



Supplementary Terms and Conditions for IBM Services - Acquired from an IBM Business Partner -

Version: April 2016

1. Subject

These Supplementary Terms and Conditions for IBM Services - Acquired from an IBM Business Partner - (hereinafter referred to as "STC") govern the terms and conditions for Services set out on the Order Form.

The provisions of the Agreement will apply accordingly to Eligible Machines, Eligible Programs or Services included in the scope of Service after commencement of the Agreement.

The Agreement consists of the Order Form, Statements of Work (SOWs), these STC and the "IBM Agreement for IBM Services - Acquired from an IBM Business Partner -".

2. Definitions

Authorised Requestors means the Customer's employees who may place Service requests with IBM in accordance with this Agreement. These employees must possess adequate technical skills to enable problem-oriented and purposeful communication between the Customer and IBM.

Installation Location means a location specified on the Order Form where Eligible Machines are installed (Customer installation address).

Eligible Machine means a Machine identified on the Order Form or included later in the scope of Service. **Machine** means – unless otherwise described – the Machine itself, including its model variants, features and Machine elements.

Eligible Program means a Program listed on the Order Form or included later in the scope of Service.

Order Form means the Order Form itself – including its Attachments – and/or any associated additional document agreed between the parties.

Customer means a Customer of the IBM Business Partner who purchases the Services or products for its own use and not for resale.

Machine/Service List means a list contained on the Order Form that lists the Eligible Machines and Services.

3. Term

The minimum term of this Agreement – beginning on the date specified on the Order Form – will be one year.

An Agreement with a fixed minimum term (two, three, four or five years) will be effective for the agreed period ("Fixed Agreement Term").

The contract will be automatically renewed by one further year at the end of the respective term. Contact your IBM Business Partner in good time to obtain information about any modified Service charges.

In each case, the remaining term will be agreed for new Machines, Programs and Services included during the Agreement Term.

4. Automatic Inclusion of Machines and Programs

4.1. Automatic Inclusion of Machines

Newly acquired Machines will be included automatically in the Agreement. The following will apply:

- A Machine that the Customer acquires will be included on the day after its installation. The Service Type for the respective Machine will correspond to the Service Type for comparable IBM Machine Types at the same location. If no comparable Machines are installed at the location, Maintenance will be provided in compliance with the basic Service type available for the applicable Machine.
- Charges for Maintenance Services will not be payable until after expiry of the warranty period, however; in the event of advance payment, the warranty period will be taken into account accordingly. This will not apply to charges for any extended warranty Services (Warranty Service Upgrades). These will be separately payable. The Customer will obtain information about this from the IBM Business Partner.

Automatic inclusion will also refer to separate Machine extensions or upgrades, including additional features, elements and model conversions for an existing Eligible Machine.

The Customer can object in writing to chargeable automatic inclusion of a Machine in the scope of Service within one month after receipt of the invoice by written notification to the IBM Business Partner (with a copy to IBM).

However, there will be no right to objection for automatic inclusion of Machine extensions or upgrades, including additional features, elements and model conversions for an existing Eligible Machine.

If IBM has already provided Maintenance Services for automatically included Machines at the Customer's request, the IBM Business Partner may charge the Customer for them. The Customer will obtain information about this from the IBM Business Partner.

4.2. Automatic Inclusion of Programs

When a software Service Agreement expires that referred at the time of acquisition to an Eligible Program in compliance with this Agreement, it will be included in this Agreement if the software runs on an Eligible Machine. IBM will update the inventory after inclusion of a Program. The Customer can object in writing to chargeable automatic inclusion of a Program in the scope of Service within one month after receipt of the invoice by written notification to the IBM Business Partner (with a copy to IBM).

However, there will be no right to object, if the Program is only an update, a new feature, a new release or a new version of an existing Eligible Program or a further copy of an existing Eligible Program on an Eligible Machine.

If IBM has already provided Services for automatically included Programs at the Customer's request, the IBM Business Partner may charge these to the Customer. The Customer will obtain information about this from the IBM Business Partner.

5. Licence for Service Programs

The following terms and conditions apply to all Programs that IBM provides together with a Service and that is not otherwise accompanied by a separate licence Agreement.

In connection with the provision of the Service IBM grant to the Customer a non-exclusive licence to use the Service Program on the Eligible Machines defined by IBM to assist in problem determination or other system support in conjunction with the Services under this Agreement.

