

## **AGREEMENT**

This Agreement, executed this 21 day of December 2007, by and between the Rector and Visitors of the University of Virginia, (the "University") and International Business Machines Corporation ("IBM").

### **TERM**

The term of this Agreement will be for five years effective upon execution of the Agreement, with the ability to renew on the same terms and conditions, for two additional two-year periods. IBM and the University will mutually agree at least 90 days prior to each renewal period whether to renew the terms of the Agreement.

### **WITNESS**

By its Request for Proposal (RFP) #MW040607 for Computers – UNIX/Linux/High Performance, dated April 6, 2007, the University requested proposals from firms to provide discounts across product lines and services to meet the University's high-end computing needs to include workstations, servers, storage, tape drives and other associated peripherals, plus software, installation/implementation, maintenance, training and any other goods and services necessary to help the University achieve its goals (the "Goods and Services"). In response to the RFP, IBM submitted a written proposal dated May 9, 2007, and emails dated June 6, 2007, June 26, 2007, June 28, 2007, September 14, 2007, and November 6, 2007.

The parties, having negotiated concerning the Goods and Services wish to express in this Agreement the basis on which IBM will provide the Goods and Services to the University.

Accordingly, and in consideration of the mutual premises and provisions hereof, the parties hereby agree as follows:

## I. Contents

These documents are hereby incorporated into this Agreement:

- A. The RFP dated April 6, 2007, including its Attachments 1, 2, 3 and 4;
- B. RFP Addendum One dated April 24, 2007
- C. Agreement Attachment 1, Contractual Provisions;
- D. Agreement Attachment 2, Procedure for Resolution of Contractual Claims;
- E. Agreement Attachment 3, Statement of Work (Sample);
- F. Agreement Attachment 4, IBM Customer Agreement dated October 17, 2000;
- G. IBM's Proposal dated May 9, 2007; and
- H. IBM's response to negotiations with the University, consisting of emails dated June 6, 2007, June 26, 2007, June 28, 2007, September 14, 2007, and November 6, 2007 from Jeanette Bellamy (IBM) to Michael Warlick (University).

To the extent that the terms of the various Agreement documents are in conflict, the terms of this Agreement, the RFP, RFP Addendum One, Agreement Attachment's 1 and 2 will prevail over all other Agreement documentation.

## II. Specific Provisions

These specific provisions are restated here for clarification:

- A. Goods and Services
  - 1. *Products:* IBM will make available for purchase all of its servers and storage products, the software it sales, and its installation/implementation, maintenance and training services. Currently, the server and storage products include IBM's System p, System I, System x, Blade Center, Total Disc Storage and Total Tape Storage offerings. All items will be shipped FOB Destination, freight included.
  - 2. *Warranty:* IBM warranties vary by product, but a minimum of a one-year warranty is provided on all IBM hardware products. Further warranty information can be found at:  
[www-304.ibm.com/jct01004c/systems/support/machine\\_warranties/warranties\\_licenses\\_maintenance.html](http://www-304.ibm.com/jct01004c/systems/support/machine_warranties/warranties_licenses_maintenance.html)
  - 3. *Maintenance / Support / Services:* A full array of support programs will be available from IBM, to include service plans, technical support, installation

assistance, and training. A complete list of these programs and options can be found at: <http://www.ibm.com/us/>.

## B. Discounts

The following tables show the minimum discounts offered off of IBM's Standard List Price.

<b>IBM Storage</b>		
<b>Equipment ( Machine Type/Model)</b>	<b>Description</b>	<b>Discount</b>
<b>DISK</b>		
1750-522/EX2	DS6000 Storage Server Base/Expansion	40%
1812-81A/81S	DS4000 EXP810 Expansion	40%
1814-70A/70S/72A/72S	DS4700 Fibre Channel Storage Server	40%
1815-80A/82A/84A/88A	DS4800 Fibre Channel Storage Server	40%
2101-200	Storage Rack	22%
2105-800	Refurbished Enterprise Storage Server	50%
2421-931/932/9B2/92E/9AE	DS8000 Stg Server-1 Year Warranty	50%
2422-931/932/9B2/92E/9AE	DS8000 Stg Server-2 Year Warranty	50%
2423-931/932/9B2/92E/9AE	DS8000 Stg Server-3 Year Warranty	50%
2424-931/932/9B2/92E/9AE	DS8000 Stg Server-4 Year Warranty	50%
<b>NETWORK ATTACHED STORAGE</b>		
2101-N00	N Series NAS Rack	22%
2861-001	N Series NAS SATA Expansion	40%
2863-A10/A20/001	N3700 NAS Appliance/Expansion	40%
2864-A10/A20/G10/G20	N5200 NAS Appliance, Gateway	40%
2865-A10/A20/G10/G20	N5500 NAS Appliance, Gateway	40%
2866-A10/A20/G10/G20	N7600 NAS Appliance, Gateway	40%
2867-A10/A20/G10/G20	N7800 NAS Appliance, Gateway	40%
2868-A10/A20	N5600 NAS Appliance	40%
<b>STORAGE AREA NETWORK</b>		
2005-B16/B32/B5K/B64/R18	Brocade Switch/Router	15%
2026-416/432	McDATA Switch	15%
2027-140/256/R04/R16/C40	McDATA Director/Router/Cabinet	25%
2053-424/P/A2	Cisco Switch/Port Analyzer	20%
2054-D1A-D1H/E04/E07/E11	Cisco Switch/Director	50%
2109-A16.M48/C36	Brocade Router/Director/Cabinet	50%

TAPE/OPTICAL/CD/DVD		
3494-D22/D24	Enterprise Tape Library Frames	10%
3573-L2U/L4U	TS3100/TS3200 LTO Small Libraries	10%
3576-L5B/E9U	TS3310 LTO 1-18 Drive Library	45%
3577-L5U	TS3400 1-2 Drive Enterprise Tape Library	40%
3580-L33/L43/S43	LTO Single Drive	10%
3584-L23/D23/L53/D53/HA1	TS3500 LTO Large Library	50%
3588-F3B/F4A	TS1030 LTO Drive for 3584 Library	10%
3590-E1x/H1x	Refurbished Enterprise Tape Drive	na
3590	Refurbished Enterprise Tape Drive	25%
3590-A50	Refurbished Enterprise Tape Controller	22%
3590-A60	Refurbished Enterprise Tape Controller	30%
3590-B1A/B31	Refurbished Enterprise Tape Drive	25%
3590-E11	Refurbished Enterprise Tape Drive	35%
3590-E1A	Refurbished Enterprise Tape Drive	35%
3590-H11	Refurbished Enterprise Tape Drive	45%
3590-H1A	Refurbished Enterprise Tape Drive	45%
3592-E05/C06/C20	TS1120 Enterprise Tape	40%
3589	Data Cartridges	25%
3599	Data Cartridges	20%
3952-F05	Tape Systems Frame	50%
3953-F05/L05	Tape Systems Frame/Library Manager	10%
3954-CV5/CV6	TS7500 Open Systems VTL Engine	25%
3955-SV5 TS7510	Open Sys VTL Disk Cache ** W/D 7/27/07 **	25%
3955-SX5/SV6/SX6	TS7500 Open Systems VTL Disk Cache	25%
3956-CC6/CX6	TS7740 System Z VTS Disk Cache	15%
3957-V06	TS7740 System Z VTS Engine	15%
3996-032/080/174	Optical Storage Library	30%
7206-336	VX2/VX3 4mm/VXA Format Drive	22%
7207-330	QIC Format Drive	0%
7210-030	DVD-RAM Drive	20%
7212-103	Enclosure for Tape and DVD-RAM	25%
STORAGE SOFTWARE		
2028-E09	McData EFCM Ent Fabric Conn Manager Ver 9	25%
5639-FMA	Brocade Fabric Manager	0%
5648-TSE	Enterprise Tape Library Expert	0%
5722-BR1	BRMS Backup Recovery & Media Services for iSeries	0%
VIRTUALIZATION, OTHER STG SOFTWARE-- SUPPORTED BY TIVOLI		
2145-8F4	SAN Volume Controller	22%
5608-TRA/TRB	TotalStorage Prod Center-Replication 3.1	0%
5608-VCx	TotalStg Prod Center-Std, Fabric, Data, Disk, Limit 3.1	0%

<b>IBM System p - High performance UNIX servers, Power5 processor</b>		
<b>Equipment ( Machine Type/Model)</b>	<b>Description</b>	<b>Discount</b>
P5 Model 285 (9111-285)	Power 5 pSeries	10%
P5 Model 505 (9115-505)	Power 5 pSeries	10%
P5 Model 510 (9110-51A)	Power 5 pSeries	10%
P5 Model 520 (9131-52A)	Power 5 pSeries	10%
P5 Model 550 (9133-55A)	Power 5 pSeries	10%
P5 Model 560 (9116-561)	Power 5 pSeries	10%
P5 Model 570 (9117-570)	Power 5 pSeries	30%
P5 Model 575 (9118-575)	Power 5 pSeries	20%
P5 Model 590 (9119-590)	Power 5 pSeries	30%
P5 Model 595 (9119-595)	Power 5 pSeries	30%
P5 Hardware Management Console (7310-XXX)		10%
P5 I/O Drawers (7311-XXX)		10%
P5 Console (7316-XXX)		18%
P5 Rack (7014-XXX)		27%
System p Category B software (See Sheet 2)		27%
AIX 5L V5.3 (5765-E61)	Pseries Operating Systems	27%
AIX 5L V5.3 (5765-G03)	Pseries Operating Systems	27%
Red Hat Enterprise Linux for P5 (5639-RH4)		0%
SUSE Linux Enterprise Server for P5, V9 (5639-SLP)		0%
SLES 10 for P5 (5639-S10)		0%
1-year software maintenance for AIX 5L (5771-xxx)		20%
3-year software maintenance for AIX 5L (5773-xxx)		20%

<b>IBM System i</b>		
<b>Equipment ( Machine Type/Model)</b>	<b>Description</b>	<b>Discount</b>
i5 Model 515 (9407-515)	iSeries Power 5+ processor Express Model	15%
i5 Model 520 (9405-520)	iSeries Power 5+ processor Express Model	15%
i5 Model 520 (9406-520)	iSeries Power 5+ processor Value, Enterprise, Standard, CBU Models	15%
i5 Model 525 (9406-525)	iSeries Power 5+ processor Express, CBU Models	15%
i5 Model 550 (9406-550)	iSeries Power 5+ processor Enterprise, Standard, CBU Domino Models	15%
i5 Model 570 (9406-570)	iSeries Power 5+ processor Enterprise, Standard, CBU Models	15%
i5 Model 595 (9406-595)	iSeries Power 5+ processor Enterprise, Standard, CBU Models	15%
(5722-SS1)	iSeries Operating System	15%
1-year software maintenance renewal for i5/OS		0%
3-year software maintenance renewal for i5/OS		0%

