



Customer Agreement

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IBM United Kingdom Limited, Registered in London: 741598
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This IBM Customer Agreement (called the "Agreement") governs transactions by which the Customer purchases Machines, licenses ICA Programs, obtains Program licences and acquires Services (including, without limitation, customised development and support, business consulting, and maintenance Services) from IBM United Kingdom Limited ("IBM").

1. General

1.1 Agreement Structure

This Agreement is organised in five Parts:

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

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

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

Part 4 – ICA Programs includes ICA Program terms regarding Licence, Distributed System Licence Option, Program Services, Compliance Verification, and Licence Termination.

Part 5 – Services includes Services terms regarding Personnel, Materials Ownership and Licence, Customer Resources, Service for Machines (during and after warranty), Maintenance Coverage, Automatic Service Renewal, and Termination and Withdrawal of a Service.

1.2 Attachments and Transaction Documents

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

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

1.3 Definitions

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

Date of Installation –

- a. for an IBM Machine that IBM is responsible for installing, the business day after the day IBM installs it or, if the Customer defers installation, makes it available to the Customer for subsequent installation by IBM;

- b. for a Customer-set-up Machine and a non-IBM Machine, the second business day after the Machine's standard transit allowance period as specified in a Transaction Document; and
- c. for a Program:
 - (1) basic licence, the second business day after the Program's standard transit allowance period as specified in a Transaction Document;
 - (2) copy, the date (specified in a Transaction Document) on which IBM authorises the Customer to make a copy of the Program; and
 - (3) chargeable component (also called a feature), the date the Customer uses the chargeable component or a copy. The Customer agrees to notify IBM of the chargeable component's Date of Installation.

Designated Machine – either i) the machine on which the Customer will use an ICA Program for processing and which IBM requires the Customer to identify to IBM by type/model and serial number, or ii) any machine on which the Customer uses the ICA Program if IBM does not require the Customer to provide this identification.

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

ICA Program – an IBM Program licensed under Part 4 of this Agreement.

Licensed Internal Code (called “LIC”) – Machine Code used by certain IBM Machines IBM specifies (called “Specific Machines”).

Machine – a hardware device, 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 IBM may provide to the Customer.

Machine Code – microcode, basic input/output system code (called “BIOS”), utility programs, device drivers, diagnostics, and any other code (all subject to any exclusions in the licence provided with it) delivered with an IBM Machine for the purpose of enabling the Machine's function as stated in its Specifications. The term “Machine Code” includes LIC.

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

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

Other IBM Program – an IBM Program licensed under a separate IBM licence agreement (e.g., IBM International Program Licence Agreement).

Product – a Machine or a Program.

Program – the following, including the original and all whole or partial copies:

- a. machine-readable instructions and data;
- b. components;
- c. audio-visual content (such as images, text, recordings, or pictures); and
- d. related licensed materials.

The term “Program” includes any ICA Program, Other IBM Program, or Non-IBM Program that IBM may provide to the Customer. The term does not include Machine Code or Materials.

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

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

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

Western Europe – Andorra, Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom, Vatican State, plus any country subsequently added to the European Union as of the date of accession.