The Customer will not be entitled to

- modify the Program's Machine-readable instructions or merge data into another Program;
- reverse assemble, reverse compile, or otherwise convert the Program, unless such a conversion is provided by a binding legal regulation;
- sublicense, assign, or transfer the licence for the Program, or
- distribute the Program to any third parties.

IBM provides the Program without warranties of any kind.

If IBM does not provide a backup copy of the Service Program, the Customer has the right to create one copy for backup purposes provided the Customer reproduces the copyright information or any other copyright notes on the copy. The backup copy will be subject to the same terms and conditions as the original.

The Customer's licence terminates, when

- the Service is terminated, is withdrawn by IBM or the Agreement Term ends and is not renewed;
- the Service Program is no longer required for provision of the Service; or
- the Eligible Machines designated by IBM for the Program is removed from productive use by the Customer.

IBM may terminate the licence if the Customer does not fulfil the Customer's contractual obligations or at IBM's own discretion, e.g. if the Program is no longer needed for the Services. Upon termination of the licence, the Customer will be obliged to destroy the Service Program including all backup copies received or made by the Customer.

6. Responsibilities

6.1. Inventory Review

If the Customer or IBM requests a review of the inventory of the Eligible Machines and Programs, the parties will update and mutually exchange the inventory list last created. The IBM Business Partner may change the Service charge if a change in the inventory is discovered. The Customer will ask its IBM Business Partner for information.

6.2. Required Consents

The Customer is responsible for promptly obtaining and providing to IBM all required consents necessary for IBM to provide the Services in compliance with this Agreement. A required consent means any consents or approvals required to give IBM and its subcontractors the right to access, use and/or modify (including creating derivative works) the hardware, software, firmware and other products you use, without infringing the ownership or licence rights (including patent and copyright) of the providers or owners of such products.

The Customer will indemnify, defend and hold IBM, its affiliates and subcontractors, harmless from and against any and all claims, losses, liabilities and damages (including reasonable attorneys' fees

and costs) arising from or in connection with any claims (including patent and copyright infringement) made against IBM that occur as a result of the Customer's failure to provide any required consents.

IBM will be relieved of the performance of any obligations that may be affected by the Customer's to promptly provide any required consents.

6.3. Customer Responsibilities

The Customer will

1. pay all communication charges at the Customer end in connection with use of the Services, unless otherwise agreed;
2. make sure that all access codes provided by IBM are used exclusively by the designated authorised requestors;
3. provide IBM with the necessary and available diagnostic information (including product or system information) in connection with problems relating to the Eligible Machines and Programs for which support is requested;
4. use the information received within the scope of this Service exclusively for support of the IT requirements within the Customer's enterprise;
5. without the prior written consent of IBM, neither cede the described Services nor the Customer's rights or obligations within the scope of this Agreement, or otherwise transfer or pass them on. Every attempt in this respect will be void;
6. install on the Customer's Eligible Machines the Programs specified by IBM that are needed for the use of electronic tools for remote access;
7. provide IBM with the necessary remote access to the Customer's Eligible Machines and grant the necessary authorisations to enable IBM to provide the Services via the remote access;
8. be responsible for reasonable protection of all Programs and data stored on the Eligible Machines during Customer-authorized remote access by IBM;
9. communicate inventory changes to Machines, processors, parts and Programs within one (1) month to the IBM Business Partner (with a copy to IBM).

7. Charges

The charges to be paid by the Customer and the terms and conditions of payment will be defined by the IBM Business Partner. The Customer will make payments directly to the IBM Business Partner.

The IBM Business Partner may charge additional charges, e.g. in the event of termination or for additional Services to be provided by IBM.

Note: The termination rule, appropriate for the appendent contract, is separately reaffirmed within the "Terms and Conditions in order of their precedence". Below please find the three termination options.

8. Termination in Case of Yearly Term

1. If the Customer or IBM does not wish any automatic renewal as detailed in the "Term" section, the Customer will inform (with a copy to IBM) or IBM will inform (with a copy to the Customer) the IBM Business Partner in writing three months before the end of the agreed term.