<b>IBM System x -Intel</b>		
<b>Equipment ( Machine Type/Model)</b>	<b>Description</b>	<b>Discount</b>
x3200, x3250 series	xSeries Intel Servers	15%
x3400 series	xSeries Intel Servers	15%
x3500 series	xSeries Intel Servers	15%
x3550 series	xSeries Intel Servers	15%
x3650 series	xSeries Intel Servers	15%
x3800 series	xSeries Intel Servers	15%
x3850 series	xSeries Intel Servers	15%
x3950 series	xSeries Intel Servers	15%
Warranty Upgrades Intel Based Servers		15%
Remote Tech Support Intel Based Servers(Software)		15%
x3655 series	AMD Servers	15%
x3755 series	AMD Servers	15%
x3455 series	AMD Servers	15%
Warranty Upgrades AMD Based Servers		15%
Remote Tech Support AMD Based Servers(Software)		15%
DS3000 Serie -	Intel Server Storage	25%
EXP 3000 Series	Intel Server Storage	25%
Warranty Upgrades Intel Storage		15%
Remote Tech Support Intel Storage(Software)		15%
All Options		15%
Intellistation Professional Workstation		15%
Warranty Upgrades Intellistations		15%
Remote Tech Support Intellistations(Software)		15%
JS21 Power Series	Blade Servers	15%
HS21, HS21x on Intel Series	Blade Servers	15%
LS21, LS41 AMD Series	Blade Servers	15%
Blade Center Chassis		15%
Warranty Upgrades Blade Servers		15%
Remote Tech Support Blade Servers(Software)		15%
Warranty Upgrades BladeCenter Chassis		15%

<b>IBM Software (Including Subsidiaries)</b>		
<b>Brand Category</b>	<b>Educational Discount</b>	<b>Government Discount</b>
WebSphere Brand Software	60%	16%
Rational Brand Software	60%	16%
Tivoli Brand Software	60%	16%
Lotus Brand Software	60%	16%
Information Management Software	60%	16%
System Z software	0	0%

C IBM Business Partners

After this Agreement is signed by both IBM and the University, IBM will identify Business Partners authorized to support this Agreement. Once identified, the University will issue an Addendum to this Agreement to incorporate the Business Partners. IBM Business Partners are only authorized to quote to the products and pricing specified in this Agreement. Purchase Orders will still be issued directly to IBM and must include the Business Partner name and the contract number of this Agreement.

D. Invoicing

Payment terms are Net 30 days after receipt of goods and/or services and invoice whichever is later. IBM will submit one original invoice referencing the correct purchase order number to the University's Accounts Payable Department at this address:

University of Virginia  
Accounts Payable  
P. O. Box 400197  
Charlottesville, Virginia 22904-4197

E. Contract Administration

1. Primary Administration: Individual University departments are the point of contact for day-to-day operations under this Agreement. Individual University departments cannot approve amendments to this Agreement or price changes.
2. Secondary Administration: IBM will channel all Contract Administration questions not pertaining to a specific service or departmental request through the University's Procurement Service department and the individual named below:

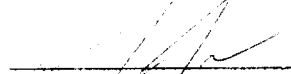
Michael N. Warlick, Senior Buyer  
University of Virginia  
Procurement Services  
P.O. Box 400202, Carruthers Hall  
1001 N. Emmet St.  
Charlottesville, VA 22904-4204  
Phone: (434) 924-8918  
Fax: (434) 982-2690  
Email: [warlick@virginia.edu](mailto:warlick@virginia.edu)



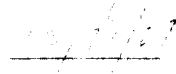


**ACCEPTANCE**

**For the Rector and Visitors  
of the University of Virginia**



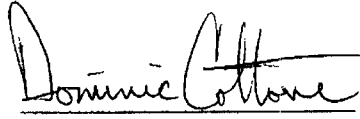
Eric N. Dgny  
Director of Procurement Services



Date

PO# 682546

**For International Business Machines Corporation**



Dominic Cottone  
Region Executive, Public Sector Mid Atlantic

12/20/2007

Date



**Attachment 1**  
**Contractual Provisions**

A. Nondiscrimination

During the performance of this Agreement, IBM will comply with the contract provisions contained in Section 2.2-4311(1) and (2) of the Code of Virginia or any successor provisions which may be applicable to this Agreement. Also, in accordance with Section 2.2-4343.1, the University does not discriminate against faith-based organizations.

B. Conflict of Interests

IBM represents to the University that its entering into this Agreement with the University and its performance through its agents, officers and employees does not and will not involve, contribute to nor create a conflict of interest prohibited by the Virginia State and Local Government Conflict of Interests Act (Va. Code 2.2-3100 *et seq*), the Virginia Ethics In Public Contracting Act (Va. Code 2.2-4367 *et seq*), the Virginia Governmental Frauds Act (Va. Code 18.2-498.1 *et seq*) or any other applicable law or regulation.

C. Assignment

Neither party to this Agreement will have the right to assign this Agreement in whole or in part without the prior written consent of the other, except that IBM is free to assign its right to payment hereunder by giving written notice to the University.

D. Amendments

No amendment of this Agreement will be effective unless it is reduced to writing and executed by the University's Director of Procurement Services and by the individual signing IBM's proposal or by other individuals named by either party as specified in Section E, Notices below. If IBM deviates from the terms of this Agreement without a written amendment, it does so at its own risk.

E. Notices

Any notice required or permitted to be given under this Agreement will be in writing and will be deemed duly given: (1) if delivered personally, when received; (2) if sent by recognized overnight courier service, on the date of the receipt provided by such courier service; (3) if sent

by registered mail, postage prepaid, return receipt requested, on the date shown on the signed receipt: or (4) if sent by facsimile, when received (as verified by sender's machine) if delivered no later than 4:00 p.m. (receiver's time) on a business day or on the next business day if delivered (as verified by sender's machine) after 4:00 p.m. (receiver's time) on a business day or on a non-business day. All such notices will be addressed to a party at such party's address or facsimile number as shown below.

If to the University:

Eric N. Denby  
Director of Procurement Services  
University of Virginia  
Carruthers Hall  
1001 North Emmet Street  
P.O. Box 400202  
Charlottesville, Virginia 22904-4202  
Fax: (434) 924-6154

If to IBM:

Paul Racioppo  
Partner, Higher Education  
IBM Corporation  
114 Ridge Drive  
Montville, New Jersey 07045  
Fax: (973) 858-0401

F. Independent Contractor

IBM is not an employee of the University, but is engaged as an independent contractor. IBM will indemnify and hold harmless the Commonwealth of Virginia, the University, and its employees and agents, with respect to all withholding, Social Security, unemployment compensation and all other taxes or amounts of any kind relating to IBM's performance of this Agreement. Nothing in this Agreement will be construed as authority for IBM to make commitments which will bind the University, or to otherwise act on behalf of the University, except as the University may expressly authorize in writing.

G. Workers' Compensation and Employers' Liability

IBM will (i) maintain Employers Liability coverage of at least \$100,000 and (ii) comply with all federal or state laws and regulations pertaining to Workers' Compensation Requirements for insured or self-insured programs.

H. Drug-Free Workplace

IBM, its agents and employees are prohibited, under the terms of this Agreement, Code of Virginia Section 2.2-4312, and the Commonwealth of Virginia, Department of Human Relations Management Policy Number 1.05, from manufacturing, distributing, dispensing, possessing, or using any unlawful or unauthorized drugs or alcohol while on University property.

During the performance of this Agreement, IBM agrees to 1) provide a drug-free workplace for IBM's employees; 2) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in IBM's workplace and specifying the actions that will be taken against employees for violations of such prohibition; 3) state in all solicitations or advertisements for employees placed by or on behalf of IBM that it maintains a drug-free workplace; and 4) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific agreement awarded to a Selected Firm, the employees of whom are prohibited from engaging in the unlawful manufacturing, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Agreement.

I. Information Technology Access Act

In accordance with § 2.2-3504 of the Code of Virginia, the following will apply to all information technology Agreements:

NON-VISUAL ACCESS TO TECHNOLOGY: All information technology (the "Technology") which is purchased or upgraded by the University will comply with the following non-visual access standards from the date of purchase or upgrade until the expiration of the Agreement:

- Effective, interactive control and use of the Technology will be readily achievable by non-visual means;

- Technology equipped for non-visual access will be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;
- Non-visual access technology will be integrated into any networks used to share communications among employees, program participants or the public; and
- Technology for non-visual access will have the capability of providing equivalent access by non-visual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing non-visual access standards will not be required if the Director of Procurement Services, University of Virginia determines that 1) the Technology is not available with non-visual access because the essential elements of the Technology are visual and 2) non-visual equivalence is not available.

Installation of hardware, software, or peripheral devices used for non-visual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information will permit the installation and effective use of non-visual access software and peripheral devices.

If requested, the Agreement must provide a detailed explanation of how compliance with the foregoing non-visual access standards is achieved and a validation of concept demonstration.

J. Intellectual Property Rights/Disclosure

Intellectual Property Rights/Disclosure will be governed by the section entitled “Ownership and License” contained in paragraph 5.3 of Attachment 4, IBM Customer Agreement dated October 17, 2000.

K. eVA Business to Government Registration

The eVA Internet electronic procurement solution, web site portal [www.eva.state.va.us](http://www.eva.state.va.us), is the Commonwealth of Virginia's comprehensive electronic procurement system. The portal is the gateway for firms to conduct business with state agencies and public bodies. All agencies and public bodies are expected to utilize eVA. All firms desiring to provide goods and/or services in the Commonwealth are encouraged to participate in the eVA Internet e-procurement

solution. IBM is required to register in the eVA Internet e-procurement solution prior to an award being made.

L. eVA Transaction Fee

IBM agrees that it is a registered eVA vendor and subject to an eVA transaction fee, for which IBM will be invoiced by Commonwealth of Virginia, Department of General Services. Additional information is available at [www.eva.state.va.us](http://www.eva.state.va.us).

M. Contractor License Requirements

State statutes and regulatory agencies require that some firms be properly registered and licensed, or hold a permit, prior to performing specific types of services. If firms provide removal, repair, improvement, renovation or construction-type services they, or a qualified individual employed by the firm, must possess and maintain an appropriate State of Virginia Class A, B, or C Contractor License (as required by applicable regulations and value of services to be performed) for the duration of the Agreement. It is the firm's responsibility to comply with the rules and regulations issued by the appropriate State regulatory agencies. A copy of the license must be furnished upon request to the University or VASCUPP member institution.

N. Goods and Services

During the term of this Agreement, IBM will provide for the University the goods and services offered to the University in its proposal and/or any addenda to its proposal which has been approved in writing by the University and as may be further specified by the University in writing when it selected IBM.