1.4 Acceptance of Terms

- 1.4.1 The Customer accepts the terms in Attachments and Transaction Documents by i) signing them (by hand or electronically), ii) using the Product or Service, or allowing others to do so, or iii) making any payment for the Product or Service.
- 1.4.2 The Customer may cancel any order without liability to IBM if a Transaction Document incorporates either i) additional contractual terms or ii) a new or revised IBM Customer Agreement of which the Customer was not notified by IBM before the date of the Customer's order, provided that the Customer notifies IBM of such cancellation either i) within 10 business days of receipt of the Transaction Document or ii) before the first delivery of the relevant goods or provision of a Service, whichever is the earlier.
- 1.4.3 A Product or Service becomes subject to this Agreement when IBM accepts the Customer's order by i) sending the Customer a Transaction Document, ii) shipping the Machine or making the Program available to the Customer, or iii) providing the Service.
- 1.4.4 Any Attachment or Transaction Document will be signed by both parties if requested by either party.
- 1.4.5. Nothing stated in this paragraph shall have the effect of excluding or limiting liability for fraud. This Agreement, including its applicable Attachments and Transaction Documents, is the complete agreement regarding transactions by which the Customer purchases Machines, licenses ICA Programs, obtains Program licences, and acquires Services from IBM, and replaces any prior oral or written communications between the Customer and IBM. In entering into this Agreement, including each Attachment and Transaction Document, neither party is relying on any representation that is not specified in this Agreement including, without limitation, any representations concerning: i) estimated completion dates, hours, or charges to provide any Service; ii) performance or function of any Product or system, other than as expressly warranted in the Warranties section below; iii) the experiences or recommendations of other parties; or iv) results or savings the Customer may achieve. Additional or different terms in any written communication from the Customer (such as a purchase order) are void.
- 1.4.6 The Customer accepts, on behalf of its Enterprise, the terms of this Agreement by accepting a Transaction Document or Attachment that incorporates this Agreement by reference. Each Transaction Document or Attachment may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of the Transaction Document or Attachment. Once accepted, i) any reproduction of this Agreement, an Attachment, or Transaction Document made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original and ii) all Products and Services ordered under this Agreement are subject to it.

1.5 Delivery

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

1.6 Charges and Payment

1.6.1 Charges

- 1.6.1.1 A Transaction Document specifies the amount payable for Products or Services, based on one or more of the following types of charges: one-time, recurring, time and materials, or fixed price. Additional charges may apply (such as special handling or travel related expenses). IBM will inform the Customer in advance whenever additional charges apply.
- 1.6.1.2 Recurring charges for a Product begin on its Date of Installation. Charges for Services are billed as specified in a Transaction Document, which may be in advance, periodically during the performance of the Service, or after the Service is completed. Unless otherwise provided in this Agreement (including any applicable Attachment or Transaction Document): i) Services for which the Customer prepays must be used within the applicable contract period; and ii) IBM does not give credits or refunds for any prepaid or other charges already due or paid.
- 1.6.1.3 If a Transaction Document provides an estimated total charge for time and materials or for usage charges, the estimate is for planning purposes only. IBM invoices charges based on actual time and materials expended or the Customer's actual or authorised use, subject to any specified minimum commitment.

1.6.2 Usage Charges

- 1.6.2.1 One-time and recurring charges may be based on measurements of actual or authorised use (for example, authorised capacity for Machines, number of users or processor size for Programs, or meter readings for maintenance Services). The Customer agrees to provide actual usage data as described in an Attachment or Transaction Document.
- 1.6.2.2 If the Customer makes changes to its environment that impact usage charges (for example, change authorised capacity for Machines or change processor size or configuration for Programs), the Customer agrees to promptly notify IBM and pay any applicable charges. Recurring charges will be adjusted accordingly. In the event that IBM changes the basis of measurement, its terms for changing charges will apply.

1.6.3 Changes to Charges

- 1.6.3.1 From time to time, IBM may change its charges. The Customer receives the benefit of a decrease in charges for amounts that become due on or after the effective date of the decrease.
- 1.6.3.2 Unless provided otherwise in an Attachment or Transaction Document, IBM may increase recurring charges for Products and Services, as well as labour rates and minimum charges for Services provided under this Agreement, by giving the Customer three months' written notice. An increase applies on the first day of the invoice or charging period on or after the effective date IBM specifies in the notice.
- 1.6.3.3 If the Customer disagrees with the increase, the Customer may terminate the affected Transaction Document by notifying IBM, in writing, within fifteen days after the date of IBM's notification to the Customer of the increase. If no notification is made by the Customer within such period, the increase will be deemed as accepted.

- 1.6.3.4 IBM may increase one-time charges without notice. However, an increase to one-time charges does not apply to the Customer if i) IBM receives the order before the announcement date of the increase and ii) one of the following occurs within three months after IBM's receipt of the order:
- a. IBM ships the Customer the Machine or makes the Program available to the Customer;
 - b. The Customer makes an authorised copy of a Program or distributes a chargeable component of a Program to another Machine; or
 - c. A Program's increased use charge becomes due.
- 1.6.3.5 Upon reasonable notice, IBM may verify the usage data and other information affecting the calculation of charges under this Agreement. Such verification will be conducted in a manner that minimises disruption to the Customer's business and may be conducted on the Customer's premises, during the Customer's normal business hours. The Customer agrees to i) provide records, system tools outputs, and other electronic or hard copy system information reasonably necessary for such verification, and ii) promptly pay any additional, valid charges and other liabilities determined as a result of such verification.