2. The Customer may terminate the Agreement by written notification to the IBM Business Partner (with a copy to IBM) for the first time after expiry of the first contractual year with a period of notice of three months prior to the end of the respective contractual year.
3. IBM may terminate the Agreement by written notification to the Customer and the IBM Business Partner for the first time after expiry of the first contractual year with a period of notice of three months prior to the end of the respective contractual year.
4. The Customer may terminate the Service for individual Machines, Programs or Services by written notification to the IBM Business Partner (with a copy to IBM) for the first time after expiry of the first contractual year with a period of notice of three months prior to the end of the respective contractual year.
5. The Customer may terminate the Service for individual Machines beforehand by written notification to the IBM Business Partner (with a copy to IBM) if a different Machine is included in an IBM Service/Maintenance Agreement that replaces the terminated one and is comparable to it in terms of its nature and in relation to its function or task.
6. The Customer may also terminate Services beforehand by written notification to the IBM Business Partner (with a copy to IBM) if the terminated Service is replaced by equivalent Services within an IBM Service/Maintenance Agreement.
7. Regardless of this, the Customer may terminate a Service for a Machine by written notification to the IBM Business Partner (with a copy to IBM) with a period of notice of one month prior to the end of a calendar month if use of the Machine within the Customer's enterprise is permanently and finally ended and the Machine is not replaced by a Machine that is comparable to it in terms of its nature and in relation to its function or task. By terminating, the Customer also confirms the permanent dismantling or rather the final end of the use of the respective Machine within the Customer's enterprise.
8. Any consequences resulting from termination, for example the obligation to pay an early termination charge or granting of a credit note, may result from the respective contractual relationship between the Customer and the IBM Business Partner. The Customer may enquire with the IBM Business Partner about the consequences resulting from a termination.
9. For the Service, IBM also relies on spare parts suppliers for both non-IBM products and its own Machines. If such suppliers terminate spare parts deliveries, IBM may withdraw the Service by written notification to the Customer and the IBM Business Partner with a period of notice of three months prior to the end of the respective contractual year.

In the event that the contractual terms agreed between the respective manufacturer and IBM, or the manufacturer's support policy terms, have been changed, IBM reserves the right to adjust the charges and/or the contract terms and/or the terms and conditions, or to terminate this Agreement without notice. The Customer will also have the right to terminate this Agreement without notice, if the Customer has not granted its consent to any adjustments made by IBM. Notice of termination must be made in the written form.

9. Termination in the Case of a Fixed Agreement Term with general Termination Possibilities and with Termination Charges

1. If the Customer or IBM does not wish any automatic renewal as detailed in the "Term" section, the Customer will inform (with a copy to IBM) or IBM will inform (with a copy to the Customer) the IBM Business Partner in writing three months before the end of the agreed term.
2. The Customer may terminate the Service for individual Machines, Programs or additional Services for the first time after expiry of the first contractual year with a period of notice of three months prior to the end of a calendar month, the Agreement for the first time before the expiry of the second contractual year with a period of notice of three months prior to the end of the respective contractual year by written notification to the IBM Business Partner (with a copy to IBM.)
3. The Customer may terminate the Service for individual Machines by written notification to the IBM Business Partner (with a copy to IBM) beforehand if a different Machine is included in an IBM

Service/Maintenance Agreement that replaces the terminated one and is comparable to it in terms of its nature and in relation to its function or task.

4. The Customer may also terminate additional Services (if such have been agreed) beforehand by written notification to the IBM Business Partner (with a copy to IBM) if the terminated Service is replaced by equivalent Services within an IBM Service/Maintenance Agreement.
5. Regardless of this, the Customer may terminate a Service for a Machine by written notification to the IBM Business Partner (with a copy to IBM) with a period of notice of one month prior to the end of a calendar month if use of the Machine within the Customer's enterprise is permanently and finally ended and the Machine is not replaced by a Machine that is comparable to it in terms of its nature and in relation to its function or task.
By terminating, the Customer also confirms the permanent dismantling or rather the final end of the use of the respective Machine within the Customer's enterprise.
6. Any consequences resulting from termination, for example the obligation to pay an early termination charge or granting of a credit note, may result from the respective contractual relationship between the Customer and the IBM Business Partner. The Customer may enquire with the IBM Business Partner about the consequences resulting from a termination.
7. For the Service, IBM also relies on spare parts suppliers for both non-IBM products and its own Machines. If such suppliers terminate spare parts deliveries, IBM may withdraw the Service by written notification to the Customer and the IBM Business Partner with a period of notice of three months prior to the end of the respective contractual year.

In the event that the contractual terms agreed between the respective manufacturer and IBM, or the manufacturer's support policy terms, have been changed, IBM reserves the right to adjust the charges and/or the contract terms and/or the terms and conditions, or to terminate this Agreement without notice. The Customer will also have the right to terminate this Agreement without notice, if the Customer has not granted its consent to any adjustments made by IBM. Notice of termination must be made in the written form.