O. Waiver

No waiver of any right hereunder will be deemed a continuing waiver, and no failure on the part of either party to exercise wholly or in part any right hereunder will prevent a later exercise of such or any other right.

P. Indemnification

Indemnification will be governed by Attachment 4, IBM Customer Agreement dated October 17, 2000, paragraphs 1.9 "Patents and Copyrights" and 1.10 "Limitation of Liability".

Q. Governing Law

This Agreement will be governed in all respects by the laws of the Commonwealth of Virginia.

R. Termination

If IBM fails to provide quality goods or services in a professional manner, solely as determined by the University, and, upon receipt of notice from the University, does not correct the deficiency to the University's satisfaction within a reasonable period of time, not to exceed 30 calendar days unless otherwise agreed to by both parties in writing, the University reserves the right to terminate this Agreement upon written notice to IBM.

S. Non-Appropriation

Funding for any Agreement between the University and IBM is dependent at all times upon the appropriation of funds by the Virginia General Assembly and/or any other organization of the Commonwealth authorized to appropriate such funds. In the event that funding to support this Agreement is not appropriated, whether in whole or in part, then the Agreement may be terminated by the University effective the last day for which appropriated funding is available.

T. Right of Audit

The University reserves the right to audit or cause to be audited IBM's books and accounts regarding the University's account at any time during the term of this Agreement and for five years thereafter. Such books and accounts are limited to copies of IBM invoices to the University to substantiate charges under the Agreement, copies of any status reports, copies of contract correspondence and any other generally available supporting documentation directly related to the Agreement.

U. Contractual Claims

This Agreement is subject to the University's policy on Contractual Claims which is provided as Attachment 2, Procedure for Resolution of Contractual Claims.

V. Insurance

Listed below is the insurance IBM must maintain as part of this Agreement. In no event will IBM construe these minimum required limits to be their limit of liability to the University.



Comprehensive Commercial General Liability:

IBM and any Subcontractor will provide a minimum combined single Limit of Liability for bodily injury and property damage of \$1,000,000 per occurrence with coverage for the following coverage:

{X}	Premises/Operations	{X}	Products/Completed Operations
{X}	Contractual	{X}	Personal Injury
{X}	Additional Insured*		

Professional Liability:

IBM and any Subcontractor will provide a minimum Limit of Liability of \$1,000,000 per claim for professional errors and omissions coverage.

Automobile Insurance:

IBM and any Subcontractor will provide a minimum combined single Limit of Liability for bodily injury and property damage of \$500,000 per occurrence with the following coverages for vehicles operated by their employees.

{X} Any Automobile

\*Additional Insured:

The University will be named as an Additional Insured, and the proper name is: "The Commonwealth of Virginia, and the Rector and Visitors of the University of Virginia, its officers, employees and agents."

W. Use of Agreement by Third Parties

In accordance with Section 2.2-4304 of the Code of Virginia, these organizations may have access to this Agreement to allow for cooperative purchasing by only the Virginia Association of State College and University Purchasing Professionals (VASCUPP) and all other Commonwealth of Virginia public institutions of higher education (to include four-year, two-year and community colleges). Current VASCUPP member institutions include: College of William and Mary, George Mason University, James Madison University, Old Dominion University, Radford University, University of Virginia, Virginia Commonwealth University,

Virginia Military Institute, and Virginia Polytechnic Institute and State University. A list of all other Virginia Public Colleges and Universities is available at <http://www.ExploreVirginiaColleges.com/>.

In addition, access to the Agreement may also be extended to 1) Any University related foundation, and 2) City of Charlottesville and County of Albemarle. Potentially, other member schools of the Atlantic Coast Conference (ACC) may also have access to this Agreement if such access is confirmed by the University. The other ACC member schools which may potentially participate are: Boston College; Clemson University; Duke University; Florida State University; Georgia Institute of Technology; University of Maryland; University of Miami; University of North Carolina; North Carolina State University; Wake Forest University; and Wake Forest University Health Sciences. Other institutions which may participate include Emory University.

Participation in this cooperative procurement is strictly voluntary. If authorized by IBM, the Agreement will be extended to the public bodies indicated above to purchase at the fees in accordance with the terms of the Agreement. IBM will notify the University in writing of any such institutions accessing the Agreement. No modification of the Agreement or execution of a separate agreement is required to participate. IBM will provide semi-annual usage reports for all VASCUPP member institutions and public institutions accessing the Agreement.

Participating public bodies will place their own orders directly with IBM and will fully and independently administer use of the Agreement to include contractual disputes, invoicing and payments without direct administration from the University. The University will not be held liable for any costs or damages incurred by any other participating public body as a result of any authorization by IBM to extend the Agreement. It is understood and agreed that the University is not responsible for the acts or omissions of any VASCUPP member institution, or of any other entity accessing the Agreement under this section, and will not be considered in default of the Agreement no matter the circumstances.

Use of this Agreement does not preclude any participating public body from using other agreements or competitive procurement processes as required by law.

X. Favored Nations

IBM endeavors to conduct its business so that all customers who are procuring in similar quantities and under similar business conditions are treated in a similar manner.

Y. The University's Authorized Representatives

The only persons who are or will be authorized to speak or act for the University in any way with respect to this Agreement are those whose positions or names have been specifically designated in writing to IBM by the University's Director of Procurement Services.

Z. Purchasing Manual

This Agreement is subject to the provisions of the Commonwealth of Virginia "Purchasing Manual for Institutions of Higher Education and Their Vendors" and any subsequent revisions, which is available on Procurement Service's web site at:

<http://www.virginia.edu/procurement/about/PurchasingManual.html>

AA. Small, Disadvantaged, Women-owned and Minority (SWAM) Business Reporting

IBM will identify and fairly consider small, disadvantaged, woman-owned or minority firms for subcontracting opportunities when qualified SWAM firms are available to perform a given task in performing for the University under this Agreement. IBM will submit a quarterly SWAM business report to the University by the 8th of the month following each calendar quarter, specifically the months of April, July, October, and January. IBM will submit the quarterly SWAM business reports to:

Nancy Noblette  
Administrative Assistant to the Director of Procurement Services  
E-mail: [nrn9g@virginia.edu](mailto:nrn9g@virginia.edu)

The quarterly SWAM business reports will contain this information:

- SWAM firms' name, address and phone number with which IBM has contracted over the specified quarterly period.
- Contact person at the SWAM firm who has knowledge of the specified information.
- Type of goods and/or services provided over the specified period of time.
- Total amount paid to the SWAM firm as it relates to the University's account.

BB. Current or Pending Litigation

IBM warrants that there is no present litigation that would endanger or adversely impact IBM's ability to perform under this Agreement.

CC. Training Material

IBM, at no additional charge, will supply the University for the University's own use, with all material used by IBM when providing training services, including the training database.

DD. Future Goods and Services

The University reserves the right to have IBM provide additional Goods and Services under the same pricing, terms, and conditions as described in this Agreement. Such additional goods and services may include, but not be limited to, upgrades and related software, products/services and/or any other Goods and Services that are newly introduced during the term of this Agreement. Any such additional Goods and Services and/or newly introduced Goods and Services will be provided to the University at most favored nations pricing, terms, and conditions for similar goods and services.

## **Attachment 2**

### **Procedure for Resolution of Contractual Claims**

The Virginia Acts of Assembly of 2006, Chapter 943, Chapter 3, Exhibit P and its attachments requires contractors with the University to submit any claims, whether for money or other relief, in writing no later than 60 days after final payment; however, written notice of the contractors intention to file such a claim must be given at the time of the occurrence or beginning of the work upon which the claim is based.

The University's procedure for deciding such contractual claims is:

- A. IBM must provide the written claim to:  
Assistant Director of Procurement Services  
University of Virginia  
1001 North Emmet Street  
P. O. Box 400202  
Charlottesville, Virginia 22904-4202
- B. Although IBM may, if it chooses, attempt to resolve its claim by dealing with a University department other than the one stated in Section A above, IBM must submit any unresolved claim in writing no later than 60 days after final payment to the Assistant Director of Procurement Services if it wishes to pursue its claim.
- C. Upon receiving the written claim, the Assistant Director of Procurement Services will review the written materials relating to the claim and decide whether to discuss the merits of the claim with IBM. If such discussion is to be held, the Assistant Director of Procurement Services will contact IBM and arrange such discussion. The manner of conducting such discussion will be as the Assistant Director and IBM mutually agree.
- D. The Assistant Director of Procurement Services will mail his or her decision to IBM within 60 days after receipt of the claim. The decision will state the reason for granting or denying the claim.

E. IBM may appeal the decision to:  
Director of Procurement Services  
University of Virginia  
Carruthers Hall  
1001 North Emmet Street  
P.O. Box 400202  
Charlottesville, Virginia 22904-4202

by providing a written statement explaining the basis of the appeal, within 15 days after IBM's receipt of the decision.

F. Upon receiving the written appeal, the Director of Procurement Services will review the written materials relating to the claim and decide whether to discuss the merits of the claim with IBM. If such discussion is to be held, the Director of Procurement Services will contact IBM and arrange such discussion. The manner of conducting such discussion will be as the Director of Procurement Services and IBM mutually agree.

G. The Director of Procurement Services will mail his or her decision to IBM within 60 days after the Director of Procurement Services receipt of the appeal. The decision will state the reasons for granting or denying the appeal.

### Attachment 3

#### Statement of Work (Sample)

DATE

UNIVERSITY REQUESTOR

TITLE

DEPARTMENT

University of Virginia

Charlottesville, VA 22903

Dear UNIVERSITY REQUESTOR:

IBM is pleased to provide this proposed **Statement of Work** (THIS SOW NUMBER#) under the terms and conditions of the Agreement between IBM and the University of Virginia dated February XX, 2007, in response to your request to provide technical consulting services to assist the University with THIS PROJECT.

Scope of Services

We anticipate assigning XX PERSONNEL for a period of XXXXX to work with your team for THIS PROJECT. Specifically, we can begin to engage with your team to initiate the following:

- Review XXXX
- Develop XXXX
- Provide XXXX

Overall Approach

PROJECT APPROACH

Estimated Schedule

The estimated start date is XXXXX

The estimated completion date is XXXXX

Termination

UVA may at any time terminate this SOW, in whole or in part, by seven days written notice to IBM. In such case, UVA's liability shall be limited to payment to IBM for all Services IBM delivers through termination.

Charges

These Services will be conducted on a time and materials basis. The charges for these Services will be billed at \$XXX per hour for an estimated XXX total hours. You will be charged only for the actual hours IBM expends on these Services. The estimated professional services charges for these Services are \$XXXXXX and are exclusive of applicable taxes. In no event will total charges exceed \$XXXXXXX (\$XXXXXX service fees plus maximum 15 percent travel and living expenses of \$XXXXXX\*.15) unless authorized in advanced by a written UVA purchase order.