1.6.4 Payment

- 1.6.4.1 Amounts are due upon receipt of invoice and payable as specified in a Transaction Document. The Customer agrees to pay accordingly, including any late payment fee. Payment may be made electronically to an account specified by IBM or by other means agreed to by the parties.
- 1.6.4.2 If payment is not received within 30 days from the date of invoice, (or in the case of quarterly advance billing of recurring charges, within 60 days from the date of invoice), the Customer may be subject to late payment charges.
- 1.6.4.3 Such late payment charges will be calculated in accordance with the applicable official rate of statutory interest as defined by the Late Payment of Commercial Debts (Interest) Act 1998. For the purpose of late payment charge calculations the Customer's receipt of invoice will be deemed to be 3 working days after the date of invoice, unless otherwise notified to IBM at the time of actual receipt.
- 1.6.4.4 IBM's rights relating to late payment charges shall be in addition to any other right that IBM may have in the event that the Customer fails to make any payment due to IBM under this Agreement.
- 1.6.4.5 IBM reserves the right to require payment in advance of delivery or other security for payment.

1.6.5 Taxes

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

1.7 Changes to the Agreement Terms

- 1.7.1 In order to maintain flexibility in IBM's and the Customer's business relationship, IBM may change the terms of this Agreement by providing the Customer at least three months' written notice. However, these changes are not retroactive. They apply, as of the effective date IBM specifies in the notice, only to new orders, on-going transactions that do not expire, and

transactions with a defined renewable contract period. For transactions with a defined renewable contract period, the Customer may request that IBM defer the change effective date until the end of the current contract period.

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

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

1.8 Business Partners

1.8.1 IBM has signed agreements with certain organisations (called "IBM Business Partners") to promote, market, and support certain Products and Services. The Customer may order IBM Products or Services that are promoted or marketed to the Customer by IBM Business Partners or other suppliers, however, i) this Agreement applies only if a Transaction Document subject to this Agreement is provided for the specific transaction, and ii) such Business Partners and suppliers remain independent and separate from IBM.

1.8.2 IBM is not responsible for the actions or statements of IBM Business Partners or other suppliers, any obligations either has to the Customer, or any products or services that they supply to the Customer under their agreements.

1.9 Intellectual Property Protection

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

1.9.1 Third Party Claims

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

- a. promptly notifies IBM in writing of the claim; and
- b. allows IBM to control, and cooperates with IBM in, the defence and any related settlement negotiations.

1.9.2 Remedies

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

- a. for a Machine, the Customer's net book value calculated according to generally accepted accounting principles;
- b. for an ICA Program, the amount paid by the Customer or 12 months' charges (whichever is less); and
- c. for Materials, the amount the Customer paid IBM for the creation of the Materials.

1.9.3 Claims for Which IBM is Not Responsible

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

- a. anything provided by the Customer or a third party on the Customer's behalf that is incorporated into a Product or IBM's compliance with any designs, specifications, or instructions provided by the Customer or a third party on the Customer's behalf;
- b. modification of a Product by the Customer or a third party on the Customer's behalf, or an ICA Program's use other than in accordance with its applicable licences and restrictions;
- c. the combination, operation, or use of a Product with any product, hardware device, program, data, apparatus, method, or process that IBM did not provide as a system, if the infringement would not have occurred were it not for such combination, operation or use;
- d. the distribution, operation or use of a Product outside the Customer's Enterprise; or
- e. infringement by a non-IBM Product or an Other IBM Program alone.

