a table illustrating the various

Logical Model combinations may be found in the Exhibit.

- b. If an Eligible Machine is running a combination of z/OS.e with EWLC charges and some other operating system, the following steps are used to calculate the Logical Model:
  - (1) Customer advises IBM of planned MSUs:

Within 30 days of the billing period start date for EWLC charges, will advise IBM of the planned MSU usage for both the z/OS.e and the non-z/OS.e Logical Models. The total planned MSUs must equal the total MSU capacity of the Eligible Machine. To determine the total MSU capacity of each model of an Eligible Machine, see the Mainframe Exhibits section of the System z Software Contracts Web site.
  - (2) IBM to calculate Logical Model sizes:
    - (a) IBM will calculate the Logical Model sizes for zELC Programs by selecting the Logical Model with an MSU rating that equals Customer's planned z/OS.e MSU usage or the next higher Logical Model if Customer's planned z/OS.e MSU usage exceeds the MSU rating for a Logical Model. IBM will similarly calculate the non-z/OS.e Logical Model using non-z/OS.e MSUs.
    - (b) IBM will calculate the appropriate tier for TWLC programs based upon Customer's planned z/OS.e MSU usage. IBM will similarly calculate the non-z/OS.e tier using the non-z/OS.e MSUs.
  - (3) Changing Logical Models sizes:

If an Eligible Machine is upgraded or downgraded, or if Customer changes the MSUs used for z/OS.e, Customer will advise IBM of the new planned MSUs for both z/OS.e and non-z/OS.e. IBM will adjust the Logical Model sizes accordingly.
  - (4) If MSU usage is greater than the total MSU capacity of the Eligible Machine:

In the event actual MSUs reported on a Sub-Capacity Report for both the z/OS.e and non-z/OS.e Logical Models exceed the total MSU capacity of the Eligible Machine, IBM will reduce the z/OS.e MSUs so that the total MSUs do not exceed the total MSU capacity of the Eligible Machine. However, the z/OS.e MSUs may not be reduced below 3 MSUs. If necessary, the non-z/OS.e MSUs will also be reduced so the total MSU capacity of the Eligible Machine is not exceeded.

This calculation will not impact zELC charges, only EWLC charges.
  - (5) Actual MSU use exceeds planned MSUs provided to IBM:

If the Sub-Capacity Report shows that actual non-z/OS.e MSU usage exceeded the planned MSU usage that Customer provided to IBM, IBM may adjust the size of the Logical Models accordingly. Both Customer and IBM agree that this will be considered to be an order placed by Customer without further action on Customer's part. Customer authorizes IBM or Customer's IBM Business Partner to make any resulting billing increase and agree to pay such revised charges.
- c. If the charges on an Eligible Machine are either aggregated Variable Workload License Charge ("VWLC") or aggregated Parallel Sysplex License Charges ("PSLC"), and a Program is running on only one of the Logical Models, the Full Logical Model Capacity for each Logical Model is defined as follows:
  - (1) For a Program running in the Logical Model with z/OS.e:
    - (a) divide the total number of MSUs in the Eligible Machine by the number of engines in that Eligible Machine;
    - (b) multiply that result by the number of engines in the Logical Model;
    - (c) if the result is not a whole number, any fraction equal to or greater than one-half is rounded up to the next whole number. Otherwise, fractions are dropped.
  - (2) For a Program running in the Logical Model without z/OS.e, subtract the MSUs calculated above from the total MSUs in the Eligible Machine.

### 3.2 Aggregated Charges:

- a. Aggregated PSLC may apply if the Eligible Machine is coupled in a Parallel Sysplex that has aggregated PSLC charges. Usage Pricing Charges may apply.

- b. Aggregated Workload License Charges (“WLC”) may apply if the Eligible Machine is coupled in a Parallel Sysplex that has aggregated WLC charges.
- c. Prerequisite Attachments, Supplements and Exhibits for Aggregated Charges (as applicable)
  - (1) For PSLC:
    - (a) Attachment for Parallel Sysplex License Charges (Z125-5205); and
    - (b) Exhibit - Parallel Sysplex License Charges (Z125-5206).
  - (2) For WLC:
    - (a) Attachment for IBM System z Workload License Charges (Z125-6516); and
    - (b) IBM System z Workload License Charges Exhibit (Z125-6324).

### **3.3 zELC Charges:**

- a. zELC charges are based on the category of the Logical Model.
- b. zELC charges are available for selected Programs used on Eligible Machines that are identified in the “Group” column by “zELC,” followed by the zELC category, on the Mainframe Exhibits section of the System z Software Contracts Web site.
- c. When zELC charges are not available for certain Programs, a default charge applies. It is specified on the Mainframe Exhibits section of the System z Software Contracts Web site for each applicable Eligible Machine in the column called “Other.”
- d. If Customer selects zELC charges for any Program on an Eligible Machine, then all Programs for which zELC charges are available must have zELC charges, unless EWLC charges are available for selected Programs. In this case those Programs may have EWLC charges.
- e. Increases in any zELC or default charges for Programs, due to changes in the category or model placement for any Eligible Machine to which the Programs are licensed, will be in effect for a minimum period of one month.

### **3.4 TWLC Charges**

- a. TWLC charges are a tiered price structure and based on Full Logical Model Capacity. Sub-Capacity pricing is not available.
- b. TWLC charges are available for selected Programs used on non-aggregated Eligible Machines identified in the “Group” column by “TWLC” followed by the TWLC tier on the Mainframe Exhibits section of the System z Software Contracts Web site.
- c. When TWLC charges are not available for certain programs, a default charge applies. It is specified on the Mainframe Exhibits section of the System z Software Contracts Web site for each applicable Eligible Machine in the column called “Other.”
- d. If Customer selects TWLC charges for any Program on an Eligible Machine, then all Programs for which TWLC charges are available must have TWLC charges, unless EWLC charges are available for selected Programs. In this case those Programs must have EWLC charges. However, if Customer elects Midrange Workload License Charges (“MWLC”) on z/VSE V4 or higher then all Programs with MWLC available must have MWLC charges.
- e. Increases in any TWLC or default charges for Programs, due to changes in the tier placement for any Eligible Machine to which the Programs are licensed, will be in effect for a minimum period of one month.

### **3.5 EWLC Charges:**

- a. EWLC charges are based on Full Capacity or Sub-Capacity pricing.
- b. EWLC charges are available only for selected Programs used on non-aggregated Eligible Machines that are identified in the “Group” column by “EWLC” on the Mainframe Exhibits section of the System z Software Contracts Web site.
- c. If Customer selects EWLC charges for a Program on an Eligible Machine, then all Programs for which EWLC charges are available must have EWLC charges. All other Programs on that Eligible Machine must have zELC charges, if zELC charges are available, or TWLC charges, if TWLC charges are available. However, if Customer elects Midrange Workload License Charges (“MWLC”) on z/VSE V4 or higher then all Programs with MWLC available must have MWLC charges.

IBM Programs with Select Application License Charges (“SALC”) may be licensed to the same Eligible Machine as IBM Programs with EWLC Charges. SALC is described in the Select Application License Charges Amendment to Attachment for IBM System z Usage Pricing Charges (Z125-7284-00 or later),

d. Full Capacity Pricing Terms:

Increases in EWLC charges for Programs, due to changes in the model placement for any Eligible Machine to which the Programs are licensed, will be in effect for a minimum period of one month.

e. Sub-Capacity Pricing Terms:

(1) Sub-Capacity Charges:

- (a) Monthly charges are based on the number of MSUs reported in the Program’s Sub-Capacity Report for the specified Eligible Machine during a Reporting Period. This value corresponds to the Product LPAR Utilization Capacity or must equal Full Capacity. If Sub-Capacity pricing is not in effect, monthly charges are based on Full Capacity.

NOTE: Information on IBM’s billing process, including how to determine the applicable Reporting Period for a particular month’s charges, can be found on the Sub-Capacity Corner website at

<http://ibm.com/systems/z/swprice/subcap/terms.html> .

- (b) Eligible Operating System licenses are charged at Full Capacity MSUs until IBM has processed the initial Sub-Capacity Report for that Eligible Operating System on that Eligible Machine, enabling Sub-Capacity Pricing for that Operating System Family.
- (c) The initial monthly charge for a non-operating system license is based upon the applicable operating system MSUs.
- (d) Once Sub-Capacity Pricing has commenced for an Eligible Operating System on an Eligible Machine, if an EWLC Program does not appear in a Sub-Capacity Report subsequent to its initial monthly charge, the Program will be charged at the minimum EWLC MSUs.
- NOTE: IBM specifies minimum EWLC MSUs in its programming announcements.
- (e) If Customer elects to have Sub-Capacity Pricing for an EWLC IBM Program on an Eligible Machine, then Customer must have Sub-Capacity Pricing for all EWLC IBM Programs in that Operating System Family on that Eligible Machine.
- (f) EWLC features have the same MSUs as the Program.
- (g) When z/TPF is licensed to an Eligible Machine, the Sub-Capacity Reporting Tool calculates the number of MSUs for z/TPF Programs running on it. See the Amendment for Calculation of z/TPF MSUs (Z125-7283) for further details.
- (h) When z/OS or z/OS.e is licensed to an Eligible Machine, the Sub-Capacity Reporting Tool calculates the number of MSUs used across all the z/OS and z/OS.e LPARs in which each EWLC Program ran during the Reporting Period as follows:

If z/OS or z/OS.e is running in Native LPAR(s) ...	and z/OS or z/OS.e is running in Guest LPAR(s), at least one of which is at V1.6 or lower ...	and z/OS or z/OS.e is running in Guest LPAR(s), at least one of which is at V1.7 or higher ...	then, MSUs are calculated in LPAR(s) in which the EWLC IBM Program ran, as follows:
Yes	Yes	Yes	The highest combined 1. 4-hour rolling average utilization across all z/OS and z/OS.e Native LPARs, and 2. The maximum capacity of all z/OS and z/OS.e Guest LPARs
Yes	Yes	No	
Yes Yes No	No No No	Yes No Yes	The highest combined 4-hour rolling average utilization across all z/OS and z/OS.e Native LPARs and z/OS and z/OS.e Guest systems
No No	Yes Yes	Yes No	The highest combined maximum capacity of all z/OS and z/OS.e Guest LPARs

Customer may manage Native z/OS or z/OS.e LPAR utilization by specifying the LPAR defined capacity on the Hardware Management Console ("HMC"). However, this is not required to obtain Sub-Capacity pricing. If Customer chooses to specify the defined capacity for a particular Native z/OS or z/OS.e LPAR, the Sub-Capacity Reporting Tool will use the lower of the specified capacity or the 4-hour rolling average in order to determine the number of MSUs associated with each EWLC Program

- (i) If an OS/390 or MVS operating system is licensed to the same Eligible Machine, then charges for the z/OS Operating System Family are based on Full Capacity.
- (j) The capping function in z/OS or z/OS.e is used to ensure the workload does not exceed the LPAR defined capacity Customer has specified on a 4-hour rolling average. To achieve this, the capping function may automatically reduce and limit computer resources to workloads running in that LPAR. By defining the LPAR capacity, Customer authorizes the capping function to cap the computer's resources as defined.

(2) IBM's Responsibilities:

IBM will:

- (a) specify in the Exhibit a) the Eligible Machines, and b) the date and the process for transmitting Sub-Capacity Reports to IBM;
- (b) provide the Sub-Capacity Reporting Tool;
- (c) adjust EWLC in response to the changes Customer indicates on the Sub-Capacity Reports that Customer submits; and
- (d) register Eligible Machines when Customer submits the initial Sub-Capacity Reports.

(3) Customer's Responsibilities under Sub-Capacity Pricing:

Customer agrees to:

- (a) promptly install any enabling code for Programs or IBM System z Licensed Internal Code ("LIC") required for Sub-Capacity pricing;
- (b) collect, and retain for a period of not less than six months, the SMF and SCRT89 data records for all LPARs, by Eligible Machine, required by the Sub-Capacity Reporting Tool for each Reporting Period;
- (c) run the most current version of the Sub-Capacity Reporting Tool against the collected SMF and SCRT89 data to produce a Sub-Capacity Report. In addition, Customer agrees to specify the LPAR name(s) in the Sub-Capacity Report where any IBM Programs run for which SMF or SCRT89 data is not created. If there have been special circumstances during the Reporting Period, Customer may also provide alternate values, as defined in the *SCRT Users Guide* (SG24-6522), for each Program, with an explanation for the variance;
- (d) send to IBM within the time specified in the Exhibit:
  - (i) the initial Sub-Capacity Report that is based on the data for the entire initial Reporting Period for each Eligible Machine that Customer wishes IBM to register for Sub-Capacity pricing; and
  - (ii) subsequent Sub-Capacity Reports that are based on the data for each entire Reporting Period thereafter, for each registered Eligible Machine.

Sub-Capacity Reports may not be used to order or discontinue licenses, move licenses between Eligible Machines, report Eligible Machine model upgrades, or enable or disable Program features.

Both IBM and Customer agree that Sub-Capacity Reports that reflect a changed Product LPAR Utilization Capacity will be considered to be orders placed by Customer without further action on Customer's part. Customer authorizes IBM or Customer's IBM Business Partner to make any resulting billing increase or decrease, and agrees to pay such revised charges. Sub-Capacity Reports not submitted by the "not later than" date specified in the Exhibit will result in Programs being charged on a Full Capacity basis for the Reporting Period;

- (e) configure Customer's Eligible Machine to send Transmit System Availability Data ("TSAD") weekly to IBM via the Remote Support Facility ("RSF"). This enables IBM to

verify that the Product LPAR Utilization Capacity MSUs in the Sub-Capacity Reports Customer submits to IBM are consistent with Customer's actual Eligible Machine configuration. An alternate means for Customer to collect and transmit this data is provided in the "z/OS Planning for Sub-Capacity Pricing" publication. Failure to submit TSAD may result in Programs being charged on a Full Capacity basis;

- (f) assign a person in Customer's organization with authority to discuss and promptly resolve any questions on Sub-Capacity Reports or inconsistencies between Sub-Capacity Report contents or current license entitlement, and configuration data reported via the RSF; and
- (g) notify IBM if Customer elects to convert from Sub-Capacity pricing to EWLC at Full Capacity.

### **3.6 GOTC Charges (Graduated One-Time Charges)**

- a. Programs for which Customer has paid GOTC may be moved to an Eligible Machine.
- b. Upgrade charges will apply if the Eligible Machine "Default Model Group" specified in the Exhibit or the Mainframe Exhibits section of the System z Software Contracts Web site is higher than the current GOTC entitlement. Refunds do not apply if the Eligible Machine Default Model Group is lower.
- c. Contact IBM for special pricing if the GOTC license is being moved to an Eligible Machine whose applicable default charge is based on MSUs rather than a specific Default Model Group.

### **3.7 z/OS.e Charges:**

z/OS.e charges are based on the number of engines in the Logical Model in which z/OS.e runs or on EWLC charges.

## **4. Additional License Terms for z/OS.e**

- a. Customer may run z/OS.e only on Eligible Machines.
- b. Customer must run z/OS.e in a Logical Partition ("LPAR") that has "ZOSE" as the first four characters of the LPAR name.
- c. Customer must execute z/OS.e in z/Architecture (64-bit) mode.
- d. Customer must order and license z/OS.e for the number of engines in the Logical Model in which Customer will run z/OS.e, or alternatively, z/OS.e may be ordered with EWLC charges.
- e. Customer may use only the levels of Language Environment (LE), JES2 and JES3 that are delivered with z/OS.e.
- f. Customer may not run any of the following z/OS.e base elements, optional features, or functions:
  - (1) BookManager READ
  - (2) BookManager BUILD feature
  - (3) GDDM
  - (4) GDDM-PGF feature
  - (5) GDDM-REXX feature
  - (6) DCE Application Support
  - (7) LANRES
  - (8) Bulk Data Transfer (BDT) File-to-File feature
  - (9) Language Environment's use of Run-time Library Services (RTLS)
  - (10) Language Environment Routine Retention (LRR)
  - (11) Language Environment Compatibility Preinitialization for C and PL/I
  - (12) Encina Toolkit Executive
  - (13) MICR/OCR
  - (14) Communications Server Network Print Facility (NPF) feature
- g. Customer may not run any of the following under z/OS.e:

- (1) CICS, IMS, FORTRAN, or COBOL applications. However, Customer may run precompiled COBOL DB2 stored procedures and other precompiled COBOL applications using the Language Environment preinitialization interface (CEEPIPI). Customer may also use DB2, CICS, and IMS Connectors to access existing z/OS or OS/390 systems or an application server on Linux for zSeries. Hipersockets may be used as long as they access LPARs or IFLs on the same Eligible Machine.
- (2) COBOL, FORTRAN, PL/I, or VisualAge PL/I compilers. However, Customer may execute precompiled PL/I and VisualAge PL/I applications.
- (3) DB2 QMF Host feature, DB2 QMF HPO feature.
- (4) Customer may not have more than eight concurrent TSO users under z/OS.e.
- (5) Customer may not run any operating system other than z/OS.e, z/VM V4, z/VM V5 and LINUX in the z/OS.e Logical Model. Such operating systems include, for example, z/OS, OS/390, MVS, VM (prior to z/VM V4), VSE, z/VSE, TPF, z/TPF, etc.
- (6) Customer agrees to configure Customer's Eligible Machine to send Transmit System Availability Data ("TSAD") to IBM weekly via the Remote Support Facility ("RSF"). This enables IBM to verify that Customer's z/OS.e license matches Customer's actual Eligible Machine configuration. An alternate means for Customer to collect and transmit this data is provided in the "Hardware Management Console Operations Guide" publication.

## 5. Programs that run on an IFL

- a. Programs that run on an IFL engine may be licensed under the terms of the agreement provided with them.
- b. Charges for Programs that IBM has announced as eligible to run on IFL engines are based on the total number of IFL engines installed on the Eligible Machine.
- c. If a Program runs on the IFL engine(s) and on the engine(s) of one or both of the Logical Models, the charges are based on the total of the IFL engines and the engines in the Logical Models where the Program runs.

## 6. Compliance Verification

For purposes of this section, "ICA Program Terms" means terms applicable to ICA Programs in the IBM Customer Agreement and applicable Transaction Documents and Attachments (including this one).

Upon reasonable notice, IBM may verify Customer's compliance with ICA Program Terms at all site(s) and for all environments in which Customer uses or installs ICA Programs (whether for testing or productive use or otherwise). Such verification will be conducted during Customer's normal business hours and in a manner that minimizes disruption to Customer's business. IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

As reasonably necessary to verify Customer's use and installation of ICA Programs and Customer's compliance with the ICA Program Terms, Customer agrees to: 1) create, retain, and provide to IBM and its auditors written and other records, system tools outputs, and other electronic or hard copy system information, including information regarding the system configurations on which the ICA Programs operate; and 2) permit IBM and its auditors to be present and observe while Customer accesses machines to provide such records, outputs and other system information.