Item	Hours	Fees
Services to perform THIS PROJECT		
POSITION TITLE @ \$XXX/hour	XXX	\$XXXXXX
POSITION TITLE @ \$XXX/hour	XXX	\$XXXXXX
Total		\$XXXXXX

This assumes that all work will be performed at the UVA campus. If we determine that it is necessary to exceed the hours or the Estimated End Date, we will inform you as soon as practical. In such event, you may authorize additional hours or extend the Estimated End Date in writing. To the extent that additional time is required, it will be handled through the Project Change Control Process and issuance of the associated written UVA Purchase Order. UVA will only authorize additional services and/or expenses through a written UVA purchase order corresponding to, and issued in advance of, the provision of such services and/or charges.

In addition, UVA will reimburse IBM for the actual travel and living expenses incurred in providing these services, not to exceed 15% of the total service fees. IBM shall submit to UVA all invoices and supporting documentation for hours worked and expenses incurred in a format acceptable to both parties. You will be invoiced monthly for hours expended. All invoices are payable net 30 days after receipt of invoice and services.

### **Assumptions**

The successful completion of the proposed scope of work depends on the commitment and participation of UVA management and personnel. The responsibilities listed in this section are in addition to those responsibilities specified in this Agreement, and are to be provided at no charge to IBM. UVA is responsible for the control of all UVA responsibilities. The performance of IBM and its subcontractors is predicated upon the following responsibilities being fulfilled by UVA.

Delays in performance of these responsibilities may result in additional cost and/or delay of the completion of the project, and will be handled in accordance with Appendix A-1 Project Change Control Procedure.

- UVA is responsible for providing a UVA Project Manager or designee, who will serve as the focal point for all communications with IBM for this work and can make decisions on behalf of UVA and who will be responsible for managing UVA personnel and any UVA contractors and suppliers.
- UVA will ensure that appropriately knowledgeable staff, information or materials are available to as reasonably required to enable the project team to provide the services.
- UVA will be responsible for promptly obtaining and providing to IBM Global Services all required consents necessary for IBM to access, use and/or modify software, hardware, firmware and other products used by UVA for which IBM shall provide services hereunder consistent with Virginia law and University policy. A required consent means any consents or approvals required to give IBM and its subcontractors the right or license to access, use and/or modify (including creating derivative works) without infringing the ownership or license rights (including patent or copyright) of the providers or owners of such products.
- UVA will provide suitable office space, supplies, furniture, and other facilities with telephone access for IBM on-site personnel while working on premises provided by UVA. IBM will abide by and respect reasonable restrictions and work place rules applicable to UVA premises. The IBM project team will be located in a reasonably contiguous area. All necessary access and clearance will be provided for access to this area.
- UVA will be responsible for: (i) the identification and interpretation of any laws, rules, and regulations that may impact your business, including those pertaining to product safety for all products; and (ii) ensuring your compliance with all such laws, rules, and regulations.
- UVA will be responsible for the review and evaluation of the interim work products and deliverables as well as all final decisions and implementations related to any findings resulting from this project.
- IBM intends to provide NAMED PERSON as the IBM "Project Manager" to implement, perform, and manage all services. The IBM Project Manager will be UVA's primary contact, although the IBM Project Manager will be assisted by other members of IBM's staff (and any subcontractors, if applicable) in completing key activities. In the event that IBM Project Manager or any other individual responsible for UVA's account, is no longer employed by IBM, is unavailable for any reason, or is performing in an unsatisfactory manner as determined by UVA's Project Manager, IBM will propose a replacement for that individual within a reasonable time frame, so as not to significantly delay the provision of services to UVA. UVA reserves the right to approve the replacement, or to cancel the order for THE PROJECT. If a proposed replacement is accepted by UVA, the replacement will provide



the services at rates no higher than the rates of the original individual and in accordance with all terms and conditions specified in the Agreement dated February XX, 2007.

**Completion Criteria**

IBM will have fulfilled its obligations under this SOW when any one of the following first occurs:

- Scope of Services has been fully performed commensurate with the total hours budgeted for this project related to providing the following to UVA’s satisfaction:
  - RECEIPT OF DELIVERABLE
  - RECEIPT OF DELIVERABLE
- UVA or IBM terminates the project in accordance with the provisions of the Agreement.

This Statement of Work is provided by IBM under the terms and conditions of the Agreement between IBM and the University dated February XX, 2007 (the “Agreement”) and becomes effective as a contract between the parties upon issuance of a corresponding signed, written University of Virginia purchase order referencing: 1) the Agreement; 2) THIS SOW NUMBER# ; and 3) the specific not-to-exceed dollar amount corresponding to the fees and charges cited in THIS SOW NUMBER#. Such documentation will constitute the complete understanding between the parties, and can only be modified when both of us agree in writing as specified in the Agreement.

This offer is valid until XXXXXXXXXXXX

The Rector and Visitors of the University of Virginia

Customer number:

# **9414060**

International Business Machines Corporation

Armonk, New York 10504

Issued By:

Name (type or print):

Date:

Customer address:

IBM Office Address:

# Statement of Work Appendix A: Standard Project Procedures

## A-1 Project Change Control Procedure

The following process will be followed if a change to this SOW is required.

- A Project Change Request (PCR) will be the vehicle for communicating change. No PCR or charges associated with PCRs are authorized unless UVA has issued a written UVA purchase order in advance of the provision of services corresponding to such changes and/or charges. The PCR must describe the change, the rationale for the change and the effect the change will have on the project.
- The designated Project Manager of the requesting party will review the proposed change and determine whether to submit the request to the other party.
- Both Project Managers will review the proposed change and recommend it for further investigation or reject it. IBM will specify any charges for such investigation. UVA only authorizes IBM to incur any additional charges via a corresponding written UVA purchase order detailing such charges. IBM will invoice UVA for any such charges. The investigation will determine the effect that the implementation of the PCR will have on price, schedule and other terms and conditions of the SOW.
- No PCR or charges associated with PCRs are authorized unless UVA has issued a written UVA purchase order in advance of the provision of services corresponding to such changes and/or charges. Until a change is agreed as described in writing, both parties will continue to act in accordance with the latest agreed version of the SOW.

## A-2 Deliverable Materials Acceptance Procedure

Each Deliverable Material (except for the Project Plan) as defined in the SOW will be reviewed and accepted in accordance with the following procedure:

- One printed draft of the Deliverable Material will be submitted to the UVA Project Manager. It is the UVA Project Manager's responsibility to make and distribute additional copies to any other reviewers.
- Within five business days of receipt, the UVA Project Manager will either accept the Deliverable Material or provide the IBM Project Manager a written list of requested revisions. If IBM receives no response from the UVA Project Manager within five business days, then the Deliverable Material will be deemed accepted.
- The IBM Project Manager will consider UVA's timely request for revisions, if any, within the context of IBM's obligations as stated in this SOW.
- Those UVA revisions agreed to by IBM will be made and the Deliverable Material will be resubmitted to the UVA Project Manager, at which time the Deliverable Material will be deemed accepted.
- Those UVA revisions not agreed to by IBM will be managed in accordance with Appendix A-1 Project Change Control Procedure.
- Any conflict arising from this Deliverable Materials Acceptance Procedure will be addressed as specified in the Escalation Procedure set forth in Appendix A-3.

## A-3 Escalation Procedure

The following procedure will be followed if resolution is required to a conflict arising during the performance of this SOW.

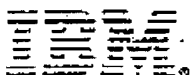
When a conflict arises between UVA and IBM, the project team member(s) will first strive to work out the problem internally.

- Level 1: If the project team cannot resolve the conflict, the UVA Project Manager and IBM Project Manager will meet to resolve the issue.
- Level 2: If the conflict is not resolved after being escalated to Level 1, the UVA Executive Sponsor will meet with the IBM Project Executive to resolve the issue.
- If the conflict is resolved by either Level 1 or Level 2 intervention, the resolution will be addressed in accordance with Appendix A-1 Project Change Control Procedure.
- If the conflict remains unresolved after Level 2 intervention, then either party may terminate this SOW. If the conflict is addressed by termination, UVA agrees to pay IBM for a) all Services IBM provides and any Products and Materials IBM delivers through termination, b) all expenses IBM incurs through termination, and c) any charges IBM incurs in terminating the Services.
- During any conflict resolution, IBM agrees to provide Services relating to items not in dispute, to the extent practicable pending resolution of the conflict.

## Attachment 4

# IBM Customer Agreement

ATTACHMENT 4



International Business Machines Corporation  
IBM Office, United States, 1133 Westchester Avenue, White Plains, New York 10604

### Notice to IBM Customers

January 22, 1991

#### Introduction of IBM Customer Agreement

We are announcing today the restructuring of most of our standard contracts into a single IBM Customer Agreement. This announcement is in response to your suggestions that we shorten and simplify our contracts and be easier to do business with. The new Agreement allows us to include only once the common terms that were previously stated multiple times. Many of the current agreements and amendments have been completely eliminated. The result is a single, easy-to-understand contract that covers the majority of your transactions with us.

Previously separate contracts for machines, programs and services (such as Project Support Services) are now fully integrated into the IBM Customer Agreement. It also includes several Options (such as Volume Discounts) and accommodates electronic communications between us.

The IBM Customer Agreement provides an attractive, comprehensive warranty for our products and services that describes how we do business today. Included is your right to a full refund if we do not meet our obligations.

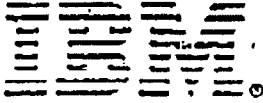
The substance of the IBM Customer Agreement and its Attachments, with minor exceptions, is unchanged from our current contracts. The words, however, have been rewritten to be concise and easy to read.

#### Effective Dates of New and Revised Documents

The IBM Customer Agreement and Attachments will automatically become effective on May 1, 1991. If you have any questions about the Agreement or its Attachments, please contact your IBM marketing representative. We will address any concerns you may have. Until they are resolved to your satisfaction, we will continue to transact business under your existing IBM contracts.

The IBM Customer Agreement follows, along with a description of its Attachments. Your IBM marketing representative will promptly provide any Attachments you request.





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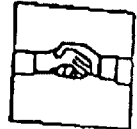
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The IBM Customer Agreement follows, along with a description of its Attachments. Your IBM marketing representative will promptly provide any Attachments you request.

# IBM Customer Agreement



Thank you for doing business with us. We are committed to providing you with the highest quality Products and Services. If, at any time, you have any questions or problems, or are not completely satisfied, please let us know. Our goal is to do our best for you.

This IBM Customer Agreement (called the "Agreement") covers the major business transactions we may do with you, including:

- (a) sale of Machines;
- (b) license of Programs; and
- (c) provision of Services.