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

1.10 Limitation of Liability

1.10.1 Items for Which IBM May be Liable

- 1.10.1.1 For the purposes of this section, a "Default" means any act, statement, omission or negligence on the part of IBM in connection with, or in relation to, the subject matter of an Agreement in respect of which IBM is legally liable to the Customer, whether in contract or in tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default.
- 1.10.1.2 Circumstances may arise where, because of a Default by IBM in the performance of its obligations under this Agreement or other liability, the Customer is entitled to recover damages from IBM. Regardless of the basis on which the Customer is entitled to claim damages from IBM and except as expressly required by law without the possibility of contractual waiver, IBM's entire liability for any one Default will not exceed the amount of any direct damages, to the extent actually suffered by the Customer as an immediate and direct consequence of the default, up to the greater of (1) £300,000 (three hundred thousand pounds Sterling) or (2) 125% of the charges (if recurring, 12 months' charges apply) for the Product or Service that is the subject of the claim. For purposes of this item, the term "Product" also includes Materials and Machine Code.
- 1.10.1.3 This limit also applies to any of IBM's subcontractors and Program developers. It is the maximum for which IBM and its subcontractors and Program developers are collectively responsible. The following amounts are not subject to a cap on the amount of damages:
 - a. payments referred to in the Intellectual Property Protection section above; and
 - b. damages for bodily injury (including death) and damage to real property and tangible personal property for which IBM is legally liable.

1.10.2 Items for Which IBM is Not Liable

- 1.10.2.1 Except as expressly required by law without the possibility of contractual waiver, under no circumstances is IBM, its subcontractors, or Program developers liable for any of the following even if informed of their possibility:
 - a. loss of, or damage to, data;
 - b. special, incidental, exemplary, indirect, or consequential damages; or

- c. wasted management time or lost profits, business, revenue, goodwill, or anticipated savings.

1.11 General Principles of IBM's and the Customer's Relationship

1.11.1 Notices and Communications

Written communications, including notices to the receiving party's designated representative, are to be sent to the address (physical, e-mail or facsimile) specified in an applicable Attachment or Transaction Document. To the extent permissible under applicable law, the parties consent to the use of electronic means and facsimile transmissions to send and receive communications in connection with IBM's and the Customer's business relationship arising out of this Agreement, and such communications are acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity.

1.11.2 Assignment and Resale

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other. Any attempt to assign without consent is void. The assignment of this Agreement, in whole or in part, within the Enterprise of which either party is a part or to a successor organisation by merger or acquisition does not require the consent of the other. IBM is also permitted to assign its rights to payments without obtaining the Customer's consent. It is not considered an assignment for IBM to divest a portion of its business in a manner that similarly affects all of its customers.

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

The Customer agrees to acquire Machines with the intent to use them within that portion of its Enterprise physically located within Western Europe and not for reselling, leasing, or transferring to a third party, unless either of the following applies:

- a. the Customer is arranging lease-back financing for the Machines; or
- b. the Customer purchases them without any discount or allowance.

1.11.3 Compliance with Laws

IBM will comply with laws applicable to IBM generally as a provider of information technology Products and Services. IBM is not responsible for determining the requirements of laws applicable to the Customer's business, including those relating to Products and Services that the Customer acquires under this Agreement, or that IBM's provision of or the Customer's receipt of particular Products or Services under this Agreement, meets the requirements of such laws. Notwithstanding anything in this Agreement to the contrary, neither party is obligated to take any action that would violate law applicable to that party.

Each party will comply with applicable export and import laws and regulations, including those of the United States that prohibit or limit export for certain uses or to certain end users.

1.11.4 Dispute Resolution

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

1.11.5 Other Principles of IBM's and the Customer's Relationship

- a. Neither party grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent.
- b. The exchange of any confidential information will be made under a separate, signed confidentiality agreement. However, to the extent confidential information is exchanged in connection with any Product or Service under this Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this Agreement.
- c. This Agreement and any transaction under it do not create an agency, joint venture, or partnership between the Customer and IBM. Each party is free to enter into similar agreements with others to develop, acquire, or provide competitive products and services.
- d. Each party grants only the licences and rights specified in this Agreement. No other licences or rights (including licences or rights under patents) are granted either directly, by implication, or otherwise. The rights and licences granted to the Customer under this Agreement may be terminated if the Customer fails to fulfil its applicable payment obligations.

e. **Data Privacy**

1. **Definitions** – For the purposes of this sub-Clause 1.11.5.e, the following additional definitions shall apply:

Business Contact Information – business-related contact information disclosed by the Customer to IBM, including names, job titles, business addresses, telephone numbers and email addresses of the Customer's employees and contractors.