IBM will notify Customer in writing if any such verification indicates that Customer is not in compliance with the ICA Program Terms. Customer agrees to promptly pay any additional charges and other liabilities Customer becomes obligated to pay based on its use and deployment of ICA Programs or its failure to comply with the ICA Program Terms at any time during the period such ICA Programs are licensed to Customer.

The rights and obligations in this section remain in effect during the period such ICA Programs are licensed to Customer and for two years thereafter. This section applies to all ICA Programs licensed within Customer's Enterprise, including any licensed under separate Attachments and Transaction Documents, notwithstanding any contrary audit provisions that may be contained in them.

This Attachment and the IBM Customer Agreement (or any equivalent agreement in effect between the parties) identified below, including applicable Attachments and Transaction Documents, are the complete agreement regarding (1) EWLC, TWLC, or zELC for Programs running on an Eligible Machine; and (2) z/OS.e, and replace all prior oral or written communications, representations, undertakings, warranties, promises, covenants, and commitments between Customer and IBM regarding (1) EWLC, TWLC, or zELC for Programs running on an Eligible Machine; and (2) z/OS.e. In entering into this Attachment, including any applicable Transaction Document, neither party is relying on any representation that is not specified in this Attachment, the Transaction Document, or the Agreement. Additional or different terms in any written communication from Customer (such as a purchase order) are void.

Each party accepts, on behalf of its Enterprise, the terms of this Attachment by signing this Attachment (or another document that incorporates it by reference) by hand or electronically. Once signed, i) any reproduction of this Attachment made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original, and ii) all Products and Services ordered under this Attachment are subject to it.

If there is a conflict among the various documents, 1) the terms of this Attachment prevail over those of the Agreement, and 2) the terms of a Transaction Document prevail over both of these documents.

Agreed to:

Agreed to:

**International Business Machines Corporation**

By \_\_\_\_\_  
Authorized Signature

By \_\_\_\_\_  
Authorized Signature

Name (type or print):

Name (type or print):

Date:

Date:

Enterprise number: 02734100

Agreement number:

Enterprise address: 360 Fair Lane  
Placerville, CA 95667

IBM address: 7100 Highlands Parkway  
Smyrna, GA 30082

Contract Administrator: Kelly Webb, Interim Director of Information Technologies, or successor.

*After signing, please return a copy of this page to the "IBM address" shown above*





# International Program License Agreement

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This Agreement includes **Part 1 - General Terms**, **Part 2 - Country-unique Terms** (if any), the LI, and the PoE and is the complete agreement between Licensee and IBM regarding the use of the Program. It replaces any prior oral or written communications between Licensee and IBM concerning Licensee’s use of the Program. The terms of Part 2 may replace or modify those of Part 1. To the extent of any conflict, the LI prevails over both Parts.

### 3. License Grant

The Program is owned by IBM or an IBM supplier, and is copyrighted and licensed, not sold.

IBM grants Licensee a nonexclusive license to 1) use the Program up to the Authorized Use specified in the PoE, 2) make and install copies to support such Authorized Use, and 3) make a backup copy, all provided that

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- f. if Licensee obtains this Program as a Supporting Program, Licensee uses this Program only to support the Principal Program and subject to any limitations in the license to the Principal Program, or, if Licensee obtains this Program as a Principal Program, Licensee uses all Supporting Programs only to support this Program, and subject to any limitations in this Agreement. For purposes of this Item "f," a "Supporting Program" is a Program that is part of another IBM Program ("Principal Program") and identified as a Supporting Program in the Principal Program's LI. (To obtain a separate license to a Supporting Program without these restrictions, Licensee should contact the party from whom Licensee obtained the Supporting Program.)

This license applies to each copy of the Program that Licensee makes.

### **3.1 Trade-ups, Updates, Fixes, and Patches**

#### **3.1.1 Trade-ups**

If the Program is replaced by a trade-up Program, the replaced Program's license is promptly terminated.

#### **3.1.2 Updates, Fixes, and Patches**

When Licensee receives an update, fix, or patch to a Program, Licensee accepts any additional or different terms that are applicable to such update, fix, or patch that are specified in its LI. If no additional or different terms are provided, then the update, fix, or patch is subject solely to this Agreement. If the Program is replaced by an update, Licensee agrees to promptly discontinue use of the replaced Program.

### **3.2 Fixed Term Licenses**

If IBM licenses the Program for a fixed term, Licensee's license is terminated at the end of the fixed term, unless Licensee and IBM agree to renew it.

### **3.3 Term and Termination**

This Agreement is effective until terminated.

IBM may terminate Licensee's license if Licensee fails to comply with the terms of this Agreement.

If the license is terminated for any reason by either party, Licensee agrees to promptly discontinue use of and destroy all of Licensee's copies of the Program. Any terms of this Agreement that by their nature extend beyond termination of this Agreement remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

## **4. Charges**

Charges are based on Authorized Use obtained, which is specified in the PoE. IBM does not give credits or refunds for charges already due or paid, except as specified elsewhere in this Agreement.

If Licensee wishes to increase its Authorized Use, Licensee must notify IBM or an authorized IBM reseller in advance and pay any applicable charges.

## **5. Taxes**

If any authority imposes on the Program a duty, tax, levy, or fee, excluding those based on IBM's net income, then Licensee agrees to pay that amount, as specified in an invoice, or supply exemption documentation. Licensee is responsible for any personal property taxes for the Program from the date that Licensee obtains it. If any authority imposes a customs duty, tax, levy, or fee for the import into or the export, transfer, access, or use of the Program outside the country in which the original Licensee was granted the license, then Licensee agrees that it is responsible for, and will pay, any amount imposed.

## **6. Money-back Guarantee**

If Licensee is dissatisfied with the Program for any reason and is the original Licensee, Licensee may terminate the license and obtain a refund of the amount Licensee paid for the Program, provided that Licensee returns the Program and PoE to the party from whom Licensee obtained it within 30 days of the date the PoE was issued to Licensee. If the license is for a fixed term that is subject to renewal, then Licensee may obtain a refund only if the Program and its PoE are returned within the first 30 days of the initial term. If Licensee downloaded the Program, Licensee should contact the party from whom Licensee obtained it for instructions on how to obtain the refund.

## 7. Program Transfer

Licensee may transfer the Program and all of Licensee's license rights and obligations to another party only if that party agrees to the terms of this Agreement. If the license is terminated for any reason by either party, Licensee is prohibited from transferring the Program to another party. Licensee may not transfer a portion of 1) the Program or 2) the Program's Authorized Use. When Licensee transfers the Program, Licensee must also transfer a hard copy of this Agreement, including the LI and PoE. Immediately after the transfer, Licensee's license terminates.

## 8. Warranty and Exclusions

### 8.1 Limited Warranty

IBM warrants that the Program, when used in its specified operating environment, will conform to its specifications. The Program's specifications, and specified operating environment information, can be found in documentation accompanying the Program (such as a read-me file) or other information published by IBM (such as an announcement letter). Licensee agrees that such documentation and other Program content may be supplied only in the English language, unless otherwise required by local law without the possibility of contractual waiver or limitation.

The warranty applies only to the unmodified portion of the Program. IBM does not warrant uninterrupted or error-free operation of the Program, or that IBM will correct all Program defects. Licensee is responsible for the results obtained from the use of the Program.

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If the Program does not function as warranted during the Warranty Period and the problem cannot be resolved with information available in the IBM databases, Licensee may return the Program and its PoE to the party (either IBM or its reseller) from whom Licensee obtained it and receive a refund of the amount Licensee paid. After returning the Program, Licensee's license terminates. If Licensee downloaded the Program, Licensee should contact the party from whom Licensee obtained it for instructions on how to obtain the refund.

### 8.2 Exclusions

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## 9. Licensee Data and Databases

To assist Licensee in isolating the cause of a problem with the Program, IBM may request that Licensee 1) allow IBM to remotely access Licensee's system or 2) send Licensee information or system data to IBM. However, IBM is not obligated to provide such assistance unless IBM and Licensee enter a separate written agreement under which IBM agrees to provide to Licensee that type of technical support, which is beyond IBM's warranty obligations in this Agreement. In any event, IBM uses information about errors and problems to improve its products and services, and assist with its provision of related support

offerings. For these purposes, IBM may use IBM entities and subcontractors (including in one or more countries other than the one in which Licensee is located), and Licensee authorizes IBM to do so.

Licensee remains responsible for 1) any data and the content of any database Licensee makes available to IBM, 2) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally-identifiable data), and 3) backup and recovery of any database and any stored data. Licensee will not send or provide IBM access to any personally-identifiable information, whether in data or any other form, and will be responsible for reasonable costs and other amounts that IBM may incur relating to any such information mistakenly provided to IBM or the loss or disclosure of such information by IBM, including those arising out of any third party claims.

## **10. Limitation of Liability**

The limitations and exclusions in this Section 10 (Limitation of Liability) apply to the full extent they are not prohibited by applicable law without the possibility of contractual waiver.

### **10.1 Items for Which IBM May Be Liable**

Circumstances may arise where, because of a default on IBM's part or other liability, Licensee is entitled to recover damages from IBM. Regardless of the basis on which Licensee is 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 each Program or otherwise arising under this Agreement will not exceed the amount of any 1) damages for bodily injury (including death) and damage to real property and tangible personal property and 2) other actual direct damages up to the charges (if the Program is subject to fixed term charges, up to twelve months' charges) Licensee paid for the Program that is the subject of the claim.

This limit also applies to any of IBM's Program developers and suppliers. It is the maximum for which IBM and its Program developers and suppliers are collectively responsible.

### **10.2 Items for Which IBM Is Not Liable**

**UNDER NO CIRCUMSTANCES IS IBM, ITS PROGRAM DEVELOPERS OR SUPPLIERS 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.**

## **11. Compliance Verification**

For purposes of this Section 11 (Compliance Verification), "IPLA Program Terms" means 1) this Agreement and applicable amendments and transaction documents provided by IBM, and 2) IBM software policies that may be found at the IBM Software Policy website ([www.ibm.com/softwarepolicies/](http://www.ibm.com/softwarepolicies/)), including but not limited to those policies concerning backup, sub-capacity pricing, and migration.

The rights and obligations set forth in this Section 11 remain in effect during the period the Program is licensed to Licensee, and for two years thereafter.

### **11.1 Verification Process**

Licensee agrees to create, retain, and provide to IBM and its auditors accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that Licensee's use of all Programs is in compliance with the IPLA Program Terms, including, without limitation, all of IBM's applicable licensing and pricing qualification terms. Licensee is responsible for 1) ensuring that it does not exceed its Authorized Use, and 2) remaining in compliance with IPLA Program Terms.

Upon reasonable notice, IBM may verify Licensee's compliance with IPLA Program Terms at all sites and for all environments in which Licensee uses (for any purpose) Programs subject to IPLA Program Terms. Such verification will be conducted in a manner that minimizes disruption to Licensee's business, and may be conducted on Licensee'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.

## 11.2 Resolution

IBM will notify Licensee in writing if any such verification indicates that Licensee has used any Program in excess of its Authorized Use or is otherwise not in compliance with the IPLA Program Terms. Licensee agrees to promptly pay directly to IBM the charges that IBM specifies in an invoice for 1) any such excess use, 2) support for such excess use for the lesser of the duration of such excess use or two years, and 3) any additional charges and other liabilities determined as a result of such verification.

## 12. Third Party Notices

The Program may include third party code that IBM, not the third party, licenses to Licensee under this Agreement. Notices, if any, for the third party code ("Third Party Notices") are included for Licensee's information only. These notices can be found in the Program's NOTICES file(s). Information on how to obtain source code for certain third party code can be found in the Third Party Notices. If in the Third Party Notices IBM identifies third party code as "Modifiable Third Party Code," IBM authorizes Licensee to 1) modify the Modifiable Third Party Code and 2) reverse engineer the Program modules that directly interface with the Modifiable Third Party Code provided that it is only for the purpose of debugging Licensee's modifications to such third party code. IBM's service and support obligations, if any, apply only to the unmodified Program.

## 13. General

- a. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.
- b. For Programs IBM provides to Licensee in tangible form, IBM fulfills its shipping and delivery obligations upon the delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by Licensee and IBM.
- c. 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.
- d. Licensee agrees to comply with all applicable export and import laws and regulations, including U.S. embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users.
- e. Licensee authorizes International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors and IBM Business Partners) to store and use Licensee's business contact information wherever they do business, in connection with IBM products and services, or in furtherance of IBM's business relationship with Licensee.
- f. 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.
- g. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation: 1) neither party will bring a legal action, regardless of form, for any claim arising out of or related to this Agreement more than two years after the cause of action arose; and 2) upon the expiration of such time limit, any such claim and all respective rights related to the claim lapse.
- h. Neither Licensee nor IBM is responsible for failure to fulfill any obligations due to causes beyond its control.
- i. No right or cause of action for any third party is created by this Agreement, nor is IBM responsible for any third party claims against Licensee, except as permitted in Subsection 10.1 (Items for Which IBM May Be Liable) above for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable to that third party.
- j. In entering into this Agreement, neither party is relying on any representation not specified in this Agreement, including but not limited to any representation concerning: 1) the performance or function of the Program, other than as expressly warranted in Section 8 (Warranty and Exclusions) above; 2) the experiences or recommendations of other parties; or 3) any results or savings that Licensee may achieve.
- k. IBM has signed agreements with certain organizations (called "IBM Business Partners") to promote, market, and support certain Programs. IBM Business Partners remain independent and separate from IBM. IBM is not responsible for the actions or statements of IBM Business Partners or obligations they have to Licensee.

- I. The license and intellectual property indemnification terms of Licensee's other agreements with IBM (such as the IBM Customer Agreement) do not apply to Program licenses granted under this Agreement.

## **14. Geographic Scope and Governing Law**

### **14.1 Governing Law**

Both parties agree to the application of the laws of the country in which Licensee obtained the Program license to govern, interpret, and enforce all of Licensee's 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.

The United Nations Convention on Contracts for the International Sale of Goods does not apply.

### **14.2 Jurisdiction**

All rights, duties, and obligations are subject to the courts of the country in which Licensee obtained the Program license.

# IBM International Program License Agreement

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## Part 2 - Country-unique Terms

For licenses granted in the countries specified below, the following terms replace or modify the referenced terms in Part 1. All terms in Part 1 that are not changed by these amendments remain unchanged and in effect. This Part 2 is organized as follows:

- Multiple country amendments to Part 1, Section 14 (Governing Law and Jurisdiction);
- Americas country amendments to other Agreement terms;
- Asia Pacific country amendments to other Agreement terms; and
- Europe, Middle East, and Africa country amendments to other Agreement terms.

### Multiple country amendments to Part 1, Section 14 (Governing Law and Jurisdiction)

#### 14.1 Governing Law

*The phrase “the laws of the country in which Licensee obtained the Program license” in the first paragraph of 14.1 Governing Law is replaced by the following phrases in the countries below:*

#### AMERICAS

- (1) in **Canada**: the laws in the Province of Ontario;
- (2) in **Mexico**: the federal laws of the Republic of Mexico;
- (3) in the **United States, Anguilla, Antigua/Barbuda, Aruba, British Virgin Islands, Cayman Islands, Dominica, Grenada, Guyana, Saint Kitts and Nevis, Saint Lucia, Saint Maarten, and Saint Vincent and the Grenadines**: the laws of the State of New York, United States;
- (4) in **Venezuela**: the laws of the Bolivarian Republic of Venezuela;

#### ASIA PACIFIC

- (5) in **Cambodia and Laos**: the laws of the State of New York, United States;
- (6) in **Australia**: the laws of the State or Territory in which the transaction is performed;
- (7) in **Hong Kong SAR and Macau SAR**: the laws of Hong Kong Special Administrative Region (“SAR”);
- (8) in **Taiwan**: the laws of Taiwan

#### EUROPE, MIDDLE EAST, AND AFRICA

- (9) in **Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan**: the laws of Austria;
- (10) in **Algeria, Andorra, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis and Futuna**: the laws of France;
- (11) in **Estonia, Latvia, and Lithuania**: the laws of Finland;
- (12) in **Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe**: the laws of England; and
- (13) in **South Africa, Namibia, Lesotho and Swaziland**: the laws of the Republic of South Africa.

## 14.2 Jurisdiction

*The following paragraph pertains to jurisdiction and replaces Subsection 14.2 (Jurisdiction) as it applies for those countries identified in bold below:*

All rights, duties, and obligations are subject to the courts of the country in which Licensee obtained the Program license except that in the countries identified below all disputes arising out of or related to this Agreement, including summary proceedings, will be brought before and subject to the exclusive jurisdiction of the following courts of competent jurisdiction:

### AMERICAS

- (1) in **Argentina**: the Ordinary Commercial Court of the city of Buenos Aires,
- (2) in **Brazil**: the court of Rio de Janeiro, RJ;
- (3) in **Chile**: the Civil Courts of Justice of Santiago;
- (4) in **Ecuador**: the civil judges of Quito for executory or summary proceedings (as applicable);
- (5) in **Mexico**: the courts located in Mexico City, Federal District;
- (6) in **Peru**: the judges and tribunals of the judicial district of Lima, Cercado;
- (7) in **Uruguay**: the courts of the city of Montevideo;
- (8) in **Venezuela**: the courts of the metropolitan area of the city of Caracas;

### EUROPE, MIDDLE EAST, AND AFRICA

- (9) in **Austria**: the court of law in Vienna, Austria (Inner-City);
- (10) in **Algeria, Andorra, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, France, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Monaco, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis and Futuna**: the Commercial Court of Paris;
- (11) in **Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe**: the English courts;
- (12) in **South Africa, Namibia, Lesotho and Swaziland**: the High Court in Johannesburg;
- (13) in **Greece**: the competent court of Athens;
- (14) in **Israel**: the courts of Tel Aviv-Jaffa;
- (15) in **Italy**: the courts of Milan;
- (16) in **Portugal**: the courts of Lisbon;
- (17) in **Spain**: the courts of Madrid; and
- (18) in **Turkey**: the Istanbul Central Courts and Execution Directorates of Istanbul, the Republic of Turkey.