We also make several Options available to you concerning the Products and Services we provide under this Agreement, such as volume discounts.

This Agreement and its applicable Attachments and Transaction Documents are the complete agreement regarding these transactions, and replace any prior oral or written communications between us.

By signing below for our respective Enterprises, each of us agrees to the terms of this Agreement. Once signed, 1) any reproduction of this Agreement, an Attachment or Transaction Document made by reliable means (for example, photocopy or facsimile) is considered an original and 2) all Products and Services you order under this Agreement are subject to it.

Agreed to:  
Enterprise name:

THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA

By

Authorized signature

Agreed to:  
International Business Machines Corporation  
Armonk, New York 10504

Authorized signature

Name (type or print): ERIC N. Denby, C.P.M.  
Director, Procurement Services

Date:

Enterprise number:

Enterprise address:

Name (type or print): KENT L. MASON

Date: 10.17.00

Agreement number:

IBM Office number:

IBM Office address:

7100 HIGHLANDS PARKWAY  
SMYRNA, GA. 30082

# Customer Agreement

## Table of Contents

<i>Section</i>	<i>Title</i>	<i>Page</i>	<i>Section</i>	<i>Title</i>	<i>Page</i>
<b>Part 1 - General</b>		<b>3</b>	<b>Part 4 - Programs</b>		<b>14</b>
1.1	Definitions	3	4.1	Grant of License	14
1.2	Agreement Structure	4	4.2	License Details	14
1.3	Delivery	4	4.3	Distributed Features	15
1.4	Electronic Communications	5	4.4	Additional License Copies	15
1.5	Prices and Price Changes	5	4.5	Program Testing	15
1.6	Invoicing, Payment, and Taxes	6	4.6	Program Packages	15
1.7	Additional Charges	6	4.7	Program Protection	16
1.8	Types of Service for Machines	6	4.8	Program Services	16
1.9	Patents and Copyrights	7	4.9	Variable-Charge Programs	16
1.10	Limitation of Liability	7	4.10	License Termination	16
1.11	Mutual Responsibilities	8	<b>Part 5 - Services</b>		<b>17</b>
1.12	Your Other Responsibilities	8	5.1	Maintenance Services	17
1.13	Your Additional Rights	9	5.2	Continuing Support Services	18
1.14	IBM Business Partners	9	5.3	Project Support Services	18
1.15	Changes to the Agreement Terms	9	5.4	IBM Information Network and Other Services	20
1.16	Agreement Termination	9	<b>Part 6 - Options</b>		<b>21</b>
1.17	Geographic Scope	9	6.1	Volume Discounts	21
1.18	Governing Law	9	6.2	Maintenance Service Options	22
<b>Part 2 - Warranties</b>		<b>10</b>	6.3	Payment Options	22
2.1	The IBM Warranties	10	6.4	Special Options	23
2.2	Extent of Warranty	11			
2.3	Items Not Covered by Warranty	11			
<b>Part 3 - Machines</b>		<b>12</b>			
3.1	Title	12			
3.2	Risk of Loss	12			
3.3	Production Status	12			
3.4	Installation	12			
3.5	Licensed Internal Code	13			

 **Customer Agreement****Part 1 - General**

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**1.1 Definitions**

**Customer-set-up Machine** is an IBM Machine that you set up according to our instructions.

**Date of Installation** is the following:

1. for a Machine —
  - a. the business day after the day we install it or, if you defer installation, make it available to you for installation;
  - b. the second business day after the end of a Customer-set-up Machine's standard transit allowance period. We will allocate a reasonable transit allowance period; or
  - c. the second business day after the arrival of a non-IBM Machine.
2. for a Program, the latest of —
  - a. the day after its testing period ends (this does not apply to Program Packages);
  - b. 10 days after we ship it; or
  - c. the day, specified in a Transaction Document, on which we authorize you to make an Additional License Copy or a copy of a Distributed Feature.

**Designated Machine** is the Machine, that you identify to us by type/model and serial (or plant order) number, on which you intend to use a Program for processing. When we specify that you do not have to provide this identification to us, the term Designated Machine means the single Machine on which you may use the Program at any one time.

**Enterprise** is 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 or Puerto Rico.

**Machine** is a machine, its features, conversions, upgrades, elements, or accessories, or any combination of them. The term "Machine" includes an IBM Machine and any non-IBM Machine (including other equipment) that we may provide to you.

**Product** is a Machine or a Program.

**Program** is the following, including features and any whole or partial copies:

1. machine-readable instructions;
2. a collection of machine-readable data, such as a data base; and
3. related materials, including documentation and listings, in any form.

The term "Program" includes an IBM Program and any non-IBM Program that we may provide to you. The term does not include Licensed Internal Code or Materials.

**Service** is assistance or use of a resource (such as a network) we make available to you.

**Specifications** is a document that provides information specific to a Product. For a Machine, we call the document "Official Published Specifications." For a Program, we call it "Licensed Program Specifications" or "License Information."

**Specified Operating Environment** is the Machines and Programs with which a Program is designed to operate; as described in the Program's Specifications.



## 1.2 Agreement Structure

### Attachments

Some Products and Services have terms in addition to those we specify in this Agreement. We provide the additional terms in documents called "Attachments" which are also part of this Agreement. For example, we describe the additional terms for IBM Information Network Services in an Attachment. We make the Attachments available to you for signature.

### Transaction Documents

For each order you place, we will provide to you the appropriate "Transaction Documents" that confirm the specific details of your order. The following are examples of Transaction Documents, with examples of the information they may contain:

1. supplements (Machine quantity and type ordered, price, estimated shipment date, and warranty period);
2. exhibits (eligible Products by category, discount schedules, and available contract periods);
3. addenda (selected contract-period duration, start date, and total quantity or revenue committed);
4. statements of work (project schedule, responsibilities, and charges); and
5. Invoices (item, quantity, price, amount due, and other typical Invoice information).

### Conflicting Terms

If there is a conflict among the terms in the various documents, those of an Attachment prevail over those of this Agreement. The terms of a Transaction Document prevail over those of both of these documents.

### Our Acceptance of Your Order

A Product or Service becomes subject to this Agreement when we accept your order. We accept your order by doing any of the following:

1. sending you a Transaction Document;
2. shipping the Product; or
3. providing the Service.

### Your Acceptance of Additional Terms

You accept the additional terms in an Attachment or Transaction Document by doing any of the following:

1. signing the Attachment or Transaction Document;
2. using the Product or Service, or allowing others to do so; or
3. making any payment for the Product or Service.

## 1.3 Delivery

We will use our best efforts to meet your delivery requirements for Products and Services you order, and will inform you of their status. We pay normal transportation charges for Products we ship to you.

## 1.4 Electronic Communications

Each of us may communicate with the other by electronic means. Both of us agree to the following for all electronic communications:

1. an identification code (called a "USERID") contained in an electronic document is legally sufficient to verify the sender's identity and the document's authenticity;
2. an electronic document that contains a USERID is a signed writing; and
3. an electronic document, or any computer printout of it, is an original when maintained in the normal course of business.

### Electronic Data Interchange

We may provide Electronic Data Interchange (called "EDI") Options to you. Electronic invoicing and electronic payment are examples of these Options. When using EDI Options, each of us agrees:

1. when a bank is involved, to pay our respective bank charges and to promptly notify the other of any changes to the bank payment process; and
2. to promptly notify the other of any changes to the technology, process, or information upon which the EDI transactions are based.

We will specify respective responsibilities for the EDI Option you choose.

## 1.5 Prices and Price Changes

The following are the bases on which we may require the amount payable for a Product or Service to be paid, with an example of each:

1. one-time (the price of a Machine);
2. recurring (a monthly charge for Maintenance Services); or
3. a combination of both (an initial charge and a monthly license charge for a Program).

We will specify the amount and basis for the particular Product or Service.

### Price Increases

We may increase recurring charges by giving you three months' written notice. An increase applies on the first day of the applicable invoice period on or after the effective date we specify in the notice.

We may increase one-time charges and hourly rates without notice. However, an increase to one-time charges does not apply to you if 1) we receive your order before the announcement date of the increase and 2) one of the following occurs within three months after the announcement:

1. we ship you the Product;
2. with our authorization, you make an Additional License Copy of a Program or a copy of a Distributed Feature; or
3. a Program's group-upgrade charge becomes due.

### Price Decreases

You receive the benefit of a decrease in charges for amounts which become due on or after the effective date of the decrease.

## 1.6 Invoicing, Payment, and Taxes

We invoice:

1. recurring charges (other than usage charges) for a Program and for Maintenance Services in advance for the applicable invoice period;
2. usage charges following the period in which you incur them; and
3. all other charges when or after you incur them.

For a Product with a one-time charge, payment is due on its Date of Installation. Recurring charges for a Product begin on its Date of Installation.

You agree to pay as we specify in the invoice. You also agree to pay amounts equal to any applicable taxes resulting from any transaction under this Agreement. This does not include taxes based on our net income. You are responsible for personal property taxes for each Product from the date we ship it to you.

## 1.7 Additional Charges

Depending on the particular Product, Service, or circumstances, additional charges may apply. For example, if we are required to use other than private automobile or scheduled public transportation to provide Maintenance Services to you, we charge an additional amount. We will notify you in advance if these charges apply.

## 1.8 Types of Service for Machines

We provide certain types of service for a Machine to keep it in, or restore it to, good working order during its warranty period or while it is under Maintenance Services. The following terms apply to both warranty service and Maintenance Services.

Depending on the Machine, the service may be 1) a "Repair" service at your location (called "On-site") or at one of our service locations (called "Carry-in") or 2) an "Exchange" service, either On-site or Carry-in. We will inform you of the available types of service for a Machine.

Under Maintenance Services, you may select the type of service from those available for the Machine. We require that a Machine and its features have the same type of service.

We offer On-site types of service 24 hours a day, seven days a week. Carry-in types of service are available during the normal business hours of our service locations.

When a type of service involves the exchange of a Machine or part, the item we replace becomes our property and the replacement becomes yours. The replacement may not be new, but will be in good working order.

Under Carry-in service, instead of delivering the failing Machine to us, if you prefer, you may ship it (prepaid and suitably packaged) to a location we designate. After we have repaired or exchanged the Machine, we will return it to you at our expense.

Under On-site Exchange service, depending on the nature of the failure, we may repair the failing Machine at your site instead of exchanging it.

We are responsible for loss of, or damage to, your Machine while it is 1) in our possession or 2) in transit in those cases where we are responsible for the transportation charges.