8. If the Agreement is converted into an Agreement with Yearly Term after the end of the agreed term, the Customer and IBM may then terminate the Agreement by written notification to the IBM Business Partner (with a copy to the other party) after the expiry of one contractual year with a period of notice of three months prior to the end of the respective contractual year. All other termination possibilities, e.g. for individual Machines, absence of spare parts deliveries or in the event of a price increase, will continue to apply.

10. Termination in the Case of a Fixed Agreement Term without any Termination Possibilities

1. If the Customer or IBM does not wish any automatic renewal as detailed in the "Term" section, the Customer will inform (with a copy to IBM) or IBM will inform (with a copy to the Customer) the IBM Business Partner in writing three months before the end of the agreed term.
2. The Customer may terminate the Agreement by written notification to the IBM Business Partner (with a copy to IBM) for the first time with a period of notice of three months prior to the end of the agreed Fixed Agreement Term. IBM may terminate the Agreement by written notification to the IBM Business Partner (with a copy to the Customer) for the first time with a period of notice of three months prior to the end of the agreed Fixed Agreement Term.
3. The Customer may terminate the Service for individual Machines beforehand by written notification to the IBM Business Partner (with a copy to IBM) if a different Machine is included in an IBM Service/Maintenance Agreement that replaces the terminated one and is comparable to it in terms of its nature and in relation to its function or task.
4. The Customer may also terminate additional Services (if such have been agreed) beforehand by written notification to the IBM Business Partner (with a copy to IBM) if the terminated Service is replaced by equivalent Services within an IBM Service/Maintenance Agreement.
5. Regardless of this, the Customer may terminate a Service for a Machine by written notification to the IBM Business Partner (with a copy to IBM) with a period of notice of one month prior to the end of a calendar month if use of the Machine within the Customer's enterprise is permanently and

finally ended and the Machine is not replaced by a Machine that is comparable to it in terms of its nature and in relation to its function or task. By terminating, the Customer also confirms the permanent dismantling or rather the final end of the use of the respective Machine within the Customer's enterprise.

6. Any consequences resulting from termination, for example the obligation to pay an early termination charge or granting of a credit note, may result from the respective contractual relationship between the Customer and the IBM Business Partner. The Customer may enquire with the IBM Business Partner about the consequences resulting from a termination.
7. For the Service, IBM also relies on spare parts suppliers for both non-IBM products and its own Machines. If such suppliers terminate spare parts deliveries, IBM may withdraw the Service with three months prior written notice.

In the event that the contractual terms agreed between the respective manufacturer and IBM, or the manufacturer's support policy terms, have been changed, IBM reserves the right to adjust the charges and/or the contract terms and/or the terms and conditions, or to terminate this Agreement without notice. The Customer will also have the right to terminate this Agreement without notice, if the Customer has not granted its consent to any adjustments made by IBM. Notice of termination must be made in the written form.

8. If the Agreement is converted into an Agreement with Yearly Term after the end of the agreed term, the Customer and IBM may then terminate the Agreement by written notification to the IBM Business Partner (with a copy to the other party) by the end of one contractual year with a period of notice of three months prior to the end of the respective contractual year. All other termination possibilities, e.g. for individual Machines, absence of spare parts deliveries or in the event of a price increase, will continue to apply.

11. Order-Based Data Processing

11.1. Data Processing for IBM's own Purposes

The Customer agrees that IBM Deutschland GmbH, based at IBM-Allee 1, D-71139 Ehningen (Germany) (called "IBM Deutschland" in the following) may collect, process and use the Customer's contact information for the purpose of the performance of the contractual relationship and for promoting the business relationship with the Customer. "Business Contact Information" is business-related contact information that the Customer/IBM Business Partner has disclosed to IBM Deutschland, in particular, names, job titles, business addresses, telephone, and fax numbers as well as e-mail addresses of Customer employees or of third parties. The Customer also agrees that such Business Contact Information may be disclosed to the IBM companies and IBM Business Partners and their respective subcontractors or that such contact information may be processed and used by these companies in relation to the intended purposes specified in this paragraph of the present GTCs. IBM companies means the International Business Machines Corporation based in Armonk, New York (USA) and their affiliated group companies.

IBM Deutschland, the IBM companies and IBM Business Partners are entitled to use such contact information of the Customer's employees either themselves or through third parties for promotional campaigns by telephone, fax or email for products as well as consulting and support provided by IBM Deutschland for marketing purposes. The Customer and its employees are entitled to object to the collection, processing and use of their contact information for marketing purposes to IBM Deutschland at any time.