## 14.3 Arbitration

*The following paragraph is added as a new Subsection 14.3 (Arbitration) as it applies for those countries identified in bold below. The provisions of this Subsection 14.3 prevail over those of Subsection 14.2 (Jurisdiction) to the extent permitted by the applicable governing law and rules of procedure:*

### ASIA PACIFIC

- (1) In **Cambodia, India, Laos, Philippines, and Vietnam**:  
Disputes arising out of or in connection with this Agreement will be finally settled by arbitration which will be held in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Center (“SIAC Rules”) then in effect. The arbitration award will be final and binding for the parties without appeal and will be in writing and set forth the findings of fact and the conclusions of law.



The number of arbitrators will be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties will appoint a third arbitrator who will act as chairman of the proceedings. Vacancies in the post of chairman will be filled by the president of the SIAC. Other vacancies will be filled by the respective nominating party. Proceedings will continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator will be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings will be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

(2) **In the People's Republic of China:**

In case no settlement can be reached, the disputes will be submitted to China International Economic and Trade Arbitration Commission for arbitration according to the then effective rules of the said Arbitration Commission. The arbitration will take place in Beijing and be conducted in Chinese. The arbitration award will be final and binding on both parties. During the course of arbitration, this agreement will continue to be performed except for the part which the parties are disputing and which is undergoing arbitration.

(3) **In Indonesia:**

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.

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration that shall be held in Jakarta, Indonesia in accordance with the rules of Board of the Indonesian National Board of Arbitration (Badan Arbitrase Nasional Indonesia or "BANI") then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the chairman of the BANI. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English and/or Indonesian language.

**EUROPE, MIDDLE EAST, AND AFRICA**

(4) **In Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan:**

All disputes arising out of this Agreement or related to its violation, termination or nullity will be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Center of the Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with these rules. The arbitration will be held in Vienna, Austria, and the official language of the proceedings will be English. The decision of the arbitrators will be final and binding upon both parties. Therefore, pursuant to paragraph 598 (2) of the Austrian Code of Civil Procedure, the parties expressly waive the application of paragraph 595 (1) figure 7 of

the Code. IBM may, however, institute proceedings in a competent court in the country of installation.

(5) In **Estonia, Latvia, and Lithuania:**

All disputes arising in connection with this Agreement will be finally settled in arbitration that will be held in Helsinki, Finland in accordance with the arbitration laws of Finland then in effect. Each party will appoint one arbitrator. The arbitrators will then jointly appoint the chairman. If arbitrators cannot agree on the chairman, then the Central Chamber of Commerce in Helsinki will appoint the chairman.

## **AMERICAS COUNTRY AMENDMENTS**

### **CANADA**

#### **10.1 Items for Which IBM May be Liable**

*The following replaces Item 1 in the first paragraph of this Subsection 10.1 (Items for Which IBM May be Liable):*

1) damages for bodily injury (including death) and physical harm to real property and tangible personal property caused by IBM's negligence; and

#### **13. General**

*The following replaces Item 13.d:*

d. Licensee agrees to comply with all applicable export and import laws and regulations, including those of that apply to goods of United States origin and that prohibit or limit export for certain uses or to certain users.

*The following replaces Item 13.i:*

i. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is IBM responsible for any third party claims against Licensee except as permitted by the Limitation of Liability section above for bodily injury (including death) or physical harm to real or tangible personal property caused by IBM's negligence for which IBM is legally liable to that third party.

*The following is added as Item 13.m:*

m. For purposes of this Item 13.m, "Personal Data" refers to information relating to an identified or identifiable individual made available by one of the parties, its personnel or any other individual to the other in connection with this Agreement. The following provisions apply in the event that one party makes Personal Data available to the other:

(1) General

- (a) Each party is responsible for complying with any obligations applying to it under applicable Canadian data privacy laws and regulations ("Laws").
- (b) Neither party will request Personal Data beyond what is necessary to fulfill the purpose(s) for which it is requested. The purpose(s) for requesting Personal Data must be reasonable. Each party will agree in advance as to the type of Personal Data that is required to be made available.

(2) Security Safeguards

- (a) Each party acknowledges that it is solely responsible for determining and communicating to the other the appropriate technological, physical and organizational security measures required to protect Personal Data.
- (b) Each party will ensure that Personal Data is protected in accordance with the security safeguards communicated and agreed to by the other.
- (c) Each party will ensure that any third party to whom Personal Data is transferred is bound by the applicable terms of this section.
- (d) Additional or different services required to comply with the Laws will be deemed a request for new services.

- (3) Use  
Each party agrees that Personal Data will only be used, accessed, managed, transferred, disclosed to third parties or otherwise processed to fulfill the purpose(s) for which it was made available.
- (4) Access Requests
  - (a) Each party agrees to reasonably cooperate with the other in connection with requests to access or amend Personal Data.
  - (b) Each party agrees to reimburse the other for any reasonable charges incurred in providing each other assistance.
  - (c) Each party agrees to amend Personal Data only upon receiving instructions to do so from the other party or its personnel.
- (5) Retention  
Each party will promptly return to the other or destroy all Personal Data that is no longer necessary to fulfill the purpose(s) for which it was made available, unless otherwise instructed by the other or its personnel or required by law.
- (6) Public Bodies Who Are Subject to Public Sector Privacy Legislation  
For Customers who are public bodies subject to public sector privacy legislation, this Item 13.m applies only to Personal Data made available to Customer in connection with this Agreement, and the obligations in this section apply only to Customer, except that: 1) section (2)(a) applies only to IBM; 2) sections (1)(a) and (4)(a) apply to both parties; and 3) section (4)(b) and the last sentence in (1)(b) do not apply.

## PERU

### 10. Limitation of Liability

*The following is added to the end of this Section 10 (Limitation of Liability):*

Except as expressly required by law without the possibility of contractual waiver, Licensee and IBM intend that the limitation of liability in this Limitation of Liability section applies to damages caused by all types of claims and causes of action. If any limitation on or exclusion from liability in this section is held by a court of competent jurisdiction to be unenforceable with respect to a particular claim or cause of action, the parties intend that it nonetheless apply to the maximum extent permitted by applicable law to all other claims and causes of action.

#### 10.1 Items for Which IBM May be Liable

*The following is added at the end of this Subsection 10.1:*

In accordance with Article 1328 of the Peruvian Civil Code, the limitations and exclusions specified in this section will not apply to damages caused by IBM's willful misconduct ("dolo") or gross negligence ("culpa inexcusable").

## UNITED STATES OF AMERICA:

### 5. Taxes

*The following is added at the end of this Section 5 (Taxes)*

For Programs delivered electronically in the United States for which Licensee claims a state sales and use tax exemption, Licensee agrees not to receive any tangible personal property (e.g., media and publications) associated with the electronic program.

Licensee agrees to be responsible for any sales and use tax liabilities that may arise as a result of Licensee's subsequent redistribution of Programs after delivery by IBM.

### 13. General

*The following is added to Section 13 as Item 13.m:*

U.S. Government Users Restricted Rights - Use, duplication or disclosure is restricted by the GSA IT Schedule 70 Contract with the IBM Corporation.

*The following is added to Item 13.f:*

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

## ASIA PACIFIC COUNTRY AMENDMENTS

### AUSTRALIA:

#### 5. Taxes

*The following sentences replace the first two sentences of Section 5 (Taxes):*

If any government or authority imposes a duty, tax (other than income tax), levy, or fee, on this Agreement or on the Program itself, that is not otherwise provided for in the amount payable, Licensee agrees to pay it when IBM invoices Licensee. If the rate of GST changes, IBM may adjust the charge or other amount payable to take into account that change from the date the change becomes effective.

#### 8.1 Limited Warranty

*The following is added Subsection 8.1 (Limited Warranty):*

The warranties specified this Section are in addition to any rights Licensee may have under the Competition and Consumer Act 2010 or other legislation and are only limited to the extent permitted by the applicable legislation.

#### 10.1 Items for Which IBM May be Liable

*The following is added to Subsection 10.1 (Items for Which IBM Maybe Liable):*

Where IBM is in breach of a condition or warranty implied by the Competition and Consumer Act 2010, IBM's liability is limited to the repair or replacement of the goods, or the supply of equivalent goods. Where that condition or warranty relates to right to sell, quiet possession or clear title, or the goods are of a kind ordinarily obtained for personal, domestic or household use or consumption, then none of the limitations in this paragraph apply.

### HONG KONG SAR, MACAU SAR, AND TAIWAN

*As applies to licenses obtained in Taiwan and the special administrative regions, phrases throughout this Agreement containing the word "country" (for example, "the country in which the original Licensee was granted the license" and "the country in which Licensee obtained the Program license") are replaced with the following:*

- (1) In **Hong Kong SAR**: "Hong Kong SAR"
- (2) In **Macau SAR**: "Macau SAR" except in the Governing Law clause (Section 14.1)
- (3) In **Taiwan**: "Taiwan."

### INDIA

#### 10.1 Items for Which IBM May be Liable

*The following replaces the terms of Items 1 and 2 of the first paragraph:*

1) liability for bodily injury (including death) or damage to real property and tangible personal property will be limited to that caused by IBM's negligence; and 2) as to any other actual damage arising in any situation involving nonperformance by IBM pursuant to, or in any way related to the subject of this Agreement, IBM's liability will be limited to the charge paid by Licensee for the individual Program that is the subject of the claim.

#### 13. General

*The following replaces the terms of Item 13.g:*

If no suit or other legal action is brought, within three years after the cause of action arose, in respect of any claim that either party may have against the other, the rights of the concerned party in respect of such claim will be forfeited and the other party will stand released from its obligations in respect of such claim.

### INDONESIA

#### 3.3 Term and Termination

*The following is added to the last paragraph:*

Both parties waive the provision of article 1266 of the Indonesian Civil Code, to the extent the article provision requires such court decree for the termination of an agreement creating mutual obligations.

## **JAPAN**

### **13. General**

*The following is inserted after Item 13.f:*

Any doubts concerning this Agreement will be initially resolved between us in good faith and in accordance with the principle of mutual trust.

## **MALAYSIA**

### **10.2 Items for Which IBM Is not Liable**

*The word "SPECIAL" in Item 10.2b is deleted.*

## **NEW ZEALAND**

### **8.1 Limited Warranty**

*The following is added:*

The warranties specified in this Section are in addition to any rights Licensee may have under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited. The Consumer Guarantees Act 1993 will not apply in respect of any goods which IBM provides, if Licensee requires the goods for the purposes of a business as defined in that Act.

### **10. Limitation of Liability**

*The following is added:*

Where Programs are not obtained for the purposes of a business as defined in the Consumer Guarantees Act 1993, the limitations in this Section are subject to the limitations in that Act.

## **PEOPLE'S REPUBLIC OF CHINA**

### **4. Charges**

*The following is added:*

All banking charges incurred in the People's Republic of China will be borne by Licensee and those incurred outside the People's Republic of China will be borne by IBM.

## **PHILIPPINES**

### **10.2 Items for Which IBM Is not Liable**

*The following replaces the terms of Item 10.2b:*

b. special (including nominal and exemplary damages), moral, incidental, or indirect damages or for any economic consequential damages; or

## **SINGAPORE**

### **10.2 Items for Which IBM Is not Liable**

*The words "SPECIAL" and "ECONOMIC" are deleted from Item 10.2b.*

### **13. General**

*The following replaces the terms of Item 13.i:*

Subject to the rights provided to IBM's suppliers and Program developers as provided in Section 10 above (Limitation of Liability), a person who is not a party to this Agreement will have no right under the Contracts (Right of Third Parties) Act to enforce any of its terms.

## **TAIWAN**

### **8.1 Limited Warranty**

*The last paragraph is deleted.*

### **10.1 Items for Which IBM May Be Liable**

*The following sentences are deleted*

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.

## EUROPE, MIDDLE EAST, AFRICA (EMEA) COUNTRY AMENDMENTS

### EUROPEAN UNION MEMBER STATES

#### 8. Warranty and Exclusions

*The following is added to Section 8 (Warranty and Exclusion):*

In the European Union ("EU"), consumers have legal rights under applicable national legislation governing the sale of consumer goods. Such rights are not affected by the provisions set out in this Section 8 Warranty and Exclusions. The territorial scope of the Limited Warranty is worldwide.

#### EU MEMBER STATES AND THE COUNTRIES IDENTIFIED BELOW

**Iceland, Liechtenstein, Norway, Switzerland, Turkey, and any other European country that has enacted local data privacy or protection legislation similar to the EU model.**

#### 13. General

*The following replaces Item 13.e:*

- (1) **Definitions** – For the purposes of this Item 13.e, the following additional definitions apply:
  - (a) **Business Contact Information** – business-related contact information disclosed by Licensee to IBM, including names, job titles, business addresses, telephone numbers and email addresses of Licensee's employees and contractors. For Austria, Italy and Switzerland, Business Contact Information also includes information about Customer and its contractors as legal entities (for example, Customer's revenue data and other transactional information)
  - (b) **Business Contact Personnel** – Licensee employees and contractors to whom the Business Contact Information relates.
  - (c) **Data Protection Authority** – the authority established by the Data Protection and Electronic Communications Legislation in the applicable country or, for non-EU countries, the authority responsible for supervising the protection of personal data in that country, or (for any of the foregoing) any duly appointed successor entity thereto.
  - (d) **Data Protection & Electronic Communications Legislation** – (i) the applicable local legislation and regulations in force implementing the requirements of EU Directive 95/46/EC (on the protection of individuals with regard to the processing of personal data and on the free movement of such data) and of EU Directive 2002/58/EC (concerning the processing of personal data and the protection of privacy in the electronic communications sector); or (ii) for non-EU countries, the legislation and/or regulations passed in the applicable country relating to the protection of personal data and the regulation of electronic communications involving personal data, including (for any of the foregoing) any statutory replacement or modification thereof.
  - (e) **IBM Group** – International Business Machines Corporation of Armonk, New York, USA, its subsidiaries, and their respective Business Partners and subcontractors.
- (2) Licensee authorises IBM:
  - (a) to process and use Business Contact Information within IBM Group in support of Licensee including the provision of support services, and for the purpose of furthering the business relationship between Licensee and IBM Group, including, without limitation, contacting Business Contact Personnel (by email or otherwise) and marketing IBM Group products and services (the "Specified Purpose"); and
  - (b) to disclose Business Contact Information to other members of IBM Group in pursuit of the Specified Purpose only.
- (3) IBM agrees that all Business Contact Information will be processed in accordance with the Data Protection & Electronic Communications Legislation and will be used only for the Specified Purpose.
- (4) To the extent required by the Data Protection & Electronic Communications Legislation, Licensee represents that (a) it has obtained (or will obtain) any consents from (and has issued (or will issue) any notices to) the Business Contact Personnel as are necessary in order to enable IBM Group to process and use the Business Contact Information for the Specified Purpose.

- (5) Licensee authorizes IBM to transfer Business Contact Information outside the European Economic Area, provided that the transfer is made on contractual terms approved by the Data Protection Authority or the transfer is otherwise permitted under the Data Protection & Electronic Communications Legislation.

## **AUSTRIA**

### **8.2 Exclusions**

*The following is deleted from the first paragraph:*

#### **MERCHANTABILITY, SATISFACTORY QUALITY**

### **10. Limitation of Liability**

*The following is added:*

The following limitations and exclusions of IBM's liability do not apply for damages caused by gross negligence or willful misconduct.

#### **10.1 Items for Which IBM May Be Liable**

*The following replaces the first sentence in the first paragraph:*

Circumstances may arise where, because of a default by IBM in the performance of its obligations under this Agreement or other liability, Licensee is entitled to recover damages from IBM.

*In the second sentence of the first paragraph, delete entirely the parenthetical phrase:*

“(including fundamental breach, negligence, misrepresentation, or other contract or tort claim)”.

#### **10.2 Items for Which IBM Is Not Liable**

*The following replaces Item 10.2b:*

- b. indirect damages or consequential damages; or

## **BELGIUM, FRANCE, ITALY, AND LUXEMBOURG**

### **10. Limitation of Liability**

*The following replaces the terms of Section 10 (Limitation of Liability) in its entirety:*

Except as otherwise provided by mandatory law:

#### **10.1 Items for Which IBM May Be Liable**

IBM's entire liability for all claims in the aggregate for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this Agreement or due to any other cause related to this Agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if IBM is at fault) or of such cause, for a maximum amount equal to the charges (if the Program is subject to fixed term charges, up to twelve months' charges) Licensee paid for the Program that has caused the damages.

The above limitation will not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which IBM is legally liable.

#### **10.2 Items for Which IBM Is Not Liable**

**UNDER NO CIRCUMSTANCES IS IBM OR ANY OF ITS PROGRAM DEVELOPERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL, EXEMPLARY OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; AND / OR 3) LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES.**

#### **10.3 Suppliers and Program Developers**

The limitation and exclusion of liability herein agreed applies not only to the activities performed by IBM but also to the activities performed by its suppliers and Program developers, and represents the maximum amount for which IBM as well as its suppliers and Program developers are collectively responsible.

## **GERMANY**

### **8.1 Limited Warranty**

*The following is inserted at the beginning of Section 8.1:*

The Warranty Period is twelve months from the date of delivery of the Program to the original Licensee.

### **8.2 Exclusions**

*Section 8.2 is deleted in its entirety and replaced with the following:*

Section 8.1 defines IBM's entire warranty obligations to Licensee except as otherwise required by applicable statutory law.

## **10. Limitation of Liability**

*The following replaces the Limitation of Liability section in its entirety:*

- a. IBM will be liable without limit for 1) loss or damage caused by a breach of an express guarantee; 2) damages or losses resulting in bodily injury (including death); and 3) damages caused intentionally or by gross negligence.
- b. In the event of loss, damage and frustrated expenditures caused by slight negligence or in breach of essential contractual obligations, IBM will be liable, regardless of the basis on which Licensee is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), per claim only up to the greater of 500,000 euro or the charges (if the Program is subject to fixed term charges, up to 12 months' charges) Licensee paid for the Program that caused the loss or damage. A number of defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one default.
- c. In the event of loss, damage and frustrated expenditures caused by slight negligence, IBM will not be liable for indirect or consequential damages, even if IBM was informed about the possibility of such loss or damage.
- d. In case of delay on IBM's part: 1) IBM will pay to Licensee an amount not exceeding the loss or damage caused by IBM's delay and 2) IBM will be liable only in respect of the resulting damages that Licensee suffers, subject to the provisions of Items a and b above.

## **13. General**

*The following replaces the provisions of 13.g:*

Any claims resulting from this Agreement are subject to a limitation period of three years, except as stated in Section 8.1 (Limited Warranty) of this Agreement.

*The following replaces the provisions of 13.i:*

No right or cause of action for any third party is created by this Agreement, nor is IBM responsible for any third party claims against Licensee, except (to the extent permitted in Section 10 (Limitation of Liability)) for: i) bodily injury (including death); or ii) damage to real or tangible personal property for which (in either case) IBM is legally liable to that third party.