You agree to:

1. obtain authorization from the owner to have us service a Machine that you do not own;
2. where applicable, before we provide service —
  - a. follow the problem determination, problem analysis, and service request procedures that we provide,
  - b. secure all programs, data, and funds contained in a Machine,
  - c. inform us of changes in a Machine's location, and
  - d. for a Machine with Exchange service, remove all features, parts, options, alterations, and attachments not under our service. You also agree to ensure that the Machine is free of any legal obligations or restrictions that prevent its exchange;
3. be responsible for loss of, or damage to, a Machine in transit in those cases where you are responsible for the transportation charges; and
4. on completion of Carry-In Repair service, connect a repaired Machine and verify its operation.

## 1.9 Patents and Copyrights

If a third party claims that a Product we provide infringes a patent or copyright, we will defend you against that claim at our expense and pay all costs, damages, and attorney's fees that a court finally awards, provided that you:

1. promptly notify us in writing of the claim; and
2. allow us to control, and cooperate with us in, the defense and any related settlement negotiations.

If such a claim is made or appears likely to be made, you agree to permit us to enable you to continue to use the Product, or to modify or replace it. If we determine that none of these alternatives is reasonably available, you agree to return the Product to us on our written request. We will then give you a credit equal to your net book value for the Product, provided you have followed generally-accepted accounting principles.

This is our entire obligation to you regarding any claim of infringement.

### Claims for Which We are Not Responsible

We have no obligation regarding any claim based on any of the following:

1. your modification of a Product, or a Program's use in other than its Specified Operating Environment;
2. the combination, operation, or use of a Product with any product, data, or apparatus that we did not provide; or
3. infringement by a non-IBM Product alone, as opposed to its combination, operation, or use as part of a system of Products that we provide to you.

## 1.10 Limitation of Liability

Circumstances may arise where, because of a default on our part or other liability, you are entitled to recover damages from us. In each such instance, regardless of the basis on which you are entitled to claim damages from us, we are liable only for:

1. payments referred to in our patent and copyright terms described above;
2. bodily injury (including death), and damage to real property and tangible personal property; and

3. the amount of any other actual loss or damage, 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.

This limit also applies to any of our subcontractors and Program developers. It is the maximum for which we are collectively responsible.

#### Items for Which We are Not Liable

Under no circumstances are we liable for any of the following:

1. third-party claims against you for losses or damages (other than those under the first two items listed above);
2. loss of, or damage to, your records or data; or
3. economic consequential damages (including lost profits or savings) or incidental damages, even if we are informed of their possibility.

### 1.11 Mutual Responsibilities

Both of us agree that under this Agreement:

1. neither of us will use the other's trademark, trade name, or other designation in any promotion or publication without prior written consent;
2. all information exchanged is nonconfidential. If either of us requires the exchange of confidential information, it will be made under a signed confidentiality agreement;
3. each is free to enter into similar agreements with others;
4. each grants the other only the licenses specified. No other licenses (including licenses under patents) are granted;
5. each will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations; and
6. neither of us will bring a legal action more than two years after the cause of action arose.

### 1.12 Your Other Responsibilities

You agree:

1. not to assign this Agreement or your rights under it, delegate your obligations, or resell any Service without prior written consent. Any attempt to do so is void;
2. to acquire Machines with the intent to use them within your Enterprise and not for reselling, leasing, or transferring to a third party, unless either of the following applies —
  - a. you are arranging lease-back financing for the Machines, or
  - b. you purchase them without any discount or allowance, and do not remarket them in competition with our authorized remarketers;
3. to allow us to install mandatory engineering changes (such as those required for safety) on a Machine. Any parts we remove become our property;
4. that you are responsible for the results obtained from the Products and Services;
5. to comply with all applicable government export laws and regulations; and
6. to provide us with full, free, and safe access to your facilities for us to fulfill our obligations. If you become aware of any unsafe conditions or hazardous materials to which our personnel would be exposed at any of your facilities, you agree to promptly notify us.

### 1.13 Your Additional Rights

You may have additional rights under certain laws (such as consumer laws) which do not allow the exclusion of implied warranties, or the exclusion or limitation of certain damages. If these laws apply, our exclusions or limitations may not apply to you.

### 1.14 IBM Business Partners

We have signed agreements with certain organizations (called "IBM Business Partners") to promote, market, and support some of our Products and Services. We have chosen these organizations because of their skills and experience in a particular field.

When you order our Products or Services (marketed to you by these organizations) under this Agreement, we confirm that we are responsible for providing them to you under the warranties and other terms of this Agreement. We are not responsible for 1) the actions of these organizations, 2) any additional obligations they may have to you, or 3) any products or services that they (and not us) may supply to you.

### 1.15 Changes to the Agreement Terms

In order to maintain flexibility in our Products, Services, and Options, we may change the terms of this Agreement by giving you three months' written notice. However, these changes are not retroactive. They apply, as of the effective date we specify in the notice, only to new orders (those we receive on or after the date of the notice) and to on-going transactions, such as licenses and Services.

Otherwise, for a change to be valid, both of us must sign it. Additional or different terms in any order or written communication from you are void.

### 1.16 Agreement Termination

~~You may terminate this Agreement on written notice to us following the expiration or termination of all your obligations.~~

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.

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

### 1.17 Geographic Scope

All your rights, all our obligations, and all licenses (except for Licensed Internal Code and as specifically granted) are valid only in the United States and Puerto Rico.

### 1.18 Governing Law

The laws of the State of ~~New York~~ <sup>Virginia (Km)</sup> govern this Agreement.

**Part 2 - Warranties****2.1 The IBM Warranties****Warranty for IBM Machines**

For each IBM Machine, we warrant that it:

1. is free from defects in materials and workmanship; and
2. conforms to its Specifications.

The warranty period for a Machine is a specified, fixed period. We calculate its expiration from the Machine's Date of Installation.

During the warranty period, we provide warranty service under the type of service we designate for the Machine or under the alternative service you select under Maintenance Services.

For us to provide warranty service for a feature, conversion, or upgrade, we require that the Machine on which it is installed be 1) the designated, serial-numbered Machine and 2) at an engineering-change level compatible with the feature, conversion, or upgrade.

During the warranty period, we manage and install engineering changes that apply to the Machine.

If a Machine does not function as warranted during the warranty period, we will repair or replace it without charge. If we are unable to do so, you may return it to us and we will refund your money.

**Warranty for IBM Programs**

For each warranted IBM Program, we warrant that:

1. we have the right to license it; and
2. it conforms to its Specifications.

The warranty period for a Program expires when its Program Services are no longer available.

During the warranty period, we provide warranty service, without charge, for a Program through Program Services. Program Services are available for a warranted Program for at least one year following its general availability. Therefore, the duration of warranty service depends on when you obtain your license. If, during the first year after you obtain your license, we are unable to make the Program function as warranted, you may return it to us and we will refund your money.

**Warranty for IBM Services**

For each IBM Service, we warrant that we perform it:

1. in a workmanlike manner; and
2. according to its current description contained in this Agreement, an Attachment, or a Transaction Document.

**Warranty for Systems**

Where we provide Products to you as a system, we warrant that they are compatible and can operate with one another.

**Warranty for Integrated Systems**

For each Integrated system we deliver to you under a Statement of Work for Systems Integration Services, we warrant that it meets its Completion Criteria as specified in the Statement of Work.

The warranty period for an Integrated system is a fixed period as specified in the Statement of Work. It begins on the date we deliver the system to you.

If an Integrated system does not function as warranted during the warranty period, we will correct the deficiency without charge. If we are unable to do so, you may return the system to us and we will refund your money.

**2.2 Extent of Warranty**

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

Misuse, accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by you, or failure caused by a product for which we are not responsible may void the warranties.

THESE WARRANTIES REPLACE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

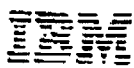
**2.3 Items Not Covered by Warranty**

We do not warrant uninterrupted or error-free operation of a Product or Service.

We will identify IBM Products and Services that we do not warrant.

We provide non-IBM Products and Services on an "AS IS" basis. However, non-IBM manufacturers, suppliers, or publishers may provide their own warranties to you.





## Customer Agreement

### Part 3 - Machines

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#### 3.1 Title

When we accept your order, we agree to sell you the Machine described in a Transaction Document. We transfer title to you or, if you choose, your lessor when we ship the Machine. However, we reserve a purchase money security interest in the Machine until we receive the amounts due. For a feature, conversion, or upgrade involving the removal of parts which become our property, we reserve the security interest until we receive the amounts due and the removed parts. You agree to sign an appropriate document to permit us to perfect our purchase money security interest.

#### 3.2 Risk of Loss

We bear the risk of loss for the Machine through its Date of Installation. Thereafter, you assume the risk.

#### 3.3 Production Status

Each Machine is manufactured from new parts, or new and serviceable used parts (which perform like new parts). In some cases, the Machine may not be new and may have been previously installed. Regardless of the Machine's production status, our warranty terms apply.

#### 3.4 Installation

For the Machine to function properly, it must be installed in a suitable physical environment. You agree to provide an environment meeting our specified requirements for the Machine.

We design our standard installation procedures to ensure that each Machine we install is in good working order and meets its Specifications. We will successfully complete these procedures before we consider the Machine installed.

You are responsible for setting up a Customer-set-up Machine (we provide instructions to enable you to do so) and for the installation of a non-IBM Machine.

#### Machine Features, Conversions, and Upgrades

We sell features, conversions, and upgrades for installation only on designated, serial-numbered Machines. You represent that you have the permission of the owner (if you are not the owner of the Machine) and any lien holders to 1) install features, conversions, and upgrades and 2) transfer removed parts to us.

Some of these transactions (called "Net-Priced" transactions) include associated replacement parts. We provide these parts on an exchange basis. All removed parts in a Net-Priced transaction become our property. For a Net-Priced transaction, you agree to allow us to install it within 30 days of its delivery and to recover the removed parts. Otherwise, we may terminate the transaction and you must return the feature, conversion, or upgrade to us at your expense.

### 3.5 Licensed Internal Code

Certain Machines we specify (called "Specific Machines") use Licensed Internal Code (called "Code"). We own copyrights in Code. We own all copies of Code, including all copies made from them.

We will identify each Specific Machine in a Transaction Document. If you are the rightful possessor of a Specific Machine, we grant you a license to use the Code (or any replacement we provide) on, or in conjunction with, only the Specific Machine, designated by serial number, for which the Code is provided. We license the Code to only one rightful possessor at a time.

Under each license, we authorize you to do only the following:

1. execute the Code to enable the Specific Machine to function according to its Specifications;
2. make a backup or archival copy of the Code (unless we make one available for your use), provided you reproduce the copyright notice and any other legend of ownership on the copy. You may use the copy only to replace the original, when necessary; and
3. execute and display the Code as necessary to maintain the Specific Machine.

You agree to acquire any replacement for, or additional copy of, Code directly from us in accordance with our standard policies and practices. You also agree to use that Code under these terms.