Business Contact Personnel – certain Customer employees and contractors to whom the Business Contact Information relates.

Data Protection Authority – the Office of the Information Commissioner, or any duly appointed successor entity thereto.

Data Protection & Electronic Communications Legislation – (a) the Data Protection Act 1998, and the various statutory instruments made thereunder, and (b) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (Statutory Instrument 2003 No. 2426), including (in either case) any statutory replacement or modification thereof.

IBM Group – International Business Machines Corporation of Armonk, New York, USA, its subsidiaries, and their respective 'Business Partners' and subcontractors. IBM Group entities are principally providers of information technology, including hardware and software products, services, consultancy, financing services and other related activities.

2. The Customer authorises IBM to process and use Business Contact Information for the purpose of furthering the business relationship between the Customer and IBM Group, including the marketing of products and services (the "**Specified Purpose**").
3. The Customer agrees that Business Contact Information may be disclosed to, and processed and used by, IBM Group in pursuit of the Specified Purpose.
4. IBM agrees that all Business Contact Information will be processed in accordance with the Data Protection & Electronic Communications Legislation and will be used only in accordance with the Specified Purpose.
5. To the extent that the Data Protection & Electronic Communications Legislation requires them, the Customer represents that it has obtained (or will obtain) such

consents from and has issued (or will issue) such notices to, the Business Contact Personnel as are necessary in order to enable the IBM Group to process and use the Business Contact Information to contact them, including by email, in accordance with the Specified Purpose.

6. The Customer consents to IBM transferring Business Contact Information outside the European Economic Area, provided that the transfer is made on contractual terms approved by the Data Protection Authority as ensuring adequate safeguards for the rights and freedoms of data subjects.
- f. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is IBM responsible for any third party claims against the Customer except as described in the Intellectual Property Protection section above or as permitted by the Limitation of Liability section above for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable to that third party. Consequently, the Customer may not seek liability from IBM for damages that the Customer suffers as a result of such third party claims.
- g. The Customer is responsible for selecting the Products and Services that meet its needs and for the results obtained from the use of the Products and Services, including the Customer's decision to implement any recommendation concerning the Customer's business practices and operations.
- h. Where approval, acceptance, consent or similar action by either party is required under this Agreement, such action will not be unreasonably delayed or withheld.
- i. Neither party is responsible for failure to fulfil any non-monetary obligations due to events beyond its control.
- j. As reasonably required by IBM to fulfil its obligations under this Agreement, the Customer agrees to provide IBM with sufficient and safe access (including remote access) to the Customer's facilities, systems, information, personnel, and resources, all at no charge to IBM. IBM is not responsible for any delay in performing or failure to perform caused by the Customer's delay in providing such access or performing other Customer responsibilities under this Agreement.

1.12 Agreement Termination

- 1.12.1 Either party may terminate this Agreement on written notice to the other following the expiration or termination of the terminating party's obligations under this Agreement, including any applicable Attachment or Transaction Document.
- 1.12.2 Either party may terminate this Agreement if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time to comply. Licence termination and termination of a Services transaction are described in Parts 4 and 5, respectively.
- 1.12.3 Any terms of this Agreement that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

1.13 Geographical Scope and Governing Law

- 1.13.1 Except as may be agreed between the parties, or as legally required, all the Customer's rights, all IBM's obligations and all licences (except for Licensed Internal Code and as specifically granted) are valid only in the United Kingdom.
- 1.13.2 The laws of England govern this Agreement and both parties agree to submit all disputes relating to this Agreement to the exclusive jurisdiction of the English Courts. Except where

required by law, IBM has no obligation to provide any Services for Machines located outside the United Kingdom.