## **IRELAND**

### **8.2 Exclusions**

*The following paragraph is added:*

Except as expressly provided in these terms and conditions, or Section 12 of the Sale of Goods Act 1893 as amended by the Sale of Goods and Supply of Services Act, 1980 (the "1980 Act"), all conditions or warranties (express or implied, statutory or otherwise) are hereby excluded including, without limitation, any warranties implied by the Sale of Goods Act 1893 as amended by the 1980 Act (including, for the avoidance of doubt, Section 39 of the 1980 Act).

## **IRELAND AND UNITED KINGDOM**

### **2. Agreement Structure**

*The following sentence is added:*

Nothing in this paragraph shall have the effect of excluding or limiting liability for fraud.



## **10.1 Items for Which IBM May Be Liable**

*The following replaces the first paragraph of the Subsection:*

For the purposes of this section, a “Default” means any act, statement, omission or negligence on the part of IBM in connection with, or in relation to, the subject matter of an Agreement in respect of which IBM is legally liable to Licensee, whether in contract or in tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default.

Circumstances may arise where, because of a Default by IBM in the performance of its obligations under this Agreement or other liability, Licensee is entitled to recover damages from IBM.

Regardless of the basis on which Licensee is entitled to claim damages from IBM and except as expressly required by law without the possibility of contractual waiver, IBM's entire liability for any one Default will not exceed the amount of any direct damages, to the extent actually suffered by Licensee as an immediate and direct consequence of the default, up to the greater of (1) 500,000 euro (or the equivalent in local currency) or (2) 125% of the charges (if the Program is subject to fixed term charges, up to 12 months' charges) for the Program that is the subject of the claim.

Notwithstanding the foregoing, the amount of any damages for bodily injury (including death) and damage to real property and tangible personal property for which IBM is legally liable is not subject to such limitation.

## **10.2 Items for Which IBM is Not Liable**

*The following replaces Items 10.2b and 10.2c:*

- b. special, incidental, exemplary, or indirect damages or consequential damages; or
- c. wasted management time or lost profits, business, revenue, goodwill, or anticipated savings.

## Part 1- General Terms

This IBM International Agreement for Acquisition of Software Maintenance (called the "Agreement") governs Customer's acquisition of IBM software maintenance ("Software Maintenance"), which may also be referred to as subscription and support ("S&S") in connection with IBM System z Programs. Software Maintenance is provided only for those Eligible Programs licensed by Customer within its Enterprise. Acquisition of Software Maintenance in quantities greater than the number for which Customer is licensed does not create or imply any greater license authorization. An "Enterprise" in this Agreement is any legal entity (such as a corporation) and the subsidiaries it owns by more than 50 percent. "Eligible Programs" are described below.

IBM has signed agreements with certain organizations (called "IBM Business Partners") to promote and market Software Maintenance offerings. When Customer orders Software Maintenance marketed to Customer by IBM Business Partners, IBM will provide Software Maintenance to Customer under the terms of this Agreement. IBM is not responsible for 1) the actions of IBM Business Partners, 2) any additional obligations they have to Customer or 3) any products or services that they supply to Customer under their agreements. In the event that Customer's IBM Business Partner is no longer able to market Software Maintenance, for any reason, Customer may continue to receive Software Maintenance under the terms of this Agreement by instructing IBM to transfer administration of Software Maintenance to either 1) another IBM Business Partner of Customer's choice (who may require Customer to first execute one of their agreements) who is approved to market Software Maintenance to Customer, or 2) IBM.

Section 2 of the Agreement contains terms that are specific to a particular hardware platform. The terms in the remaining sections are in addition to those in section 2, and apply to all platforms.

### 1. Incorporated Terms

Eligible Programs to which this Agreement applies are licensed under the International Program License Agreement ("IPLA") unless otherwise specified by IBM. A copy of the IPLA is provided with each Program in the Eligible Program's directory or in a library identified as "License," a booklet, or on a CD. Sections of the IPLA entitled "Licensee Data and Databases," "Limitation of Liability," "Compliance Verification," "General," and "Geographic Scope and Governing Law," including any associated Country-unique Terms applicable to those sections are also part of this Agreement, subject to the following:

- a. If the IPLA version provided with the IBM Eligible Program is not version 13 or higher (the version number is indicated by the last two digits in the form number—for example, the "13" in Z125-3301-13), then version 13 applies. Customer may obtain a copy of version 13 from IBM or its resellers and on the Internet at [www.ibm.com/software/sla](http://www.ibm.com/software/sla); and
- b. the following changes:
  - (1) The terms "Program" and "Program license(s)" are replaced by the term "Software Maintenance."
  - (2) The term "Licensee" is replaced by the term "Customer."
  - (3) The phrase "the laws of the country in which Customer acquired the Program license" in the Governing Law subsection is replaced by "the laws of the country in which Software Maintenance is acquired."
  - (4) The statement, "All of our rights, duties, and obligations are subject to the courts of the country in which Customer acquired the Program license" in the Jurisdiction subsection is replaced by the statement, "All rights, duties, and obligations of each of the parties are valid only in the country in which Software Maintenance is acquired or, if IBM agrees, the country where Software Maintenance is used."

Capitalized terms used but not defined in this Agreement have the meaning given to them in the IPLA.

### 2. Software Maintenance

- a. For Eligible Programs running on an IBM System z platform or equivalent:

- (1) **Eligible Programs:** Programs for which S&S is available are listed at [www-1.ibm.com/servers/eserver/zseries/library/swpriceinfo](http://www-1.ibm.com/servers/eserver/zseries/library/swpriceinfo). Click on IPLA Subscription and Support Addenda.
- (2) **S&S Period:** One year. When Customer orders S&S with a Program, the initial S&S Period begins on the date that IBM makes the Program available to Customer.
- (3) **Early Termination of an S&S Period for a Program:** While Customer may terminate an S&S Period, IBM does not issue a credit or refund for the unused portion of an S&S Period.
- (4) **Automatic Renewal:** If, by the last day of the current S&S Period, IBM has received no written notification from Customer or Customer's Business Partner, as applicable, that Customer does not want to renew S&S for a Program, IBM will automatically renew that expiring S&S Period under the Agreement terms and charges in effect on that date, subject to applicable law. Subsequent S&S Periods begin on the day following the end of the preceding S&S Period.
- (5) **S&S Period Adjustment:** When Customer acquires S&S initially or resumes it, or prior to the end of the then current S&S Period, Customer may request that the S&S Period duration is adjusted to end at a month of Customer's choice. If Customer does not choose a date, IBM will inform Customer of the end date. The "S&S ("Software Maintenance") Charge" (see item (1) in subsection b. Software Maintenance acquired directly from IBM of section 3. **Charges and Payment** below) will be pro-rated accordingly.
- (6) **S&S:** During the S&S Period, for the unmodified portion of a Program, and to the extent problems can be recreated in the specified operating environment, IBM will provide the following:
  - (a) defect correction information, a restriction, or a bypass;
  - (b) Program Updates: periodic releases of collections of code corrections, fixes, functional enhancements and new versions and releases to the Program and documentation; and
  - (c) Technical Assistance: a reasonable amount of remote assistance via telephone or electronically to address suspected Program defects. Technical assistance is available from the IBM support center in the Customer's geography. Additional details regarding Technical Assistance, including IBM contact information (see Appendix C: Contact Information), are provided in the IBM Software Support Handbook at <http://www14.software.ibm.com/webapp/set2/sas/f/handbook/home.html>

S&S does not include assistance for 1) the design and development of applications, 2) Customer's use of Programs in other than their specified operating environment, or 3) failures caused by products for which IBM is not responsible under this Agreement.

S&S is provided only if the Program is within its support timeframe as specified in the Software Support Lifecycle policy for the Program.
- (7) **Resumption Fee:** A charge to resume S&S after Customer either (a) declined S&S at the time Customer acquired the license for a Program or (b) terminated S&S. This charge is equal to the total of all S&S Charges that Customer would have paid during the lapsed interval. An S&S Period in such an instance begins on the date that IBM accepts Customer's order.
- (8) **S&S Upgrade:** If Customer upgrades S&S due to an increase in the level of use of an Eligible Program, any increase to the S&S Charge will be pro-rated to the end of the current S&S Period.

b. For Eligible Programs running on IBM distributed platforms (e.g., IBM Power Systems, IBM System i, IBM System p, IBM System x, IBM System Storage, and IBM Retail Store Solutions) or equivalent:

- (1) **Eligible Programs:** Unless otherwise provided by IBM, Eligible Programs for which Software Maintenance is available are listed at [www.ibm.com/servers/eserver/iseries/sftsol/subscript2.htm](http://www.ibm.com/servers/eserver/iseries/sftsol/subscript2.htm) or may be obtained from Customer's IBM marketing representative or IBM Business Partner.
- (2) **Initial Software Maintenance Period:** Customer must choose either one year, the charge for which may be included with the Eligible Program, or, for an additional charge, three years of Software Maintenance at the time Customer orders an Eligible Program. The Initial Software Maintenance Period begins on the date that IBM makes the Program available to Customer. If the Eligible Program is part of an IBM Software Maintenance for OS/400, i5/OS, and selected

Programs, then the Initial Software Maintenance Period duration will be adjusted so that the expiration coincides with that of the other Eligible Programs in the group. In such event, the Initial Software Maintenance Period may be less than one year.

- (3) **Subsequent Software Maintenance Periods (under this Agreement):** One or three years, at Customer's option.
- (4) **Early Termination of a Software Maintenance Period for a Program:** While Customer may terminate a Software Maintenance Period, IBM does not issue a credit or refund for the unused portion of a Software Maintenance Period.
- (5) **Renewal:**
  - (a) It is Customer's responsibility to renew Software Maintenance at the end of each Software Maintenance Period. IBM or Customer's IBM Business Partner will renew expiring Software Maintenance under terms and charges made available to Customer prior to expiration of the then current Software Maintenance Period, if it receives Customer's order to renew (e.g., order form, order letter, purchase order) not later than the expiration date. Subsequent Software Maintenance Periods under this Agreement (or other terms and charges made available to Customer prior to expiration of the then current Software Maintenance Period) begin on the day following the end of the preceding Software Maintenance Period. If Customer does not renew Software Maintenance by the expiration date of the Software Maintenance Period but subsequently wishes to acquire Software Maintenance, a Software Maintenance After License Fee, as set forth below, will apply.
  - (b) For Eligible Programs running on Power Systems, System i or System p platforms, if the Customer specifies in advance, IBM, even if it does not receive Customer's order to renew, will continue to provide Software Maintenance under terms and charges made available to Customer prior to expiration of the current Software Maintenance Period.
- (6) **Software Maintenance:** During the Software Maintenance Period:
  - (a) IBM makes available to Customer the most current commercially available version, release, or update to all of the Eligible Programs for which Customer acquires Software Maintenance under this Agreement, should any be made available. For Power Systems, System i, and System p Programs under this Agreement, Customer may obtain upgrades to any more recent commercially available version, release or update. Customer's right to upgrade to a new version, release or update under this subsection may only be exercised during the Software Maintenance Period and expires at the end of the Period if Software Maintenance is not renewed.
  - (b) For IBM Software Maintenance for OS/400, i5/OS, and selected Programs, Customer is entitled to upgrade an Eligible Program to a specific version or release only one time per machine, notwithstanding 2.b.(6)(a) above.
  - (c) IBM provides Customer technical assistance for Customer's 1) routine, short duration installation and usage (how-to) questions; and 2) code-related questions.
  - (d) IBM provides assistance via telephone and, if available, electronic access, to only Customer's information systems (IS) technical support personnel during the normal business hours (IBM published prime shift hours) of IBM support center in the Customer's geography. This assistance is not available to Customer's end users. IBM provides Severity 1 assistance 24 hours a day, every day of the year. Additional details regarding assistance, including the definition of Severity 1, are provided in the IBM Software Support Handbook at <http://www14.software.ibm.com/webapp/set2/sas/f/handbook/home.html>.
  - (e) Software Maintenance does not include assistance for 1) the design and development of applications, 2) Customer's use of Eligible Programs in other than their specified operating environment, or 3) failures caused by products for which IBM is not responsible under this Agreement.
  - (f) And only if the Program is within its support timeframe as specified in the Software Support Lifecycle policy for the Program.

- (7) **Software Maintenance After License Fee** (which may be referred to as “Maintenance After License” or “MAL” in connection with System i platforms and as “After License Charge” or “ALC” in connection with System p platforms):
- (a) Software Maintenance After License Fee is the charge to resume Software Maintenance if Customer
    - (i) did not renew it before the end of the then current Software Maintenance Period; or
    - (ii) terminated it.
  - (b) The Software Maintenance Period for a resumption of Software Maintenance begins on the date that IBM accepts Customer’s order.
  - (c) The Software Maintenance After License Fee applies when Customer acquires a used Power Systems, System i, or System p machine and wishes to acquire Software Maintenance for OS/400, i5/OS, and selected Programs, unless
    - (i) the machine has the most current version and release of the appropriate operating system installed; and
    - (ii) Customer acquires Software Maintenance within 30 days of Customer’s acquisition of the machine.
  - (d) The Software Maintenance After License Fee applies when Customer acquires a used Power Systems, System i, or System p machine and wishes to acquire Software Maintenance for the AIX operating system or AIX selected Programs unless
    - (i) the machine has a current version and release of the AIX operating system or AIX selected Programs installed and
    - (ii) Customer acquires Software Maintenance within 30 days of Customer’s acquisition of the machine.
  - (e) For Software Maintenance for other Eligible Programs not otherwise covered by this subsection 2.b(7), a Software Maintenance After License Fee may apply to Customers acquiring used Power System, System i, or System p machines. Please contact your IBM representative, or where applicable, an IBM Business Partner or IBM Call Center, for further information.
- (8) **Transfer of IBM Software Maintenance on Power Systems, System i and System p machines:** In addition to the provisions of section 4. “Software Maintenance Transferability” below, Software Maintenance for Programs running on Power Systems, System i or System p platforms
- (a) applies to a designated machine (type, model and serial number);
  - (b) may be transferred only to another machine that is licensed for the same operating system at the same or a more recent release level; and
  - (c) may incur an increase in the Software Maintenance Charge if the "transferred to" machine is of a larger capacity.

### 3. **Charges and Payment**

If Customer returns an Eligible Program for refund as allowed under its license terms, IBM or Customer’s IBM Business Partner will terminate, and refund any charges paid for, Software Maintenance ordered with the Program. IBM does not give refunds for Software Maintenance without the return of the associated Eligible Program.

- a. **Software Maintenance acquired from an IBM Business Partner**  
When Customer acquires Software Maintenance from an IBM Business Partner, the IBM Business Partner sets the charges and the terms governing charges. Customer will pay Customer’s IBM Business Partner directly.
- b. **Software Maintenance acquired directly from IBM**
  - (1) Charges for Software Maintenance during each Software Maintenance Period, called the Software Maintenance Charge, are invoiced in advance.

- (2) The Software Maintenance Charge may vary, depending on, for example, the machine (type/model), the Eligible Program or group of Eligible Programs, or level of use of the Eligible Program.
- (3) IBM may increase the Software Maintenance Charge without notice. An increase will not apply to Customer if IBM receives Customer's order for Software Maintenance before the announcement date of the increase and within three months of receipt by IBM of Customer's order IBM makes Software Maintenance available to Customer. Customer receives the benefit of a decrease in the Software Maintenance Charge for amounts which become due on or after the effective date of the decrease.
- (4) Amounts are due and payable upon receipt of invoice. Customer agrees to pay accordingly, including any late payment fee.
- (5) If any authority imposes a duty, tax, levy or fee, excluding those based on IBM's net income, upon Software Maintenance IBM supplies under this Agreement, then Customer agrees to pay that amount as specified in the invoice, unless Customer supplies exemption documentation.

#### **4. Software Maintenance Transferability**

Customer may transfer Software Maintenance only to an entity that is within Customer's Enterprise and located within the country in which Software Maintenance is acquired, provided that the entity receiving the Eligible Program agrees to the terms of this Agreement.

#### **5. Customer's Responsibilities**

Customer agrees that when Customer acquires Software Maintenance for an Eligible Program:

- a. Customer will acquire Software Maintenance for the same level of use as that at which the Eligible Program is authorized. Partial coverage for a particular Eligible Program is not offered;
- b. Customer is responsible for the results obtained from the use of the Software Maintenance;
- c. Customer will, at IBM's request, allow IBM to remotely access Customer's system to assist Customer in isolating the software problem cause;
- d. Customer remains responsible for adequately protecting Customer's system and all data contained in it whenever IBM remotely accesses it with Customer's permission to assist Customer in isolating the software problem cause;
- e. Customer will provide sufficient, free, and safe access to Customer's facilities for IBM to fulfill its obligations; and
- f. except as permitted by section 4. Software Maintenance Transferability above, Customer will not assign, or otherwise transfer, this Agreement or Customer's rights under this Agreement, or delegate Customer's obligations, without IBM's prior written consent. Any attempt to do so is void. The assignment of this Agreement, in whole or in part, within the Enterprise of which either of us 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 under this Agreement 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.

#### **6. Warranty for Software Maintenance**

IBM warrants that Software Maintenance will be provided using reasonable care and skill and according to its description in the IBM Software Support Handbook at <http://www14.software.ibm.com/webapp/set2/sas/f/handbook/home.html>. Customer agrees to provide timely written notice of any failure to comply with this warranty so that IBM can take corrective action.

The warranties will be voided by misuse, accident, modification, unsuitable physical or operating environment, operation in other than the specified operating environment, or failure caused by a product for which IBM is not responsible.

**EXCEPT AS EXPRESSLY REQUIRED BY LAW WITHOUT THE POSSIBILITY OF CONTRACTUAL WAIVER OR LIMITATION, THESE WARRANTIES ARE CUSTOMER'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF SATISFACTORY QUALITY, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.**

IBM does not warrant uninterrupted or error-free provision of Software Maintenance or that IBM will correct all defects.

## **7. Changes to Agreement Terms**

IBM may change the terms of this Agreement by giving Customer three months' prior written notice by letter or e-mail, either directly to Customer or through Customer's IBM Business Partner. These changes are not retroactive and apply, as of the effective date IBM specifies in the notice, only to new orders and renewals.

Otherwise, for a change to be valid, both of us must sign it.

## **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 withdraw Software Maintenance for an Eligible Program by publishing a notice of withdrawal not less than 12 months prior to its effective date. If IBM withdraws Software Maintenance for which Customer has prepaid and IBM has not yet fully provided it to Customer, at its sole discretion IBM will either continue to provide Software Maintenance to Customer until the end of the current Software Maintenance Period or give Customer a prorated refund. Acquisition of Software Maintenance does not extend the period for which an Eligible Program is supported.