You may transfer possession of the Code to another party only with the transfer of the Specific Machine. If you do so, you must 1) either give the other party all your copies of the Code or destroy them, and 2) give the other party a copy of this page with the Specific Machine's Identification Information filled in below. We license the other party when it accepts these terms by initial use of the Code. These terms apply to all Code you acquire from any source.

Your license terminates when you no longer rightfully possess the Specific Machine.

#### Actions You May Not Take

You agree to use the Code only as authorized above. You may not do, for example, any of the following:

1. otherwise copy, display, transfer, adapt, modify, or distribute the Code (electronically or otherwise), except as we may authorize in the Specific Machine's Specifications or in writing to you;
2. reverse assemble, reverse compile, or otherwise translate the Code;
3. sublicense or assign the license for the Code; or
4. lease the Code or any copy of it.

**INFORMATION FOR SUBSEQUENT LICENSEE OF LICENSED INTERNAL CODE**

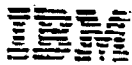
This page is copied from the IBM Customer Agreement and is provided to the subsequent licensee when Code is transferred.

The Specific Machine being transferred is identified as:

Type/Model \_\_\_\_\_ Serial Number \_\_\_\_\_

The following definitions are provided for the subsequent licensee of the Code:

1. "We" means International Business Machines Corporation (IBM);
2. "Transaction Document" does not apply to you. The above Type/Model and Serial Number identify the Specific Machine to you;
3. "You" means the subsequent licensee of the Code; and
4. "Specifications" means IBM's Official Published Specifications.



## Customer Agreement

### Part 4 - Programs

#### 4.1 Grant of License

When we accept your order, we grant you a license for the Program. Programs are copyrighted and licensed (not sold). We do not transfer title to Programs to you.

#### 4.2 License Details

Under each license, we authorize you to:

1. use the Program's machine-readable portion on only the Designated Machine, unless —
  - a. the Designated Machine is inoperable. You may then use the Program on a backup Machine,
  - b. the Designated Machine cannot assemble or compile the Program. You may then assemble or compile it on another Machine,
  - c. we grant an "Installation License." You may then use the Program on any other Machine in the same or adjoining rooms as the Designated Machine, or
  - d. we grant a "Location License." You may then use the Program on any other Machine in the same building with the same mailing address as the Designated Machine.

If you change the Designated Machine, you agree to notify us of the change and its date;

2. store the Program's machine-readable portion in, transmit it through, and display it on, Machines associated with the Designated Machine;
3. do the following to support your authorized use as described above —
  - a. modify the Program's machine-readable instructions or data, or merge them into another Program, and
  - b. make copies of the Program, provided you reproduce the copyright notice and any other legend of ownership on each copy or partial copy; and
4. use any portion of the Program we mark restricted (for example, "Restricted Materials of IBM") only to —
  - a. resolve problems related to the use of the Program, and
  - b. modify the Program so that it will work together with other products.

You agree to comply with any additional terms (for example, a usage restriction) that a Program's Specifications may contain. We provide the Specifications to you with the Program. For an "AS IS" Program, any additional terms are contained in a document called "Notice of Availability."

#### Actions You May Not Take

You agree not to do any of the following:

1. sublicense, assign, or transfer the license for any Program;
2. distribute any Program to any third party; or
3. reverse assemble, reverse compile, or otherwise translate any Program.

### 4.3 Distributed Features

Some Programs have features (called "Distributed Features") that are designed to work with those Programs (called "Associated Programs"). After we accept your order for a Distributed Feature, we authorize you to:

1. make a copy of the Distributed Feature and its documentation; and
2. distribute the copy to, and use it on, a Machine other than the Designated Machine of the Associated Program. You may use the copy on only one Machine at a time. Persons using a Machine outside of your Enterprise may use the copy only to access the Associated Program.

### 4.4 Additional License Copies

You may order additional licenses for Programs. If you prefer, for each license we grant, rather than shipping you another copy of the Program, we will authorize you to make an additional copy (called an "Additional License Copy").

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

1. have a Basic license for the Program;
2. provide problem documentation and receive Program Services (if any) only through the location of the Basic license; and
3. distribute to, and install on, the DSLO's Designated Machine, any release, correction, or bypass that we provide for the Basic license.

### 4.5 Program Testing

We provide a testing period for certain Programs to help you evaluate if they meet your needs. The testing period for a Program starts 1) 10 days after we ship it or 2) on the day we authorize you to make an Additional License Copy. We will inform you of the duration of the Program's testing period.

For the first order for each Distributed Feature, the testing period is the same as its Associated Program.

We do not provide a testing period for a Program under a DSLO license.

### 4.6 Program Packages

We provide certain Programs together with their own license agreements. These Programs (called "Program Packages") are licensed under the terms of the agreements provided with them. This Agreement's patent and copyright terms apply to IBM Program Packages.

For a Program Package, we may specify that:

1. Additional License Copies apply. If so, these copies are subject to the terms of the Program Package's agreement, except that you may not transfer them; and
2. a testing period applies. If so, and you return the Program Package to us before the end of the testing period, we will refund your money.

If a Program Package has Distributed Features, this Agreement's terms regarding Distributed Features apply.

#### 4.7 Program Protection

For each Program, you agree to:

1. if it is a data base, allow access to it only to your employees;
2. ensure that anyone who uses it (accessed either locally or remotely) does so only for your authorized use and complies with our terms regarding Programs; and
3. maintain records of all copies.

#### 4.8 Program Services

We provide Program Services for warranted Programs and for selected other Programs. If we can reproduce your reported problem in the Specified Operating Environment, we will issue defect correction information, a restriction, or a bypass. We provide Program Services for only the unmodified portion of a current release of a Program.

We provide Program Services 1) on an on-going basis (with at least six months' written notice before we terminate services for a Program), 2) until the date we specify, or 3) for a period we specify.

#### 4.9 Variable-Charge Programs

We may place a Machine in a Machine group. The charges for some Program licenses depend on the group of the Designated Machine. We call these Programs "Variable-Charge" Programs. Variable charges include graduated charges and processor-based charges. We will specify the group for a Machine and will inform you of any changes.

For these licenses, the following apply:

1. if you change (including upgrade or downgrade) a Designated Machine to a Machine in another group, you may incur a group-upgrade charge or a changed recurring charge. You agree to promptly notify us of the date of such a change;
2. if we reassign a Designated Machine to a Machine group with different charges, Program licenses with one-time charges due or paid before the reassignment are not affected. Otherwise, our price change terms apply; and
3. if a change or reassignment results in a lower charge, we do not give credits or refunds for one-time charges already due or paid.

#### 4.10 License Termination

You may terminate the license for a Program on one month's written notice or at any time during the Program's testing period. For some Programs, if you terminate the license and replace that Program with another we specify, we only require you to pay an upgrade charge.

We may terminate any license we grant in this Part if you do not meet your obligations regarding Programs.

You agree to destroy all copies of the Program within three months after license termination. However, you may keep a copy in your archives.



## Customer Agreement

### Part 5 - Services

#### 5.1 Maintenance Services

You may select the type of service from those available for the Machine. When we accept your order, we agree to service the Machine described in a Transaction Document. Based on the type of service, we will restore the Machine to good working order or exchange it. We may also perform preventive maintenance, including lubrication, adjustments, and replacement of parts. We manage and install engineering changes that apply to the Machine.

We will inform you of the date on which Maintenance Services begin. We may inspect the Machine within one month following that date. If the Machine is not in an acceptable condition for service, you may 1) have us restore it for a charge or 2) withdraw your request for Maintenance Services and we will refund any amounts you have paid to us for its service.

For a Machine under a usage plan, you agree to provide us with the meter reading as of the last working day of the period that the minimum maintenance charge covers.

We provide Maintenance Services for selected non-IBM Machines only when they are connected to certain IBM Machines. When a type of service involves the exchange of a non-IBM Machine, the replacement may not be identical.

Maintenance Services do not cover accessories and certain parts, such as frames and covers. In addition, Maintenance Services do not cover service of a Machine damaged by misuse, accident, modification, unsuitable physical or operating environment, improper maintenance by you, or failure caused by a product for which we are not responsible.

#### Alternative Service During Warranty

For certain Machines, at any time during the warranty period, you may select a different type of service from that which we designate for the Machine. For example, if you prefer On-site service to Carry-in, it may be available. We will inform you of the available types of service for the Machine and the available alternative service periods. We provide the alternative type of service for an additional charge. When the alternative service ends, we will continue Maintenance Services for the Machine under the same type of service you selected.

#### ✱ Maintenance Services Termination

You may terminate Maintenance Services for a Machine on one month's written notice to us under any of the following circumstances:

1. after it has been under Maintenance Services for at least six months;
2. if you remove it from productive use within your Enterprise;
3. as of the effective date of an increase in Maintenance Services charges; or
4. if you terminate coverage for a Maintenance Service Option under our terms for 1) removal of a Machine type from eligibility or 2) increased total adjusted charges for Maintenance Services.

We may terminate Maintenance Services for a Machine on three months' written notice, provided it has been under Maintenance Services for at least one year.

Either of us may terminate service for any Machine if the other does not meet its obligations concerning Maintenance Services. On termination of service for a Machine, we will give you any applicable credit.

## 5.2 Continuing Support Services

We provide Continuing Support Services on a contract-period basis to assist you in such areas as improving the availability of your systems and improving your productivity. We provide the terms specific to a Service in an Attachment. If we make a change to the terms of an Attachment that 1) affects your current contract period and 2) you consider unfavorable, on your request, we will defer it until the end of that contract period.

We will specify the eligible Products, applicable prerequisites and minimum commitments, exit-option percents, and available contract periods for a Service. We will also inform you periodically of any changes. These changes apply only to orders that we confirm on or after the effective date of the change.

When we accept your order, we will confirm the specific details of the Service in a Transaction Document. You may select a start date for the Service that is within three months following the effective date we specify in the Transaction Document.

During a contract period, we may increase charges. An increase becomes effective on the next anniversary of the start of a contract period, following the effective date we specify in the notice. When an increase results in a change to your total monthly charge for a Service of more than the exit-option percent we specify, you may terminate that Service on the effective date of the increase. Adjustment or termination charges do not apply in this case.

You may request a change to the Services you have selected on one month's notice. If we agree, we will confirm the change to you with applicable adjustments in charges.

Each of us agrees to notify the other (before your current contract period expires) if they do not intend to renew.

### Continuing Support Services Termination

You may terminate a Continuing Support Service by providing us one month's written notice upon fulfillment of any minimum commitments.

The termination of Services with contract periods longer than one year results in adjustment charges. In this case, you agree to pay the lesser of:

1. the difference between the total charges you paid through the termination date and those you would have paid for the shorter contract period;
2. the monthly charge multiplied by the applicable adjustment charge factor; or
3. the total charges remaining to complete the contract period.