The Customer agrees that such Business Contact Information may be transferred to countries outside the European Economic Area in conformity with the intended purposes specified in the two preceding paragraphs, provided that IBM Deutschland will ensure an adequate level of data privacy. Such an adequate level of data privacy may be achieved through the use of standard contractual clauses published by the Commission of the European Union or any other contractual Agreement approved by the competent data protection regulatory authority.

11.2. Data processing for external purposes (at the Customer's Request)

Processing of Customer Data by Order

IBM explicitly indicates to the Customer that it may be necessary to access the Customer's systems from countries outside the EU/EEA (if necessary) for the purpose of the Service provision by IBM. If IBM, or any third party commissioned by IBM, has accessed the Customer's systems or other storage media temporarily (e.g. when performing system tests or Maintenance Services), the Customer must ensure that the Customer's personal data or that of any third party will not be accessed in such a case. The terms of this section will also apply if IBM, or any third party commissioned by IBM, could be able to access the Customer's data or the data of any third party otherwise during IBM's Service provision (e.g. if data is transferred by the Customer) or in any other cases in which IBM, or any third party commissioned by IBM, processes data by order of the Customer (for example, during the disposal of storage media).

The Customer will inform IBM in writing if it is unable to fulfill this obligation in any particular case. The Parties will conclude an Agreement on the processing of Customer data by order in this case, if this is required under applicable law. This will be made by agreeing an Attachment to the "IBM Supplementary Terms and Conditions (STCs) for Processing Customer Data by Order according to §11 BDSG" ("STCs for Processing Customer Data by Order"). These STCs (as amended) can be found on the Internet at www.ibm.com/terms/de or will be provided to the Customer by IBM upon request.

The terms set out in the section regarding "Subcontractors" of the STCs for Processing Customer Data by Order will apply to those cases described in the preceding paragraph. IBM will agree EU Standard Contract Clauses with all Service providers based outside the EU/EEA in these cases, particularly in accordance with the Customer's (written) power of authority prescribed therein, if a reasonable level of data privacy cannot be ensured otherwise.

IBM's Service Centers

A large number of incidents are handled by IBM's Service Centers (called the "Center(s)" in the following). These Centers are based in different countries worldwide. The reserve capacities of these Centers are such that a trouble-free continued operation of the Centers will be ensured, even in the case of a failure of the public power supply network. These Centers are able to manage all calls from Customers in the case of an incident according to different incident categories and to forward such calls according to competence, in order to find a solution to the incident in question in each particular case. The Incident Management Systems (IMS) used at these Centers will support the respective Customer requests, according to the Services required by the respective Customer and based on given internal processes. Each incident message received by the Centers will be recorded by means of problem tickets that either already exist or in new tickets and they will be tracked up to the respective solution. A response or an escalation will be triggered, as agreed by contract, if necessary, provided that this has been agreed with the Customer.

The problem ticket systems used at the Centers enable easy identification and tracking of existing tickets or of tickets not yet resolved, where the SLA threshold values defined jointly with the Customer will be considered in each particular case. All notifications regarding operational malfunctions concerning the contractually agreed product portfolio will be accepted by specially trained staff members (incident reception), and will be classified, analyzed and resolved immediately, if possible. A knowledge-based system will be used for the analysis of errors. Any unresolved problem tickets, for which the Centers are not responsible, will be recorded, prioritized and forwarded to the lower-tier support functions of IBM, of the Customer, or to third parties.

All incidents will be processed at a Center in several steps, i.e.

- i) the identification whether a contractual relationship with the caller's company exists will be made by means of the product type and the respective serial number of the Machine in question;
- ii) if an incident (entry of a problem ticket in the IMS system) has been received by a Center for the first time, the caller's contact details and the incident itself will be recorded in the system and will be stored in systems operated worldwide, so that the caller can be identified as quickly as possible if another call is received and all incidents already

reported to the respective Center can be tracked, in order to be able to process the incident in question efficiently;

- iii) the incident message will be processed within IBM's worldwide support infrastructure by the respective staff member in charge of the incident in question;
- iv) it may be necessary that the responsible staff member requests the Customer to transfer specific data, so that an analysis of such data can be made for a comprehensive incident analysis and in order to eliminate the incident in question, or the responsible staff member will access the affected Machine or the Customer's infrastructure remotely, after prior consultation with the Customer's responsible staff member.

The Customer must ensure that IBM cannot access any other personal data of the Customer when performing an incident analysis and the elimination of the incident. More details can be found in the terms of the "STCs for Processing Customer Data by Order".

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