Notwithstanding anything to the contrary in this Agreement, if IBM terminates Customer's license for an Eligible Program due to Customer's breach of any of its terms, IBM may also concurrently terminate Software Maintenance for that Eligible Program. In this instance, IBM is not obligated to issue a refund or credit for any unused portion of Software Maintenance.

IBM may withdraw the Software Maintenance offering in its entirety on 12 months' written notice to all then current Software Maintenance customers by letter or e-mail.

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

## **9. Additional Terms**

- a. To assist Customer in isolating the cause of a software problem, IBM may ask Customer to (1) allow IBM to remotely access Customer's system or (2) send customer information or system data to IBM. IBM uses information about errors and problems only to improve its products and services and assist with its provision of Software Maintenance. IBM may use subcontractors and IBM Enterprise entities in other countries for these purposes, and Customer authorizes IBM to do so.

Customer remains responsible for (i) any data and the content of any database Customer makes available to IBM, (ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally-identifiable data), and (iii) backup and recovery of the database and any stored data. Customer will not send or provide to IBM access to personal information and will be responsible for any reasonable costs and other amounts that IBM may incur relating to any such information mistakenly provided to IBM or to the loss or disclosure of such information by IBM, including those arising out of any third party claims.

- b. All information exchanged is nonconfidential. If either of us requires the exchange of confidential information, it will be made under a signed confidentiality agreement.
- c. Each may communicate with the other by electronic means and such communication is acceptable as a signed writing to the extent permissible under applicable law. 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.

This Agreement is the complete agreement regarding Customer's acquisition of Software Maintenance, and replaces any prior oral or written communications between Customer and IBM concerning Software Maintenance. In entering into this Agreement, neither party is relying on any representation that is not specified in this Agreement including without limitation any representations concerning: 1) performance or function of any product or system, other than as expressly warranted in section 6 above; 2) the experiences or recommendations of other parties; or 3) results or savings Customer may achieve. Additional or different terms in any written communication from Customer (such as a purchase order) are void.

Customer accepts the terms of this Agreement without modification by any one of the following means: to the extent permissible under applicable law, by ordering, using, or making payment for Software Maintenance or,

where required by law, signing a transaction document. Software Maintenance becomes subject to this Agreement when IBM or Customer's IBM Business Partner accepts Customer's order or payment. Once in effect, 1) unless prohibited by applicable local law or specified otherwise, any reproduction of this Agreement made by reliable means (for example, photocopy, electronic scan or facsimile) is considered an original and 2) Software Maintenance Customer orders under this Agreement is subject to it.



# International Agreement for Acquisition of Software Maintenance

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## Part 2- Country-unique Terms

### AMERICAS

*The following terms apply to all Americas countries (except Brazil, Canada and the United States) unless a specific country term states otherwise:*

#### 3. Charges and Payment

*In subsection b. Software Maintenance acquired directly from IBM, the following replaces item (4):*

Amounts are due upon receipt of invoice and payable as IBM specifies in a transaction document. The currency for payment of amounts due is US dollars or the equivalent in local currency as follows:

- (a) As long as the country operates in a free currency exchange market, Customer and IBM agree that IBM will accept payment in the applicable country national currency calculated at the country official exchange rate published by the bank specified in a transaction document on the date payment is made.
- (b) If the government of a country establishes any restriction or limitation on its free currency exchange markets, Customer agrees to make payments to IBM in US dollars to a bank account in New York, NY, USA, designated by IBM in the transaction document, provided that such payment is not illegal under country law. If such method of payment is forbidden by country law, Customer agrees to pay the amount indicated in the transaction document in country national currency, calculated at the official exchange rate which is in use for the remittance of dividends and net earnings to foreign investors outside the country.

Customer agrees to pay accordingly, including any late payment fee. The late payment fee is calculated and payable in US dollars at two percent (or the maximum rate allowed by local law if such is less than two percent) of the delinquent amount due per each thirty day period during which any delinquent balance remains unpaid.

**All additional terms apply to the referenced country.**

### BRAZIL

#### 2. Software Maintenance

*In subsection a. For Eligible Programs running on an IBM System z platform,*

*items 2 through and including 5 are deleted in their entirety.*

*In item 6, the phrase "S&S Period" is replaced by the following:*

the period for which Customer has paid for S&S

*In item 8, the phrase "pro-rated to the end of the current S&S Period" is replaced by the following:*

effective on the first day of the following month

#### 3. Charges and Payment

*In subsection b. Software Maintenance acquired directly from IBM, the following replaces item (1):*

For Eligible Programs running on IBM distributed platforms or equivalent, charges for Software Maintenance during each Software Maintenance Period, called the Software Maintenance Charge, are invoiced in advance. For Eligible Programs running on an IBM System z platform or equivalent, charges for Software Maintenance, called the Software Maintenance Charge, are invoiced monthly in advance.

*In subsection b. Software Maintenance acquired directly from IBM, the following replaces item (3):*

IBM may increase charges for Software Maintenance provided under this Agreement. IBM's ability to increase such charges is subject to the requirements of Brazilian law.

*In subsection b. Software Maintenance acquired directly from IBM, the following replaces item (4):*

Amounts are due upon receipt of invoice and payable in local currency as IBM specifies in a transaction document. Customer agrees to pay accordingly, including any late payment fee. Delinquent amounts are subject to monetary correction based on the inflation index called the "General Price Index" calculated by Getulio Vargas Foundation (IGP-M/FGV), plus interest at the

rate of one percent per month, both calculated "pro rata die." The late payment fee is calculated against the resultant delinquent amount at the following rates:

- (a) if payment is made between the 31st day and the 60th day from invoice date, a two percent late payment penalty applied to the resultant delinquent amount, or
- (b) if payment is made 61 or more days from invoice date, a ten percent late payment penalty applied to the resultant delinquent amount.

*The following is added to subsection b. Software Maintenance acquired directly from IBM as item (6):*

Amounts due are expressed in local currency.

*The following is added to subsection b. Software Maintenance acquired directly from IBM as item (7):*

The charges for Software Maintenance acquired under this Agreement are inclusive of all applicable taxes that are IBM's responsibility on the base date established in a transaction document. The parties agree that IBM will adjust the charges accordingly should any of the following occur:

- (a) any change is made to the rate, form or base of calculation, form of payment, classification or taxes levied on the Software Maintenance or on their costs,
- (b) a new applicable tax is created,
- (c) any change is made to any other legal aspect related to the taxes applicable on the base date,
- (d) any change is made to the origin or to the delivery location for the Software Maintenance,
- (e) any change is made to the location where Services are to be provided, or
- (f) any change is made to the manner in which Services are marketed.

## **7. Changes to Agreement Terms**

*The following replaces this section in its entirety:*

In order to maintain flexibility in our business relationship, the terms of this Agreement may be changed upon execution of an amendment and the changes shall apply as of the effective date specified in the amendment. They apply only to new orders, on-going transactions that do not expire, and transactions with a defined renewable contract period. For transactions with a defined renewable contract period, Customer may request that IBM defer the change effective date until the end of the current contract period.

## **8. Termination and Withdrawal**

*The words "or e-mail" in the fourth paragraph of this section are deleted.*

## **9. Additional Terms**

*In the first sentence of item c, the phrase "and such communications are acceptable as a signed writing" is deleted.*

**In the clause that begins with "This Agreement is the complete ..."**

*In the fourth sentence, which begins with "Customer accepts the terms ...," the following phrase is deleted:*

any one of the following means: to the extent permissible under applicable law, by ordering, using, or making payment for Software Maintenance or, where required by law,

*In the fifth sentence, which begins with "Software Maintenance becomes subject to this Agreement...," the phrase "accepts Customer's order or payment" is replaced by the following phrase:*

accepts Customer's order by signing it.

ANGUILLA, ANTIGUA AND BARBUDA, ARUBA, BAHAMAS, BARBADOS, BERMUDA, BRITISH VIRGIN ISLANDS, CAYMAN ISLANDS, DOMINICA, GRENADA, GUYANA, JAMAICA, MONTserrat, NETHERLANDS ANTILLES, SAINT KITTS AND NEVIS, SAINT LUCIA, SAINT MARTIN, SAINT VINCENT AND THE GRENADINES, SURINAME, TRINIDAD AND TOBAGO, TURKS AND CAICOS ISLANDS, BELIZE, BOLIVIA, COSTA RICA, DOMINICAN REPUBLIC, EL SALVADOR, HAITI, HONDURAS, GUATEMALA, NICARAGUA, PANAMA, AND PARAGUAY

## 2. Software Maintenance

*The following replaces (4) Automatic Renewal in subsection 2.a For Eligible Programs running on an IBM System z platform or equivalent:*

IBM will renew, for an additional payment, expiring S&S for all of Customer's Program licenses for an additional Software Maintenance Period if IBM receives (1) Customer's order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current coverage period or (2) Customer's payment within 30 days of Customer's receipt of the S&S invoice for the next coverage period.

## UNITED STATES OF AMERICA

### 2. Software Maintenance

*The following is added at the end the sentence beginning with "While Customer may terminate an S&S Period ..." in (3) Early Termination of an S&S Period for a Program in subsection 2.a For Eligible Programs running on an IBM System z platform or equivalent:*

unless the S&S Period was renewed under the provisions of subsection 4, Automatic Renewal (below). In such event, Customer may obtain a credit, prorated to the end of that S&S Period from the first day of the month following the later of (a) IBM's receipt of Customer's termination request or (2) Customer's requested date of termination, through the end of that S&S Period.

## ASIA PACIFIC

### AUSTRALIA

#### 3. Charges and Payment

*The following paragraph is added after item b:*

All charges or other amounts payable under this Agreement are specified to include applicable goods and services tax ("GST").

*The following paragraph replaces item b(5) in its entirety:*

If any government or authority imposes a duty, tax (other than income tax), levy, or fee, on the Agreement or on the Software Maintenance itself, that is not otherwise provided for in the amount payable, Customer agrees to pay it when IBM invoices Customer. If the rate of GST changes, IBM may adjust the charge or other amount payable to take into account that change from the date the change becomes effective.

#### 6. Warranty for Software Maintenance

*The following paragraph is added as the first paragraph of this section:*

The warranties specified in this section are in addition to any rights Customer may have under the Trade Practices Act 1974 or other legislation and are only limited to the extent permitted by the applicable legislation.

## CAMBODIA, LAOS, PEOPLE'S REPUBLIC OF CHINA, VIETNAM, BANGLADESH, BHUTAN, NEPAL

### 2. Software Maintenance

*The following replaces (4) Automatic Renewal in subsection 2.a For Eligible Programs running on an IBM System z platform or equivalent:*

IBM will renew, for an additional payment, expiring S&S for all of Customer Program licenses for an additional S&S Period if IBM receives (1) Customer's order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current coverage period or (2) Customer's payment within 30 days of Customer's receipt of the S&S invoice for the next coverage period.

## **HONG KONG SAR, MACAU SAR, AND TAIWAN**

*As applies to transactions initiated and performed in Taiwan and the special administrative regions, phrases throughout this Agreement containing the word "country" (for example, "country of acquisition" and "country of installation") are replaced with the following:*

- (1) *In Hong Kong SAR: "Hong Kong SAR"*
- (2) *In Macau SAR: "Macau SAR" except in the Governing Law clause (section 14.1)*
- (3) *In Taiwan: "Taiwan."*

## **INDONESIA**

### **8. Termination and Withdrawal**

*The following paragraph is added between the first and second paragraphs:*

We both waive in this regard, the provision of article 1266 of the Indonesian Civil Code to the extent the article provision requires such court decree for the termination of an agreement creating mutual obligations.

## **JAPAN**

### **8. Termination and Withdrawal**

*The following paragraph is added to this section:*

When all or a substantial portion of either party's assets, credits or business are so changed as to make continued performance of that party's obligations impracticable or impossible, the other party may terminate this Agreement with prior notice.

## **NEW ZEALAND**

### **6. Warranty for Software Maintenance**

*The following paragraph is added as the first paragraph of this section:*

The warranties specified in this Part are in addition to any rights Customer may have under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited. The Consumer Guarantees Act 1993 will not apply in respect of any goods or services which IBM provides, if Customer requires the goods or services for the purposes of a business as defined in that Act.

## **EUROPE, MIDDLE EAST, AFRICA (EMEA)**

### **EUROPEAN UNION MEMBERS**

#### **6. Warranty for Software Maintenance**

*For European Union Member States the following is added to Section 6:*

In the European Union, consumers have legal rights under applicable national legislation governing the sale of consumer goods and services. Such rights are not affected by the provisions set out in this Section 6 Warranty for Software Maintenance.

## **AUSTRIA**

### **6. Warranty for Software Maintenance**

*This Section 6. Warranty for Software Maintenance is amended as specified for **GERMANY**.*

## **FRANCE**

### **3. Charges and Payment**

*In subsection b. Software Maintenance acquired directly from IBM the following is added to the end of item (3).*

If Customer disagrees with the increase, Customer may terminate the transaction by notifying IBM, in writing, within fifteen days after the date of IBM's notification to Customer of the increase.

## **GERMANY**

### **3. Charges and Payment**

*In subsection b. Software Maintenance acquired directly from IBM, item (3), "three months" is replaced with "four months."*

## 6. Warranty for Software Maintenance

For **Germany (and Austria)** the following replaces Section 6. **Warranty for Software Maintenance** in its entirety.

IBM warrants that Software Maintenance will be provided using reasonable care and skill and according to its description in the IBM Software Support Handbook at <http://www14.software.ibm.com/webapp/set2/sas/f/handbook/home.html>. Customer agrees to provide timely written notice of any failure to comply with this warranty so that IBM can take corrective action. IBM will remedy any defects covered by warranty, of which written notice has been given by Customer. If a defect is not remedied within a reasonable period of time, Customer may with respect to that defect, at Customer's choice, either request a reduction of price, or, if the value or the serviceability of the work is substantially impaired, instant termination ("Kündigung") of this Agreement. In case of minor defects or deviations, Customer shall not be entitled to terminate the Agreement.

The warranties will be voided by misuse, accident, modification, unsuitable physical or operating environment, operation in other than the specified operating environment, or failure caused by a product for which IBM is not responsible.

Without prejudice to Customer's rights under other warranty provisions of the Agreement, IBM does not warrant uninterrupted or error-free provision of Software Maintenance or that IBM will correct all defects.

## 9. Additional Terms

*The following paragraph is added as the last paragraph of subsection a:*

When assisting Customer in isolating the cause of a software problem, should IBM access Customer's personally-identifiable data upon Customer's request, "IBM Supplementary Terms and Conditions for Processing of Customer Data by Order according to § 11 BDSG" applies.

## IRELAND and UNITED KINGDOM

### 6. Warranty for Software Maintenance (Ireland only)

*The following paragraph is added:*

Except as expressly provided in these terms and conditions, or Section 12 of the Sale of Goods Act 1893 as amended by the Sale of Goods and Supply of Services Act, 1980 (the "1980 Act"), all conditions or warranties (express or implied, statutory or otherwise) are hereby excluded including, without limitation, any warranties implied by the Sale of Goods Act 1893 as amended by the 1980 Act (including, for the avoidance of doubt, Section 39 of the 1980 Act).

### Entire Agreement

*The following sentence is added to the second from last paragraph of Part 1:*

Nothing in this paragraph shall have the effect of excluding or limiting liability for fraud.



# Master Services Attachment for ServiceElite

## 1. Scope of Services

IBM will provide you Services as described in this Attachment and, if applicable, its Statements of Work and Change Authorizations to support your hardware and software products (called "Eligible Machines", "Eligible Programs", and together "Eligible Products"). Services are available for Eligible Products normally used for business, professional, or trade purposes, rather than personal, family, or household purposes.

IBM will identify the Eligible Products, the Services that apply to them, and the Services transaction contract period in Schedules that reference this Attachment and any associated Statements of Work and Change Authorizations. Each Schedule will also identify the Specified Locations at which the Services will be provided. A Specified Location may be your entire information processing environment, or a portion thereof, which may be resident at multiple sites or a single building.

The specific terms regarding Eligible Machine Services and Eligible Program Services contained in this Attachment and its Statements of Work and Change Authorizations apply only when you have contracted for an associated Eligible Machine maintenance Service or Eligible Program support Service as specified in a Schedule.

## 2. Sales through IBM and IBM Business Partners

You may acquire Services through IBM or an IBM Business Partner, or their designee, authorized to resell IBM Services. IBM Business Partners establish the price and general business terms at which they market the IBM Services to you and they will communicate these directly to you for all transactions they initiate with you. However, IBM establishes the terms of each Service IBM provides and our general business responsibilities associated with these Services. Therefore, IBM will provide the Services as described in this Attachment and its associated Statements of Work and Change Authorizations (and their Schedules).

Whenever IBM is required to provide notification to you or you are required to provide notification to IBM, each of us also agrees to notify the applicable IBM Business Partner if one is engaged in the transaction.

In the event that you have contracted through an IBM Business Partner that is no longer able to offer IBM Services, for any reason, IBM will so notify you in writing. You may continue to receive the Services by instructing IBM (in writing) to transfer administration of the Services to either 1) another IBM Business Partner of your choice (who may require you to first execute one of their agreements) that is approved to offer you IBM Services, or 2) IBM under a standard direct marketing relationship that enables IBM to generate charges and invoicing.

IBM is not responsible for 1) any actions of IBM Business Partners or their designees, 2) any additional obligations they have to you, or 3) any products or services that they supply to you under their agreements.

## 3. IBM Responsibilities

When you contract for an applicable Service, IBM agrees to deliver the Service in accordance with the terms and responsibilities identified in the Service description set out in this Attachment or an associated Statement of Work or Change Authorization. For basic maintenance of IBM Machines, the Service description is set out in our Agreement (referenced in the signature block below).