## 5.3 Project Support Services

The Project Support Services we make available to you include providing general assistance on a technical task (such as writing programs), providing consulting services, acting as a prime contractor to deliver an information handling function, and providing Systems Integration Services to you.

When we accept your order, we agree to provide the Services described in the Statement of Work. We require a separate Statement of Work, signed by both of us, for each project.

We manage the project unless the Statement of Work specifies that you manage it. If you are responsible, then we only provide Services to assist you.

## ATTACHMENT 4

The Statement of Work includes:

1. our respective responsibilities;
2. an estimated schedule which we provide for planning purposes;
3. the specific conditions, if any, (called the "Completion Criteria") that we are required to meet to fulfill our obligations; and
4. applicable charges and any other terms.

Each of us agrees to make reasonable efforts to carry out our respective responsibilities according to the estimated schedule. However, if Completion Criteria are applicable, then the project is complete when we meet those criteria.

#### Changes to the Statement of Work

When both of us agree to change a Statement of Work, we will prepare a written description of the change (called a "Change Authorization"). The Change Authorization becomes effective when we provide it to you. It need not be signed, unless either of us requests signature.

Any change in the Statement of Work may affect the charges, estimated schedule, or other terms. Depending on the scope of the requested change, we may charge you for our effort to analyze it. We will then give you a written estimate of the charges for the analysis. We will perform the analysis only on your written authorization.

#### Personnel

Each of us will authorize a person to represent us during the project. Each will 1) address all notices to the other's representative and 2) promptly notify the other in writing if this person is replaced. Each of us is responsible for supervising and controlling only our own personnel.

We will try to honor your requests regarding the assignment of our personnel to your project. However, we reserve the right to determine the assignment of our personnel.

#### Ownership and License

During a project, we may deliver to you work product (called "Materials"), such as programs, program listings, programming tools, documentation, reports, and drawings.

The Statement of Work will specify if Materials are applicable to the project. It will identify them as being "Type I Materials," "Type II Materials," or otherwise as we both agree.

Type I Materials are those, created during the project, in which you will have all right, title, and interest (including ownership of copyright). We will retain one copy of the Materials. You grant us 1) an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, distribute (internally and externally) copies of, and prepare derivative works based on Type I Materials and 2) the right to authorize others to do any of the former.

Type II Materials are those in which we or third parties have all right, title, and interest (including ownership of copyright). We will deliver one copy of the Materials to you. We grant you an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute (internally only) copies of Type II Materials.

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



**Project Support Services Termination**

You may terminate a project on written notice to us. We may terminate a project if you do not meet your obligations concerning it. Upon termination, we will stop our work in an orderly manner as soon as practical.

You agree to pay us for all Services we provide and any Materials we deliver through the project's termination. Payment includes any charges we incur in terminating subcontracts.

**Additional Terms for Systems Integration Services**

When the Statement of Work specifies Systems Integration Services, we provide you with an integrated system that may consist of a combination of Products, Services, Materials, and other items. We design, develop, deliver, install, and support the system as described in the Statement of Work.

The Statement of Work contains the Completion Criteria. We will inform you when we meet each of them. You then have 10 days to inform us if you believe that we have not met the Completion Criteria.

**5.4 IBM Information Network and Other Services****IBM Information Network Services**

The IBM Information Network (called "IBM IN") Services we make available to you include access to, and use of, IBM IN machines, programs, networking facilities, and associated communications and support services. We provide the terms specific to IBM IN Services in an Attachment.

**On-line Services**

We make on-line Services available to you, including access to certain of our Information data bases. We provide these Services to you through a connection to IBM IN. We provide the terms specific to an on-line Service in an Attachment. We may specify that you accept the terms of IBM IN Services as a prerequisite to an on-line Service.

**Other Services**

We make other Services available to you that are not associated with the Services described in this Part. For these Services, we provide all the additional terms in Attachments.

# Customer Agreement

ATTACHMENT 4

## Part 6 - Options

### 6.1 Volume Discounts

We provide discounts for certain Products based on the volume of business you agree to do with us (called your "Commitment") during a contract period. You may make a Commitment based on either Product quantity or revenue. Revenue for a Product is its single-unit charge, less any discounts or allowances.

We will specify the eligible Products, their categories, available discount percents and contract periods, upper-limit percents, and adjustment charge factors. We will inform you periodically of any changes. An unfavorable change (and all changes related to it) applies to an existing Commitment only if you accept it in writing. Related changes become effective at the same time. We will also inform you if we withdraw eligible Products from marketing. We then accept orders you place for these Products subject to their availability.

Unless we specify otherwise, we do not discount Program upgrades, Program features ordered separately from Programs, accessories, or field-installed Machine features, conversions, or upgrades.

#### End User Certification

You agree to acquire the Products for use only within your Enterprise and not for remarketing. We call this representation "End User Certification." We provide the discounts to you based on End User Certification.

#### How You May Obtain the Discounts

If you wish to obtain the discounts, you agree to sign an Addendum specifying your Commitment, and selected contract-period start date and duration.

During the contract period, you may increase your Commitment or extend the contract period (subject to our approval) by signing a revised Addendum. If you extend, you agree to increase your Commitment so that the new discount percent is at least equal to your current discount percent. Any increased discount percent applies to all eligible Products for which Date of Installation is on or after the date we receive your signed Addendum.

#### How We Apply the Discounts

We apply the discount to the single-unit charges of eligible Products that you acquire from us during the contract period. The charges are the lesser of 1) those generally available at the time of acquisition or 2) the announced charges in effect on the date we receive the initial Addendum, subject to our price change terms described below.

We count specified Products that you acquire from our authorized remarketers when we receive the required certification. Adjustment charges do not apply to these Products.

We may place some Products in a dependent category with an associated controlling category. To determine the discount percent applicable to either category, we count quantities or revenue for only those Products in the controlling category.

#### Price Changes

During a contract period, we may increase or decrease charges. We apply your discount to the new charges as follows:

1. we establish a maximum charge (called an "Upper Limit") for each Product in a committed category for each year of a contract period. We determine the Upper Limit by increasing the announced charge in effect, as of the date we receive the initial Addendum

- by a certain amount. We calculate this amount by multiplying that charge by the upper-limit percent we specify at the time of your Commitment;
- 2. for an Increase, we apply the discount to either the increased charge or the Upper Limit, whichever is less; and
- 3. for a decrease, we apply the discount to the decreased charge, provided you accept any related changes in terms we may have made after your Commitment. Otherwise, you may select 1) the decreased charge without discount or 2) the discounted charge available to you before the decrease.

**Adjustment Charges**

If you have not met your Commitment by the end of the contract period, you agree to pay adjustment charges. The adjustment charge for each Product is either:

- 1. the difference between the discounted amount we charged you and the discounted amount which you were entitled to receive; or
- 2. the result of multiplying the adjustment charge factor by the number of discount percentage points between what we gave you and what you were entitled to receive.

We will inform you which method we use for a particular Product.

For a revenue-based Commitment, the total of the adjustment charges will not be more than the difference between your Commitment and the actual revenue you attained.

**International Discounts**

For our International customers, we provide volume discounts based on worldwide Commitments. To allow you to participate in such a Commitment, this Agreement may be modified by a signed International agreement. You, your international enterprise coordinator, and we will sign the relevant Transaction Document unless the coordinator exempts you from signing. That Transaction Document becomes part of this Agreement.

**6.2 Maintenance Service Options**

We provide Maintenance Service Options for certain Machines. If you wish to obtain the benefit of lower charges available under an Option, you agree to assume additional, specified responsibilities. We provide the terms specific to an Option in an Attachment.

We will specify the eligible Machine types, eligible types of service, available discount percents and contract periods, exit-option percents, and notice requirements for termination of each contract period, as applicable to each Option. We will also inform you periodically of any changes. We will defer an unfavorable change (and all changes related to it) until the end of your contract period, if you request it in writing before the effective date of the change. Related changes become effective at the same time.

**6.3 Payment Options**

**Extended Maintenance Option**

You may select the Extended Maintenance Option (called the "EMO") for certain Machines. Under this Option, we adjust your Maintenance Services charges based on your prepayment of those charges during an available contract period.

We will specify the eligible Machine types and available contract periods. We will also inform you periodically of any changes. A change applies only to Machines you add under this Option on or after the effective date of the change.

## ATTACHMENT

The Transaction Document will list the Machines covered and the dates of coverage for the contract period you have selected for each Machine.

You may select EMO in addition to other Maintenance Service Options. We then adjust the Machine's EMO charge based on the applicable discounts which you are entitled to receive under those Options. While under this Option, you agree to maintain coverage under all the Services and other Options on which we base the Machine's EMO charge.

For a Machine not yet installed or set up, coverage starts on its Date of Installation. For an Installed Machine, coverage starts on a mutually-agreed-to date. If applicable, the contract period includes the Machine's warranty period.

We calculate the EMO charge for a Machine using the announced Maintenance Services charges and any applicable discounts in effect for the Machine when coverage begins. EMO charges are not refundable after coverage has started for the Machine.

Both of us agree that if a feature, conversion, or upgrade is installed on a Machine while it is under this Option, 1) an additional charge may apply and 2) the feature, conversion, or upgrade is subject to the remaining portion of the contract period.

If we increase the EMO charge, the increase does not apply to a Machine not yet installed or set up, unless we give you at least three months' notice before its scheduled date of shipment. If we decrease the EMO charge before coverage has begun for a Machine, you receive the benefit of the decrease.

We will give you at least three months' notice of a Machine's eligibility for renewal. At the end of your contract period, we will continue Maintenance Services for the Machine (if available), unless you request us not to do so.

If you transfer coverage for a Machine to a third party, you agree to inform that party 1) of the applicable terms of this Agreement and 2) that it must notify us in writing of the transfer, the location of the Machine, and acceptance of coverage. If that party does not wish to maintain coverage under all the Services and other Options on which we base the Machine's EMO charge, you agree to pay the transfer charge that we specify.

#### Invoicing Options

We make Invoicing Options available to you for certain Products and Services to provide flexibility in payment terms. We provide the terms specific to an Option in an Attachment.

We will specify the eligible Products, Services, and charges, and the available contract periods, invoicing schedules, and environments which may be covered by an Option. We will also inform you periodically of any changes.

Together, we will estimate your requirements for the applicable Products and Services. We use this estimate to determine the total charges that we will invoice, distributed according to the schedule you select. These invoiced amounts replace the applicable charges otherwise due. Depending on the Option, the total charges may be subject to adjustments.

The Transaction Document, signed by both of us, will list the date from which we provide the selected Option to you and its other details.

#### 6.4 Special Options

In order to meet your specific requirements, we may provide Special Options to you. Under these Options, we are willing to provide special terms and tailor our processes for you. We will describe our mutual commitments under a Special Option in a Transaction Document.