## 4. Your Responsibilities

When you contract for an applicable Service, you agree:

1. to provide IBM with an inventory in which you identify all Eligible Products to be covered at each Specified Location and to notify IBM whenever you move, add, or delete Eligible Products at an existing Specified Location or set up new Specified Locations;
2. that when an applicable Service includes IBM providing you with access codes to electronic diagnostic tools, information databases, or other Service delivery facilities, you will limit the use of these to only those who are authorized to use them under your control and only in support of Eligible Products and Services identified in Schedules;
3. to provide IBM with the necessary information it requests to perform Services which are related to its provision of the Services to you and to notify IBM of any changes;
4. to pay any communications charges associated with accessing these Services including but not limited to phone and internet connection charges, unless IBM specifies otherwise in writing;
5. to use the information obtained under these Services only for the support of the information processing requirements within your Enterprise;
6. to securely erase from any Machine that you return to IBM for any reason all programs not provided by IBM with the Machine and data, including without limitation, the following: 1) information about identified or identifiable individuals or legal entities ("Personal Data") and 2) your confidential or proprietary information and other data. If removing or deleting Personal Data is not possible, you agree to transform such information (e.g. by making it anonymous or encrypting it) so that it no longer qualifies as Personal Data under applicable law. You also agree to remove all monetary funds from Machines returned to IBM. IBM is not responsible for any funds, programs not provided by IBM with the Machine, or data contained in a Machine that you return to IBM. You acknowledge that, to perform its responsibilities, IBM may ship all or part of the Machine or its software to other IBM or third party locations around the world, and you authorize IBM to do so;
7. to acknowledge that Services will be performed on-site at your location, and off-site at IBM location(s). You also understand and acknowledge that IBM is permitted to use global resources (non-permanent residents used locally and personnel in locations worldwide) for delivery of Services; and
8. to acknowledge that some devices (for example, fusion I/O devices and solid state devices), have read/write or wear limitations as documented in the hardware product specifications. When these devices have reached the wear limitations, they are not covered under maintenance Services under which IBM agrees to provide support, maintenance, or replacement of defective, failed, or other parts, unless such terms

specifically identify the device by description and/or part number and describes the terms of support or maintenance coverage applicable to it.

## 5. Mutual Responsibilities

Each of us will comply with applicable export and import laws and regulations, including those of the United States that prohibit or limit export of 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. Automatic Inventory Increase for Machine and Software Maintenance Services

If specified as a selected option in the Schedule, IBM will automatically increase the inventory count and associated Services at Specified Locations per the terms set out below.

### OPTION #1 - MACHINE MAINTENANCE SERVICES

IBM will automatically increase the inventory count and associated Machine maintenance Services whenever:

1. an Eligible IBM Machine is added to the inventory. If the Machine is under warranty when added, maintenance Services will commence at warranty exit. If the Machine is not under warranty when added, maintenance Services will commence at the later of a) the date of installation or b) the previous yearly anniversary of the start of the transaction contract period. IBM Machines specifically excluded from coverage at transaction contract period start will remain outside the scope of this Section unless you request IBM add them during the transaction contract period. However, all Eligible IBM Machines added to your inventory during the transaction contract period will be included in the inventory count and receive maintenance Services as set out in this Section.
2. an Eligible non-IBM Machine, of the same type as other non-IBM Machines already covered at that Specified Location, is added to the inventory. If the Machine is under warranty when added, maintenance Services will commence at warranty exit. If the Machine is not under warranty when added, maintenance Services will commence at the later of a) the date of installation or b) the previous yearly anniversary of the start of the transaction contract period.

The maintenance Services that apply for these Machines will be the same as that which you are receiving for all other Eligible Machines of the same type at the Specified Location, unless agreed upon in writing by both parties.

Newly installed IBM Machines of the same type for which you have already selected Warranty Service Upgrade will be added at date of actual installation and will be covered at the same Warranty Service Upgrade support level.

If at any time either of us requests a review of the inventory count, each of us will provide reasonable cooperation to the other in updating the last formal inventory.

### OPTION #2 - SOFTWARE SERVICES

IBM will automatically increase the inventory count and associated software Services whenever an Eligible Program licensed for use on an Eligible IBM Machine is added to the inventory. The software maintenance Services that apply for these programs will be the same as that which you are receiving for all other copies of the Program licensed for use on Eligible IBM Machines of the same type at the Specified Location.

These software Services will commence immediately upon addition of the Eligible Program to the inventory except that for software maintenance Services, a) if the Program is covered under the Agreement for Acquisition of Software Maintenance when added to the inventory, then software maintenance Services via ServiceElite will commence at the expiration date of that support period, or b) if the Program is not covered under the Agreement for Acquisition of Software Maintenance when added to the inventory, then software maintenance Services via ServiceElite will commence immediately and After License Fees may apply.

If at any time either of us requests a review of the inventory count, each of us will provide reasonable cooperation to the other in updating the last formal inventory.

## 7. Charges and Payment

**For sales through IBM**, your charges are calculated taking into account your Service selections, price protection option, payment option, and for prepayments, length of the prepay period.

**FOR EACH TRANSACTION PACKAGE YOU MAY SELECT ONE OF THE FOLLOWING 3 PRICE PROTECTION OPTIONS. YOUR SELECTION WILL BE SPECIFIED IN THE SCHEDULE ASSOCIATED WITH THAT TRANSACTION PACKAGE.**

### OPTION #1 ANNUAL - PRICE PROTECTION DURING EACH TRANSACTION CONTRACT YEAR ONLY

IBM may revise charges. However, any rate increase will not take effect until the next yearly anniversary of the start of the transaction contract period. At the start of each transaction contract year, you will be invoiced at the charge rates that are then in effect and that invoice will serve as your notice of charge rate changes.

All newly added Eligible Products and Services, as well as changes to existing Eligible Product configurations and Services, will assume the charge rate that applied for these at the previous yearly anniversary of the start of the transaction contract period. Eligible Products and Services that become generally available during the transaction contract period will be added at the charge rate that applied on their initial availability date.

### OPTION #2 FULL - PRICE PROTECTION FOR ENTIRE TRANSACTION CONTRACT PERIOD, INCLUDES PROTECTION FOR NEWLY ADDED MACHINE TYPES

For the entire transaction contract period, charges for included Eligible Product configurations and Services will not increase. All newly added Eligible Products and Services, as well as changes to existing Eligible Product configurations and Services, will assume the charge rate that applied

for these at transaction contract period start. Eligible Products and Services that become generally available during the transaction contract period will be added at the charge rate that applied on their initial availability date. You will receive the benefit of a decrease in applicable charges for amounts which become due on or after the effective date of the decrease.

### **OPTION #3 PREPAY - PRICE PROTECTION FOR TRANSACTION CONTRACT PERIOD PREPAY**

Since you have selected to prepay for the entire transaction contract period, you will not be subject to increases in charges (during that period) for included Eligible Product configurations and Services. All newly added Eligible Products and Services, as well as changes to existing Eligible Product configurations and Services, will assume the charge rate that applied for these at transaction contract period start with adjustment for the reduced prepay period. Eligible Products and Services that become generally available during the transaction contract period will be added subject to the charge rate that applied on their initial availability date with adjustment for the reduced prepay period. If you elect to have these charge terms apply for charges during any renewal transaction contract period (as recalculated at the start of each renewal period), you must provide IBM written notification (at least one month prior to the start of the renewal period) and prepayment for the entire renewal period. Otherwise, charges for the renewal period will revert to a quarterly billing cycle under the terms set out for Option #1 above.

### **FOR EACH TRANSACTION PACKAGE, THE FOLLOWING CHARGE ADJUSTMENT TERMS APPLY.**

Total Services charges may be adjusted whenever:

1. a review of the inventory count indicates a change from the last accounting; or
2. a Specified Location is affected by a change that results in additional costs (e.g. a change in tax rates), Eligible Machine type, or Service is added, deleted, or changed.

For sales through IBM Business Partners, your IBM Business Partner sets the charges and terms governing charges. Your IBM Business Partner may impose an additional charge for some actions (e.g. termination), or for IBM's provision of some additional services (e.g. Service upgrades). These actions or additional services are identified in this Attachment and its associated Statements of Work and Change Authorizations with an asterisk ("\*\*"). Where you see an asterisk, check with your IBM Business Partner to determine if you will incur an additional charge or may be entitled to a credit or refund. You will make payment directly to your IBM Business Partner.

IBM may charge you directly for certain expenses IBM incurs in performance of a Service for you (e.g. actual travel and living expenses, out-of-pocket expenses). IBM will not incur these expenses without your prior written approval.

## **8. Renewal and Termination**

IBM will automatically renew Services unless you or your IBM Business Partner request otherwise. For each transaction the Schedule will specify the number of years (0 or greater) in the Renewal Contract Period. Whenever this number is greater than 0, IBM will renew the applicable Services at the end of the transaction contract period for the number of years specified. Thereafter, IBM will automatically renew the Services for same length periods unless you or your IBM Business Partner notify IBM in advance of your desire to change the length of the renewal. You, your IBM Business Partner, or IBM can select not to renew by providing written notification (at least one month prior to the end of the current transaction contract period) to the others of its decision not to renew. Nonrenewal notification sent to you by IBM or received by IBM from either you or your IBM Business Partner will result in IBM ceasing to provide you the applicable Services at the end of the current transaction contract period.

In case of renewals, charges are recalculated at the start of each renewal period. For sales through IBM, the new charges will be based on the length of the Renewal Contract Period and then current charges associated with your contracted a) Services, b) price protection option, and c) payment option.

You have committed to continue Services for the entire transaction contract period. However, you may terminate Services for an Eligible Product, on notice to IBM, if you permanently remove it from productive use within your Enterprise. You may also terminate Services immediately prior to the start of any fiscal year for which funds have not been appropriated. You agree to request such funds from the applicable legislative body.

Otherwise, if you choose to terminate Services and these are not being replaced by equivalent Services, you may do so by providing IBM one month's written notice, however, the Services must have been under contract for at least one fiscal year upon termination.

Termination adjustment fees will not apply and you will receive a credit for any remaining prepaid period associated with Services you terminate in accordance with this provision.\*

## **9. Services**

### **Warranty Service Upgrade**

For certain Eligible Machines, you may select a Service upgrade from the standard type of warranty Service for the Machine. IBM provides Service for Machines as described in our Agreement but charges for the upgrade in type of Service during the warranty period.

You may not terminate the Service upgrade or transfer it to another Machine during the warranty period. When the warranty period ends, the Machine will become part of your standard inventory count and will convert to maintenance Service at the same type of Service you selected for warranty Service upgrade.

### **Maintenance of IBM Machines**

IBM will provide Service for Machines, as described in our Agreement, for those Eligible IBM Machines specified in the Schedule.

Certain Machine types may require the installation and use of remote connectivity tools and equipment for direct problem reporting, remote problem determination and resolution.

A machine is only considered "Eligible" if it is operational and in conformance with its official published specifications on the contract start date. All Eligible Machines must be in good working order. For more details contact your sales representative.

### **Maintenance of Non-IBM Machines**



IBM will provide Service for Machines, as described in our Agreement, for those Eligible non-IBM Machines specified in the Schedule. Unless specified otherwise in the Schedule, Service is provided only for the manufacturer's base configuration for each covered Machine model. You are responsible for following the manufacturer's and IBM's provided guidelines pertaining to operator responsibilities, maintenance procedures, and supplies prior to placing a Service request.

Repair of non-IBM Machines is subject to the availability of repair parts and any technical support required of the original manufacturer. Repair parts will be functionally equivalent to those replaced. They may be new or used and may have been manufactured by other than the original manufacturer. You may request that IBM use repair parts manufactured by the original manufacturer when these are available, but there may be an additional charge for these parts.\*

In addition to items set forth in the Agreement, IBM's support does not cover:

1. Machine installation, engineering change activity, or preventive maintenance;
2. correction of date related errors. IBM will make the final determination of whether a date related error is the source of the problem;
3. service of microcode or firmware; or
4. service of features, parts, or devices not supplied by either a) the Machine's original manufacturer or b) IBM during the performance of this Service.

Upon written notice, IBM may terminate coverage for an Eligible non-IBM Machine due to lack of available repair parts or lack of original manufacturer technical support.

Eligible non-IBM Machines must meet IBM's safety and serviceability requirements. IBM reserves the right to inspect a Machine within one month from the start of Service. If the Machine is not in an acceptable condition for Service, IBM will notify you and terminate coverage for the inspected machine.

You agree to provide IBM one month's written notice prior to terminating coverage for a Machine being permanently removed from productive use within your Enterprise. You will receive a prorated credit for any remaining prepaid period associated with the terminated coverage unless indicated otherwise in the transaction document.

### **IBM Software Maintenance**

IBM will provide software maintenance support, as described below, for those Eligible Programs for which you are licensed and for which you order this Service.

#### **General:**

1. IBM makes available to you the most current commercially available version, release or update to all of the Eligible Programs for which you acquire support under this Service, should any be made available. Information on ordering versions, releases or updates can be found at <http://www-05.ibm.com/servers/eserver/ess/OpenServlet.wss>, and selecting the Entitled Software Update ("ESU") screen tab.
2. IBM provides you with assistance for your a) routine, short duration installation and usage (how-to) questions and b) code defect related questions.
3. IBM provides assistance via telephone and, if available, electronic access, only to your Information Systems ("IS") technical support personnel during normal business hours (normal business hours are 8:00 a.m. to 5:00 p.m. in the local time zone where you receive this Service, Monday through Friday, excluding national holidays). This assistance is not available to your end users. IBM provides Severity 1 assistance 24 hours a day, every day of the year. Consult the IBM Software Support Guide, which may be found at <http://www14.software.ibm.com/webapp/set2/sas/f/handbook/home.htm> for details. A 24x7 (every day of the year) all severity option is available for an extra charge.\* During normal business hours, IBM's response time objective is two hours for voice and electronic problem submissions. For voice problem submissions during other than normal business hours, IBM's response time objective for critical problems (Severity 1) is two hours and if available and you select the 24x7 all severity option, four hours for non-critical problems. For electronic problem submissions during other than normal business hours, IBM's response time objective is within two hours of the start of normal business hours 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.
4. In some instances, IBM may request that you allow it to remotely access 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 we remotely access it with your permission. If you decline providing remote access to your system by IBM, IBM may be limited in its ability to fully provide the Services necessary to resolve the problem and if IBM is unable to do so, IBM will notify you and close out the service call.
5. This Service does not include assistance for a) the design and development of applications, b) your use of Eligible Programs in other than their specified operating environment, or c) failures caused by products for which IBM is not responsible under this Service.
6. This Service is provided solely for servers that are located within the United States. For calls that originate from outside of the United States: 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 Point of Contact resides, Monday through Friday (excluding national holidays), 3) replies or other return communication to the caller will be via a United States telephone number provided by you or electronic means only, 4) software "traps" or other tools that may be necessary to diagnose problems will be sent only to the United States server location, and 5) the diagnosis and repair of data encryption will be discussed only with personnel at the United States server location.
7. All support will be provided in the English language only.

**Eligible Programs:** Licensed programs for which this Service is available are listed at <http://www-03.ibm.com/services/sl/products/> or may be obtained from your IBM representative. The listing of Eligible Programs contains the last date of service for each respective release of licensed programs. IBM will support only current releases. It is your responsibility to ensure that, when calling in for service, your software is current.

**Software Maintenance After License Fee:** The Software Maintenance After License fee is a one time charge to resume Software Maintenance if you a) did not renew this Service prior to the end of the then current support period or b) terminated this Service. The new support period in such an instance begins on the date that IBM accepts your order.

#### **Optional Feature Support**

In addition to your purchase of IBM Maintenance for selected IBM products and/or Software Maintenance for your AIX Operating System and selected License Program Products, you may purchase IBM's Support via USA Citizens for software or Support via USA Citizens for hardware feature. This feature provides standard IBM remote hardware and software support delivered and managed exclusively by USA Citizens who are located in the continental United States. IBM Support via USA Citizens is available via voice support during prime shift only for software. Your hardware support will be 24x7. Each time you call IBM, this feature's process will be engaged only after you identify yourself as a Support via USA Citizens customer and IBM verifies your entitlement for this feature. Your hardware error data for analysis and call data will be managed by USA Citizens only.

#### **Machine Control Program Remote Support**

This remote support Service is provided only for Machine Control Programs. The term "Machine Control Program" ("MCP") means code delivered with an IBM Machine that executes below the external user interface (e.g. is implemented in a part of storage that is not addressable by user programs).

IBM will provide you remote assistance (via telephone from IBM's support center or via electronic access) in response to your routine installation, configuration, and usage (how-to) questions pertaining to MCPs on your covered IBM Machines. This assistance is provided during normal business hours (8:00 a.m. to 5:00 p.m. in the local time zone where you receive the Service, Monday through Friday, excluding national holidays). For an additional charge\*, you may upgrade your Service hours of coverage to 24 x 7.

Remote Support does not include assistance for 1) the design and development of code, 2) your use of a MCP in other than its specified operating environment, 3) use on other than the specified machine, or 4) failures caused by products for which IBM is not responsible under this Service. This Service does not include on-site assistance at your location.

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This 1) Attachment, 2) its applicable Transaction Documents (e.g. Statements of Work, Change Authorizations and Schedules), and 3) the IBM Customer Agreement (or an equivalent agreement in effect between us) identified below ("Agreement") comprise the complete agreement regarding the Services described in this Attachment and its applicable Transaction Documents and replace any prior oral or written communications between you and IBM. Each party accepts the terms of this Attachment by signing this Attachment (or another document that incorporates it by reference) by hand or, where recognized by law, electronically.

As used in this Attachment, "you" and "your" refer to the transaction contracting entity that is part of the Enterprise identified below.

Agreed to:  
**EL DORADO COUNTY**

Agreed to:  
**International Business Machines Corporation**

By \_\_\_\_\_  
Authorized signature

By \_\_\_\_\_  
Authorized signature

Name (type or print):

Name (type or print):

Date:

Date:

Enterprise number: 02734100

Reference Agreement number:

Enterprise address:

Attachment number: MAS1RCP

DATA PROCESSING  
360 FAIR LANE  
PLACERVILLE CA 95667-4103

IBM address:  
IBM CORPORATION  
7100 HIGHLAND PARKWAY  
SMYRNA, GA 30082

Contract Administrator: Kelly Webb, Interim Director of Information Technologies, or successor.

# IBM Schedule for ServiceElite

*This Schedule contains a listing of the Eligible Machines at the Specified Locations identified below for which IBM will provide the identified Services as described in the referenced Master Services Attachment and any referenced Statements of Work and Change Authorizations. The complete agreement between us about these Services consists of 1) this Schedule 2) the referenced Master Services Attachment and any referenced Statements of Work and Change Authorizations, and 3) the IBM Customer Agreement (or any equivalent agreement in effect between us).*

**Name and Address of Customer:**

EL DORADO COUNTY  
 DATA PROCESSING  
 360 FAIR LANE  
 PLACERVILLE CA 95667-4103

**Customer Billing Address:**

EL DORADO COUNTY  
 INFORMATION SVCS  
 ACCOUNTS PAYABLE  
 360 FAIR LANE  
 PLACERVILLE CA 95667-4103

**Master Services Attachment Number:** MAS1RCP  
**Statement of Work Number:** AB7SC4  
**Change Authorization Number:**  
**Customer Number:** 02728837

**Schedule Number:** AB7SC4  
**Revised Schedule:** No  
**Schedule Effective Date:** 08/14/2013  
**Proposal Reference Date:** 09/01/2013

**Transaction Contract Period:**  
**Start Date:** 09/01/2013  
**End Date:** 08/31/2016  
**Renewal Contract Period:** 0 Year(s)

**\* Charge Period Charges / Payment Plan (Inclusive of MES):**

**WSU One Time Charges:** 0.00  
**SWMA ALF One Time Charges:** 0.00  
**MMS for CISCO HW One Time Charges:** 0.00  
**MMS for CISCO SW One Time Charges:** 0.00  
**MMS for Nortel One Time Charges:** 0.00  
**One Time Charges:** 0.00

**\* Maintenance Charges:** 117,523.51  
**\* Service Charges:** 12,514.05  
**\* TOTAL CHARGE PERIOD CHARGES:** 130,037.56  
 Annually

**Charge Period:**  
**Start Date:** 09/01/2013  
**End Date:** 08/31/2016

<sup>1</sup> **Accumulated Adjustment Invoicing option:** N

**Automatic Inventory Increase Option Applies:** Price Protection Option: Opt#2 Full Price Protection  
**Machine Maintenance Services Option #1:** N Pricing Method: Line Item  
**Software Services Option #2:** N

**Type of Discount(s) Applied:** Term Incentive Special Bid

\* Charges are based on the current inventory and services identified in this Schedule. Actual charges may vary with any additions, deletions, or changes to the inventory or services. Any applicable taxes are not included in the charge amounts herein but will be added to your invoice.

For a Machine subject to usage charges, in addition to the Service charge identified herein, you will be separately billed for usage in accordance with applicable usage rates and billing cycles.

**The Parties need not sign this Schedule, unless either of us requests it.**

Agreed to:

**EL DORADO COUNTY**

By: \_\_\_\_\_  
 Authorized signature  
 Name (type or print): \_\_\_\_\_  
 Date: \_\_\_\_\_

Agreed to:

**International Business Machines Corporation**

By: \_\_\_\_\_  
 Authorized signature  
 Name (type or print): \_\_\_\_\_  
 Date: \_\_\_\_\_

Contract Administrator: Kelly Webb, Interim Director of Information Technologies, or successor.

# IBM Schedule for ServiceElite

**Enterprise Total for Charge Period by Customer Number Inclusive of MES:**

Customer No.	Customer Name	Customer Location	Charges <sup>4</sup>
02727689	EL DORADO COUNTY	360 FAIR LANE, DATA PROCESSING, PLACERVILLE CA 95667-4103	10,761.63
02728837	EL DORADO COUNTY	360 FAIR LANE, DATA PROCESSING, PLACERVILLE CA 95667-4103	119,275.93
<b>Total</b>			<b>130,037.56</b>

**Note: One Time Charges are not included in the Total**

# IBM Schedule for ServiceElite

## Maintenance Machine List

--Eligible Machine Description-- A Machine is only considered "Eligible" if it is operational and in conformance with its official published specifications on the contract start date.

Mfg	Type	Mod/Feat	Add/Rem	Order/Serial Number	Related Order/Serial Number	Product Description	Qty.	Type of Svc <sup>2</sup>	Maint. Svc <sup>3</sup>	Charges <sup>4</sup>	Charges Start <sup>5</sup>	Charges Stop <sup>5</sup>
				<b>Specified Location: 02727689</b>		<b>City, State: PLACERVILLE CA 95667-4103</b>						
IBM	3953	L05		000033002		LIBRARY MANAGER	1	B	1	3,241.23		
<b>Subtotal Without MES</b>										<b>3,241.23</b>		
<b>Subtotal With MES</b>										<b>3,241.23</b>		
				<b>Specified Location: 02728837</b>		<b>City, State: PLACERVILLE CA 95667-4103</b>						
IBM	2105	800		000028962		ENTERPRISE STORAGE SERVER	1	B	1	22,705.76	E	12/31/2014
		2125				DISK EIGHT-PACK - 145.6 GB	8					12/31/2014
		3025				2GB FIBR CHAN/FICON SHORT WAVE	2					12/31/2014
		8607				FLASHCOPY V2 - UP TO 10 TB	1					12/31/2014
IBM	2096	R07		0000630EE		SYSTEM Z9 BUSINESS CLASS	1	B	1	50,572.80		
		4921				1-WAY PROCESSOR - F01	1					
		7866				IFL	1					
IBM	3584	L23		0000A3095		TS3500 TAPE LIBRARY	1	B	1	9,253.54		
		1643				INTERMED. CAP. ON DEMAND	1					
		1644				FULL CAPACITY ON DEMAND	1					
IBM	3584	D23		0000C7800		TS3500 EXPANSION FRAME	1	B	1	1,841.35		
IBM	3592	E06		0000A1B78		TS1130 TAPE DRIVE	1	B	1	2,338.82		
IBM	3592	E06		0000A1B92		TS1130 TAPE DRIVE	1	B	1	2,338.82		
IBM	3592	E06		0000A1BE4		TS1130 TAPE DRIVE	1	B	1	2,338.82		
IBM	3592	E06		0000A1BEA		TS1130 TAPE DRIVE	1	B	1	2,338.82		
IBM	3592	E06		0000A1BEB		TS1130 TAPE DRIVE	1	B	1	2,338.82		
IBM	3592	E06		0000A1BED		TS1130 TAPE DRIVE	1	B	1	2,338.82		
IBM	3592	E06		0000A1BF0		TS1130 TAPE DRIVE	1	B	1	2,338.82		
IBM	3592	E06		0000A1BF3		TS1130 TAPE DRIVE	1	B	1	2,338.82		
IBM	3592	C06		0000C6756		TS1120 TAPE CONTROLLER	1	B	1	3,114.10		
		3441				FICON SW ATTACHMENT	2					
IBM	3953	F05		000002785		LIBRARY CONTROLLER FRAME	1	B	1	8,084.17		
		3488				4GB FIBRE CHANNEL SWITCH	2					

See Legend for Details

# IBM Schedule for ServiceElite

## Maintenance Machine List

--Eligible Machine Description-- A Machine is only considered "Eligible" if it is operational and in conformance with its official published specifications on the contract start date.

Mfg	Type	Mod/ Feat	Add/ Rem	Order/ Serial Number	Related Order/ Serial Number	Product Description	Qty.	Type of Svc <sup>2</sup>	Maint. Svc <sup>3</sup>	Charges <sup>4</sup>	Charges Start <sup>5</sup>	Charges Stop <sup>5</sup>
-----	------	--------------	-------------	----------------------------	---------------------------------------	------------------------	------	--------------------------------	----------------------------	----------------------	-------------------------------	------------------------------

Subtotal Without MES	114,282.28
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Subtotal With MES	114,282.28
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Total Charge Period Charges for Maintenance Machine List Without MES	\$117,523.51
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Total Charge Period Charges for Maintenance Machine List With MES	\$117,523.51
---	--------------

See Legend for Details

# IBM Schedule for ServiceElite

## Services List

Customer Technical Contact Name (if applicable):  
 Customer Primary Technical Contact name :  
 Customer Primary Technical Contact phone number :

-----Eligible Machine Description-----

Type	Model	Serial/ Order Number	Support Service	Product Group / Service Option	Qty.	Charges <sup>4</sup>	Services Start	Charges Start <sup>5</sup>	Charges Stop <sup>5</sup>
			<b>Specified Location: 02727689</b>	<b>City, State: PLACERVILLE CA 95667-4103</b>					
			IBM HW MA SERVICE FOR MVS			7,520.40			
				IBM MA SERVICE FOR MVS					
<b>Subtotal</b>						<b>7,520.40</b>			
			<b>Specified Location: 02728837</b>	<b>City, State: PLACERVILLE CA 95667-4103</b>					
			HARD DRIVE RETENTION - STORAGE			4,536.01			
2105	800	000028962							
			HARD DRIVE RETENTION - SYS z			457.64			
2096	R07	0000630EE							
<b>Subtotal</b>						<b>4,993.65</b>			
<b>Total Charge Period Charges for Services List</b>						<b>\$ 12,514.05</b>			

**Note: One Time Charges are not included in these totals.  
 See Legend for Details**

# IBM Schedule for ServiceElite

**Legends:** <sup>1</sup> Charge adjustments related to inventory and Service changes will be accumulated and invoiced with your next standard invoicing cycle (may be sooner for annual or semiannual payment plans)

## TYPE OF SERVICE

- A) On-Site Repair/Exchange Services, Monday through Friday (excluding holidays), 8am to 5pm, next business day
- B) On-Site Repair/Exchange Services, 7 days a week, 24hrs/day.
- C) On-Site Repair/Exchange Services, Monday through Friday (excluding holidays), 8am to 5pm, 4 hour response objective  
This type of repair Service includes a response objective and is not a guarantee.
- D) On-Site Repair/Exchange Services, 7 days a week, 24hrs/day, 2 hour response objective.  
This type of repair Service includes a response objective and is not a guarantee.
- X) EasyServe (remotely delivered services) MAINTENANCE SERVICES

- 1) Maintenance of IBM Machines
- 2) Maintenance of Non-IBM Machines
- 3) Warranty Service Upgrade
- 4) Maintenance of Non-IBM Machines - Cisco Products
- 5) Maintenance of IBM Machines - Enhanced Service Response
- 6) Service for Machines Withdrawn from IBM Maintenance
- 7) Non-IBM Service for Machines Withdrawn from IBM Maintenance
- 8) Maintenance of IBM Machines (Labor Only)
- 9) Non-IBM Memory Exchange
- 10) Enhanced Parts Inventory
- 11) Spare Machine
- 12) Key Operator Support
- 13) Maintenance of non-IBM Machines during the Manufacturer's Warranty Period
- 16) IBM Maintenance Services - First Line Maintenance for Wincor Nixdorf ATMs
- 17) IBM Maintenance Services - Applications Maintenance Services for Wincor Nixdorf ATMs
- 18) Post Installation Coverage (PIC) Service Upgrade, for selected Non-IBM Machines

## Charges shown are for the Charge Period

- A (C) indicates a Machine that will have usage charges billed separately.
- An (E) indicates a Machine that has been announced as withdrawn from generally available Maintenance Service.
- An (F) indicates an assumptive Product included in the total Charge Period Price that has a manually inserted serial number and configuration provided by the customer.
- An (H) identifies a Machine on an existing ServiceElite/ServiceSuite/ ServiceElect CHIS contract with duplicate Maintenance Services coverage.
- An (M) indicates a Miscellaneous Equipment Specification (MES) on order is not installed and applicable pricing not included.
- A (K) indicates assumptive Products included in the total Charge Period Price that are based on the customer provided configuration.
- An (N) indicates that the Product is a non-GSA Schedule item .
- An (O) indicates a one time charge.
- A (P) indicates a Machine or Service with coverage on a non-CHIS contract.
- An (S) indicates a manual order installation date change.
- An (R) indicates the usage charge rate (feet, hours, or impressions) for a Machine under a usage plan.
- A (U) indicates usage charges which are measured in either feet, hours, or impressions.
- A (W) indicates a Machine under warranty.
- An (X) indicates On-order Products which are shown for planning purposes only.
- A (Y) indicates On-order MES Products which are shown for planning purposes only. These charges are included in the related Machine. <sup>5</sup>Charges Start/Stop dates shown are those that differ from the Contract Period Start/End Dates





# Statement of Work for ServiceElite

Both of us agree to add the following Services as part of our ServiceElite contract.

## Hard Drive Retention Option

Under this Hard Drive Retention Option, IBM will modify Service for Machines as described in our Agreement to allow you to retain a defective hard drive that is replaced in the course of Service by us. If your reported problem requires the replacement of a hard drive, a replacement hard drive will be supplied by us and the removed defective hard drive will be provided to you as your property for disposal by you.

The applicable Schedule will identify the Eligible Machines by Specified Location, and period for which you have contracted this Service. The IBM Eligible Machines covered under this Statement of Work must also be under IBM warranty or separately covered by Machine maintenance Service with us.

If you have selected Automatic Inventory Increase for Machines and Software Maintenance Service - Machine Maintenance Services, Option #1, that selection will also apply to this option except this Service will commence upon a Machines addition to inventory regardless of the Machines warranty status.

You agree to:

1. identify a customer representative to receive the retained defective drive from IBM;
2. refrain from placing the defective drive into productive use; and
3. dispose of all retained hard drives in compliance with applicable environmental laws and regulations.

IBM is not responsible for the loss or disclosure of, or damage to, any data that may be contained on a removed defective hard drive. Any removed hard drive that is not returned to you will be retained as IBM's property.

This 1) Statement of Work, 2) its applicable Transaction Documents (e.g. Attachments, Schedules, and Change Authorizations), and 3) the IBM Customer Agreement (or an equivalent agreement in effect between us) comprise the complete agreement regarding the Services described in this Statement of Work and its applicable Transaction Documents and replace any prior oral or written communications between Customer and IBM. Each party accepts the terms of this Statement of Work by signing this Statement of Work by hand or, where recognized by law, electronically.

As used in this Statement of Work, "you" and "your" refer to the Enterprise identified below.

Agreed to:  
**EL DORADO COUNTY**

Agreed to:  
**International Business Machines Corporation**

By \_\_\_\_\_  
Authorized signature

By \_\_\_\_\_  
Authorized signature

Name (type or print):

Name (type or print):

Date:

Date:

Enterprise Number: 02734100

Reference Attachment number: MAS1RCP

Enterprise address:

Statement of Work number: AB7SC4

DATA PROCESSING  
360 FAIR LANE  
PLACERVILLE CA 95667-4103

IBM address:  
IBM CORPORATION  
7100 HIGHLAND PARKWAY  
SMYRNA, GA 30082

Contract Administrator: Kelly Webb, Interim Director of Information Technologies, or successor.

# IBM Schedule for ServiceElite

*This Schedule contains a listing of the Eligible Machines at the Specified Locations identified below for which IBM will provide the identified Services as described in the referenced Master Services Attachment and any referenced Statements of Work and Change Authorizations. The complete agreement between us about these Services consists of 1) this Schedule 2) the referenced Master Services Attachment and any referenced Statements of Work and Change Authorizations, and 3) the IBM Customer Agreement (or any equivalent agreement in effect between us).*

**Name and Address of Customer:**

EL DORADO COUNTY  
 DATA PROCESSING  
 360 FAIR LANE  
 PLACERVILLE CA 95667-4103

**Customer Billing Address:**

EL DORADO COUNTY  
 INFORMATION SVCS  
 ACCOUNTS PAYABLE  
 360 FAIR LANE  
 PLACERVILLE CA 95667-4103

**Master Services Attachment Number:** MAS1RCP  
**Statement of Work Number:** AT8FLX  
**Change Authorization Number:**  
**Customer Number:** 02728837

**Schedule Number:** AT8FLX  
**Revised Schedule:** No  
**Schedule Effective Date:** 08/14/2013  
**Proposal Reference Date:** 09/01/2013

**Transaction Contract Period:**  
**Start Date:** 09/01/2013  
**End Date:** 08/31/2016  
**Renewal Contract Period:** 0 Year(s)

**\* Charge Period Charges / Payment Plan (Inclusive of MES):**

**WSU One Time Charges:** 0.00  
**SWMA ALF One Time Charges:** 0.00  
**MMS for CISCO HW One Time Charges:** 0.00  
**MMS for CISCO SW One Time Charges:** 0.00  
**MMS for Nortel One Time Charges:** 0.00  
**One Time Charges:** 0.00

**\* Maintenance Charges:** 14,055.12  
**\* Service Charges:** 5,121.48  
**\* TOTAL CHARGE PERIOD CHARGES:** 19,176.60  
 Annually

**Charge Period:**  
**Start Date:** 09/01/2013  
**End Date:** 08/31/2016

<sup>1</sup> **Accumulated Adjustment Invoicing option:** N

**Automatic Inventory Increase Option Applies:** Price Protection Option: Opt#2 Full Price Protection  
**Machine Maintenance Services Option #1:** N Pricing Method: Line Item  
**Software Services Option #2:** N

**Type of Discount(s) Applied:** Term Incentive Special Bid

\* Charges are based on the current inventory and services identified in this Schedule. Actual charges may vary with any additions, deletions, or changes to the inventory or services. Any applicable taxes are not included in the charge amounts herein but will be added to your invoice.

For a Machine subject to usage charges, in addition to the Service charge identified herein, you will be separately billed for usage in accordance with applicable usage rates and billing cycles.

**The Parties need not sign this Schedule, unless either of us requests it.**

Agreed to:

**EL DORADO COUNTY**

By: \_\_\_\_\_  
 Authorized signature  
 Name (type or print): \_\_\_\_\_  
 Date: \_\_\_\_\_

Agreed to:

**International Business Machines Corporation**

By: \_\_\_\_\_  
 Authorized signature  
 Name (type or print): \_\_\_\_\_  
 Date: \_\_\_\_\_

**Contract Administrator:** Kelly Webb, Interim Director of Information Technologies, or successor.

# IBM Schedule for ServiceElite

**Enterprise Total for Charge Period by Customer Number Inclusive of MES:**

Customer No.	Customer Name	Customer Location	Charges <sup>4</sup>
02750223	EL DORADO COUNTY	300 FORNI RD, SHERIFF DEPT, PLACERVILLE CA 95667-5400	19,176.60
<b>Total</b>			<b>19,176.60</b>

**Note: One Time Charges are not included in the Total**

# IBM Schedule for ServiceElite

## Maintenance Machine List

--Eligible Machine Description-- A Machine is only considered "Eligible" if it is operational and in conformance with its official published specifications on the contract start date.

Mfg	Type	Mod/Feat	Add/Rem	Order/Serial Number	Related Order/Serial Number	Product Description	Qty.	Type of Svc <sup>2</sup>	Maint. Svc <sup>3</sup>	Charges <sup>4</sup>	Charges Start <sup>5</sup>	Charges Stop <sup>5</sup>
				<b>Specified Location: 02750223</b>		<b>City, State: PLACERVILLE CA 95667-5400</b>						
IBM	9406	520		00009836E		ESERVER I5	1	B	1	5,375.16 H		
IBM	9406	520		0000C00FE		ESERVER I5	1	B	1	8,679.96 H		
<b>Subtotal Without MES</b>										<b>14,055.12</b>		
<b>Subtotal With MES</b>										<b>14,055.12</b>		
<b>Total Charge Period Charges for Maintenance Machine List Without MES</b>										<b>\$14,055.12</b>		
<b>Total Charge Period Charges for Maintenance Machine List With MES</b>										<b>\$14,055.12</b>		

See Legend for Details



# Schedule for ServiceElite

## Services List

Customer Technical Contact Name (if applicable):  
 Customer Primary Technical Contact name :  
 Customer Primary Technical Contact phone number :

-----Eligible Machine Description-----

Type	Model	Serial/ Order Number	Support Service	Product Group / Service Option	Qty.	Charges <sup>4</sup>	Services Start	Charges Start <sup>5</sup>	Charges Stop <sup>5</sup>
<b>Specified Location: 02750223</b>			<b>City, State: PLACERVILLE CA 95667-5400</b>						
			SE FOR I5OS V5R4 - PER PROC			2,433.60			
				SUPPORT P05 NUMBER OF PROCESSORS PRIME SHIFT					
9406	520	0000C00FE			1				
			SE FOR I5OS V5R4 - PER PROC			2,433.60			
				SUPPORT P05 NUMBER OF PROCESSORS PRIME SHIFT					
9406	520	00009836E			1				
			HARD DRIVE RETENTION - SYS i			127.14			
9406	520	0000C00FE			1				
			HARD DRIVE RETENTION - SYS i			127.14			
9406	520	00009836E			1				
<b>Subtotal</b>						<b>5,121.48</b>			
<b>Total Charge Period Charges for Services List</b>						<b>\$ 5,121.48</b>			

**Note: One Time Charges are not included in these totals.  
 See Legend for Details**

# IBM Schedule for ServiceElite

## Legends:

<sup>1</sup> Charge adjustments related to inventory and Service changes will be accumulated and invoiced with your next standard invoicing cycle (may be sooner for annual or semiannual payment plans)

## <sup>2</sup>TYPE OF SERVICE

- A) On-Site Repair/Exchange Services, Monday through Friday (excluding holidays), 8am to 5pm, next business day
- B) On-Site Repair/Exchange Services, 7 days a week, 24hrs/day.
- C) On-Site Repair/Exchange Services, Monday through Friday (excluding holidays), 8am to 5pm, 4 hour response objective  
This type of repair Service includes a response objective and is not a guarantee.
- D) On-Site Repair/Exchange Services, 7 days a week, 24hrs/day, 2 hour response objective.  
This type of repair Service includes a response objective and is not a guarantee.
- X) EasyServe (remotely delivered services)

## <sup>3</sup>MAINTENANCE SERVICES

- 1) Maintenance of IBM Machines
- 2) Maintenance of Non-IBM Machines
- 3) Warranty Service Upgrade
- 4) Maintenance of Non-IBM Machines - Cisco Products
- 5) Maintenance of IBM Machines - Enhanced Service Response
- 6) Service for Machines Withdrawn from IBM Maintenance
- 7) Non-IBM Service for Machines Withdrawn from IBM Maintenance
- 8) Maintenance of IBM Machines (Labor Only)
- 9) Non-IBM Memory Exchange
- 10) Enhanced Parts Inventory
- 11) Spare Machine
- 12) Key Operator Support
- 13) Maintenance of non-IBM Machines during the Manufacturer's Warranty Period
- 16) IBM Maintenance Services - First Line Maintenance for Wincor Nixdorf ATMs
- 17) IBM Maintenance Services - Applications Maintenance Services for Wincor Nixdorf ATMs
- 18) Post Installation Coverage (PIC) Service Upgrade, for selected Non-IBM Machines

## <sup>4</sup>Charges shown are for the Charge Period

- A (C) indicates a Machine that will have usage charges billed separately.
- An (E) indicates a Machine that has been announced as withdrawn from generally available Maintenance Service.
- An (F) indicates an assumptive Product included in the total Charge Period Price that has a manually inserted serial number and configuration provided by the customer.
- An (H) identifies a Machine on an existing ServiceElite/ServiceSuite/ ServiceElect CHIS contract with duplicate Maintenance Services coverage.
- A (K) indicates assumptive Products included in the total Charge Period Price that are based on the customer provided configuration.
- An (M) indicates a Miscellaneous Equipment Specification (MES) on order is not installed and applicable pricing not included.
- An (N) indicates that the Product is a non-GSA Schedule item .
- An (O) indicates a one time charge.
- A (P) indicates a Machine or Service with coverage on a non-CHIS contract.
- An (R) indicates the usage charge rate (feet, hours, or impressions) for a Machine under a usage plan.
- An (S) indicates a manual order installation date change.
- A (U) indicates usage charges which are measured in either feet, hours, or impressions.
- A (W) indicates a Machine under warranty.
- An (X) indicates On-order Products which are shown for planning purposes only.
- A (Y) indicates On-order MES Products which are shown for planning purposes only. These charges are included in the related Machine.

<sup>5</sup>Charges Start/Stop dates shown are those that differ from the Contract Period Start/End Dates



# Statement of Work for ServiceElite

Both of us agree to add the following Services as part of our ServiceElite contract.

## Hard Drive Retention Option

Under this Hard Drive Retention Option, IBM will modify Service for Machines as described in our Agreement to allow you to retain a defective hard drive that is replaced in the course of Service by us. If your reported problem requires the replacement of a hard drive, a replacement hard drive will be supplied by us and the removed defective hard drive will be provided to you as your property for disposal by you.

The applicable Schedule will identify the Eligible Machines by Specified Location, and period for which you have contracted this Service. The IBM Eligible Machines covered under this Statement of Work must also be under IBM warranty or separately covered by Machine maintenance Service with us.

If you have selected Automatic Inventory Increase for Machines and Software Maintenance Service - Machine Maintenance Services, Option #1, that selection will also apply to this option except this Service will commence upon a Machines addition to inventory regardless of the Machines warranty status.

You agree to:

1. identify a customer representative to receive the retained defective drive from IBM;
2. refrain from placing the defective drive into productive use; and
3. dispose of all retained hard drives in compliance with applicable environmental laws and regulations.

IBM is not responsible for the loss or disclosure of, or damage to, any data that may be contained on a removed defective hard drive. Any removed hard drive that is not returned to you will be retained as IBM's property.

This 1) Statement of Work, 2) its applicable Transaction Documents (e.g. Attachments, Schedules, and Change Authorizations), and 3) the IBM Customer Agreement (or an equivalent agreement in effect between us) comprise the complete agreement regarding the Services described in this Statement of Work and its applicable Transaction Documents and replace any prior oral or written communications between Customer and IBM. Each party accepts the terms of this Statement of Work by signing this Statement of Work by hand or, where recognized by law, electronically.

As used in this Statement of Work, "you" and "your" refer to the Enterprise identified below.

Agreed to:  
**EL DORADO COUNTY**

Agreed to:  
**International Business Machines Corporation**

By \_\_\_\_\_  
Authorized signature

By \_\_\_\_\_  
Authorized signature

Name (type or print):

Name (type or print):

Date:

Date:

Enterprise Number: 02734100

Reference Attachment number: MAS1RCP

Enterprise address:

Statement of Work number: AT8FLX

DATA PROCESSING  
360 FAIR LANE  
PLACERVILLE CA 95667-4103

IBM address:  
IBM CORPORATION  
7100 HIGHLAND PARKWAY  
SMYRNA, GA 30082

Contract Administrator: Kelly Webb, Interim Director of Information Technologies, or successor.

# IBM Schedule for ServiceElite

*This Schedule contains a listing of the Eligible Machines at the Specified Locations identified below for which IBM will provide the identified Services as described in the referenced Master Services Attachment and any referenced Statements of Work and Change Authorizations. The complete agreement between us about these Services consists of 1) this Schedule 2) the referenced Master Services Attachment and any referenced Statements of Work and Change Authorizations, and 3) the IBM Customer Agreement (or any equivalent agreement in effect between us).*

**Name and Address of Customer:**

EL DORADO COUNTY  
DATA PROCESSING  
360 FAIR LANE  
PLACERVILLE CA 95667-4103

**Customer Billing Address:**

EL DORADO COUNTY  
INFORMATION SVCS  
ACCOUNTS PAYABLE  
360 FAIR LANE  
PLACERVILLE CA 95667-4103

**Master Services Attachment Number:** MAS1RCP  
**Statement of Work Number:** AT8FLN  
**Change Authorization Number:**  
**Customer Number:** 02728837

**Schedule Number:** AT8FLN  
**Revised Schedule:** No  
**Schedule Effective Date:** 08/14/2013  
**Proposal Reference Date:** 09/01/2013

**Transaction Contract Period:**  
**Start Date:** 09/01/2013  
**End Date:** 08/31/2016  
**Renewal Contract Period:** 0 Year(s)

**\* Charge Period Charges / Payment Plan (Inclusive of MES):**

**WSU One Time Charges:** 0.00  
**SWMA ALF One Time Charges:** 0.00  
**MMS for CISCO HW One Time Charges:** 0.00  
**MMS for CISCO SW One Time Charges:** 0.00  
**MMS for Nortel One Time Charges:** 0.00  
**One Time Charges:** 0.00

**\* Maintenance Charges:** 13,618.80  
**\* Service Charges:** 2,150.60  
**\* TOTAL CHARGE PERIOD CHARGES:** 15,769.40  
Annually

**Charge Period:**  
**Start Date:** 09/01/2013  
**End Date:** 08/31/2016

<sup>1</sup> **Accumulated Adjustment Invoicing option:** N

**Automatic Inventory Increase Option Applies:** Price Protection Option: Opt#2 Full Price Protection  
**Machine Maintenance Services Option #1:** N Pricing Method: Line Item  
**Software Services Option #2:** N

**Type of Discount(s) Applied:** Term Incentive Special Bid

\* Charges are based on the current inventory and services identified in this Schedule. Actual charges may vary with any additions, deletions, or changes to the inventory or services. Any applicable taxes are not included in the charge amounts herein but will be added to your invoice.

For a Machine subject to usage charges, in addition to the Service charge identified herein, you will be separately billed for usage in accordance with applicable usage rates and billing cycles.

**The Parties need not sign this Schedule, unless either of us requests it.**

Agreed to:

**EL DORADO COUNTY**

By: \_\_\_\_\_  
Authorized signature

Name (type or print): \_\_\_\_\_

Date: \_\_\_\_\_

Agreed to:

**International Business Machines Corporation**

By: \_\_\_\_\_  
Authorized signature

Name (type or print): \_\_\_\_\_

Date: \_\_\_\_\_

Contract Administrator: Kelly Webb, Interim Director of Information Technologies, or successor.



# IBM Schedule for ServiceElite

**Enterprise Total for Charge Period by Customer Number Inclusive of MES:**

Customer No.	Customer Name	Customer Location	Charges <sup>4</sup>
02728837	EL DORADO COUNTY	360 FAIR LANE, DATA PROCESSING, PLACERVILLE CA 95667-4103	15,769.40
<b>Total</b>			<b>15,769.40</b>

**Note: One Time Charges are not included in the Total**

# IBM Schedule for ServiceElite

## Maintenance Machine List

--Eligible Machine Description-- A Machine is only considered "Eligible" if it is operational and in conformance with its official published specifications on the contract start date.

Mfg	Type	Mod/ Feat	Add/ Rem	Order/ Serial Number	Related Order/ Serial Number	Product Description	Qty.	Type of Svc <sup>2</sup>	Maint. Svc <sup>3</sup>	Charges <sup>4</sup>	Charges Start <sup>5</sup>	Charges Stop <sup>5</sup>
				<b>Specified Location: 02728837</b>		<b>City, State: PLACERVILLE CA 95667-4103</b>						
IBM	9133	55A		000029ADH		SYSTEM P5	1	B	1	13,618.80		
<b>Subtotal Without MES</b>										<b>13,618.80</b>		
<b>Subtotal With MES</b>										<b>13,618.80</b>		
<b>Total Charge Period Charges for Maintenance Machine List Without MES</b>										<b>\$13,618.80</b>		
<b>Total Charge Period Charges for Maintenance Machine List With MES</b>										<b>\$13,618.80</b>		

See Legend for Details

# IBM Schedule for ServiceElite

## Services List

Customer Technical Contact Name (if applicable):  
 Customer Primary Technical Contact name :  
 Customer Primary Technical Contact phone number :

-----Eligible Machine Description-----

Type	Model	Serial/ Order Number	Support Service	Product Group / Service Option	Qty.	Charges <sup>4</sup>	Services Start	Charges Start <sup>5</sup>	Charges Stop <sup>5</sup>
<b>Specified Location: 02728837</b>			<b>City, State: PLACERVILLE CA 95667-4103</b>						
			SWMA FOR AIX STD EDITION			2,112.42			
				SOFTWARE MAINTENANCE E5					
				CHARGEABLE PROCESSORS	2				
				PRIME SHIFT					
9133	55A	000029ADH			1				
			HARD DRIVE RETENTION - SYS p			38.18			
9133	55A	000029ADH			1				
<b>Subtotal</b>						<b>2,150.60</b>			
<b>Total Charge Period Charges for Services List</b>									<b>\$ 2,150.60</b>

**Note: One Time Charges are not included in these totals.  
 See Legend for Details**

# IBM Schedule for ServiceElite

## Legends:

<sup>1</sup> Charge adjustments related to inventory and Service changes will be accumulated and invoiced with your next standard invoicing cycle (may be sooner for annual or semiannual payment plans)

## <sup>2</sup>TYPE OF SERVICE

- A) On-Site Repair/Exchange Services, Monday through Friday (excluding holidays), 8am to 5pm, next business day
- B) On-Site Repair/Exchange Services, 7 days a week, 24hrs/day.
- C) On-Site Repair/Exchange Services, Monday through Friday (excluding holidays), 8am to 5pm, 4 hour response objective  
This type of repair Service includes a response objective and is not a guarantee.
- D) On-Site Repair/Exchange Services, 7 days a week, 24hrs/day, 2 hour response objective.  
This type of repair Service includes a response objective and is not a guarantee.
- X) EasyServe (remotely delivered services)

## <sup>3</sup>MAINTENANCE SERVICES

- 1) Maintenance of IBM Machines
- 2) Maintenance of Non-IBM Machines
- 3) Warranty Service Upgrade
- 4) Maintenance of Non-IBM Machines - Cisco Products
- 5) Maintenance of IBM Machines - Enhanced Service Response
- 6) Service for Machines Withdrawn from IBM Maintenance
- 7) Non-IBM Service for Machines Withdrawn from IBM Maintenance
- 8) Maintenance of IBM Machines (Labor Only)
- 9) Non-IBM Memory Exchange
- 10) Enhanced Parts Inventory
- 11) Spare Machine
- 12) Key Operator Support
- 13) Maintenance of non-IBM Machines during the Manufacturer's Warranty Period
- 16) IBM Maintenance Services - First Line Maintenance for Wincor Nixdorf ATMs
- 17) IBM Maintenance Services - Applications Maintenance Services for Wincor Nixdorf ATMs
- 18) Post Installation Coverage (PIC) Service Upgrade, for selected Non-IBM Machines

## <sup>4</sup>Charges shown are for the Charge Period

- A (C) indicates a Machine that will have usage charges billed separately.
- An (E) indicates a Machine that has been announced as withdrawn from generally available Maintenance Service.
- An (F) indicates an assumptive Product included in the total Charge Period Price that has a manually inserted serial number and configuration provided by the customer.
- An (H) identifies a Machine on an existing ServiceElite/ServiceSuite/ ServiceElect CHIS contract with duplicate Maintenance Services coverage.
- A (K) indicates assumptive Products included in the total Charge Period Price that are based on the customer provided configuration.
- An (M) indicates a Miscellaneous Equipment Specification (MES) on order is not installed and applicable pricing not included.
- An (N) indicates that the Product is a non-GSA Schedule item .
- An (O) indicates a one time charge.
- A (P) indicates a Machine or Service with coverage on a non-CHIS contract.
- An (R) indicates the usage charge rate (feet, hours, or impressions) for a Machine under a usage plan.
- An (S) indicates a manual order installation date change.
- A (U) indicates usage charges which are measured in either feet, hours, or impressions.
- A (W) indicates a Machine under warranty.
- An (X) indicates On-order Products which are shown for planning purposes only.
- A (Y) indicates On-order MES Products which are shown for planning purposes only. These charges are included in the related Machine.

<sup>5</sup>Charges Start/Stop dates shown are those that differ from the Contract Period Start/End Dates



# Statement of Work for ServiceElite

Both of us agree to add the following Services as part of our ServiceElite contract.

## Hard Drive Retention Option

Under this Hard Drive Retention Option, IBM will modify Service for Machines as described in our Agreement to allow you to retain a defective hard drive that is replaced in the course of Service by us. If your reported problem requires the replacement of a hard drive, a replacement hard drive will be supplied by us and the removed defective hard drive will be provided to you as your property for disposal by you.

The applicable Schedule will identify the Eligible Machines by Specified Location, and period for which you have contracted this Service. The IBM Eligible Machines covered under this Statement of Work must also be under IBM warranty or separately covered by Machine maintenance Service with us.

If you have selected Automatic Inventory Increase for Machines and Software Maintenance Service - Machine Maintenance Services, Option #1, that selection will also apply to this option except this Service will commence upon a Machines addition to inventory regardless of the Machines warranty status.

You agree to:

1. identify a customer representative to receive the retained defective drive from IBM;
2. refrain from placing the defective drive into productive use; and
3. dispose of all retained hard drives in compliance with applicable environmental laws and regulations.

IBM is not responsible for the loss or disclosure of, or damage to, any data that may be contained on a removed defective hard drive. Any removed hard drive that is not returned to you will be retained as IBM's property.

This 1) Statement of Work, 2) its applicable Transaction Documents (e.g. Attachments, Schedules, and Change Authorizations), and 3) the IBM Customer Agreement (or an equivalent agreement in effect between us) comprise the complete agreement regarding the Services described in this Statement of Work and its applicable Transaction Documents and replace any prior oral or written communications between Customer and IBM. Each party accepts the terms of this Statement of Work by signing this Statement of Work by hand or, where recognized by law, electronically.

As used in this Statement of Work, "you" and "your" refer to the Enterprise identified below.

Agreed to:  
**EL DORADO COUNTY**

Agreed to:  
**International Business Machines Corporation**

By \_\_\_\_\_  
Authorized signature

By \_\_\_\_\_  
Authorized signature

Name (type or print):

Name (type or print):

Date:

Date:

Enterprise Number: 02734100

Reference Attachment number: MAS1RCP

Enterprise address:

Statement of Work number: AT8FLN

DATA PROCESSING  
360 FAIR LANE  
PLACERVILLE CA 95667-4103

IBM address:  
IBM CORPORATION  
7100 HIGHLAND PARKWAY  
SMYRNA, GA 30082

Contract Administrator: Kelly Webb, Interim Director of Information Technologies, or successor.