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

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

2. Warranties

2.1 The IBM Warranties

2.1.1 Warranty for IBM Machines

- 2.1.1.1 IBM warrants that each IBM Machine is free from defects in materials and workmanship and conforms to its Specifications.
- 2.1.1.2 The warranty period for an IBM Machine is a fixed period commencing on its Date of Installation and specified in a Transaction Document. During the warranty period, IBM provides repair and exchange Service for the IBM Machine, without charge, under the type of Service IBM designates for the IBM Machine. If an IBM Machine does not function as warranted during the warranty period and IBM is unable to either i) make it do so or ii) replace it with one that is at least functionally equivalent, the Customer may return it to IBM for a refund.
- 2.1.1.3 The warranty for IBM Machines acquired in Western Europe is valid and applicable in all Western Europe countries provided the Machines have been announced and made available in such countries.
- 2.1.1.4 If the Customer has a current maintenance agreement with IBM, following expiration of the warranty period, all IBM Machines the Customer acquires under this Agreement will automatically receive maintenance Service for a charge unless the Customer requests in writing that this Service not be provided.
- 2.1.1.5 Additional terms regarding Service for Machines during and after the warranty period are contained in Part 5.

2.1.2 Warranty for ICA Programs

- 2.1.2.1 IBM warrants that each warranted ICA Program, when used in the Specified Operating Environment, will conform to its Specifications.
- 2.1.2.2 During the warranty period, IBM provides defect-related Program Services without charge. Program Services are available for a warranted ICA Program for at least one year following its general availability. The warranty period for an ICA Program expires when its Program Services are no longer available.
- 2.1.2.3 If an ICA Program does not function as warranted during the first year after the Customer obtains its licence and IBM is unable to make it do so, the Customer may return the ICA Program and the charges the Customer paid for the licence will be refunded. To be eligible, the Customer must have obtained its licence while Program Services (regardless of the remaining duration) were available for the ICA Program. Additional terms regarding Program Services are contained in Part 4.

2.1.3 Warranty for IBM Services

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

2.1.4 Warranty for Systems

- 2.1.4.1 When IBM specifies in an Attachment or Transaction Document that it is providing Products to the Customer that are intended to operate together as a system, IBM warrants that those Products are compatible and, when installed in accordance with

their Specifications, will operate with one another. This warranty is in addition to IBM's other applicable warranties.

2.2 Extent of Warranty

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

THESE WARRANTIES ARE THE CUSTOMER'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

2.2.1 Items Not Covered by Warranty

- 2.2.1.1 IBM does not warrant uninterrupted or error-free operation of a Product or Service or that IBM will correct all defects.
- 2.2.1.2 IBM will identify IBM Machines and ICA Programs that it does not warrant.
- 2.2.1.3 Unless IBM specifies otherwise in an Attachment or Transaction Document, and to the extent it is permitted by applicable law, IBM provides Materials, non-IBM Products, and non-IBM Services **WITHOUT WARRANTIES OF ANY KIND**. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to the Customer. Warranties, if any, for Other IBM Programs and Non-IBM Programs may be found in their licence agreements.

3. Machines

3.1 Production Status

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

3.2 Title and Risk of Loss

3.2.1 IBM transfers title to a Machine to the Customer or, if applicable, the Customer's lessor, upon payment of all the amounts due. For a feature, conversion, or another type of upgrade acquired for a Machine, IBM reserves transfer of title until IBM receives payment of all the amounts due and, as applicable, all removed parts, which become IBM's property.

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

3.3 Installation

The Customer agrees to provide an environment meeting the requirements for the Machine as specified in its published documentation. IBM has standard installation procedures. IBM will successfully complete these procedures before it considers an IBM Machine (other than a Machine for which the Customer defers installation or a Customer-set-up Machine) installed.

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

3.3.1 Upgrades and Engineering Changes

3.3.1.1 As used in this section, the term "upgrade" includes, without limitation, features and conversions. IBM sells upgrades for installation on Machines, and, in certain instances, only for installation on a designated, serial-numbered Machine. Within 30 days of the shipment of an upgrade, the Customer agrees to install the upgrade or, if IBM is responsible for the installation, to allow IBM to install the upgrade. Otherwise, IBM may terminate the transaction and the Customer must return the upgrade at the Customer's expense.

3.3.1.2 The Customer agrees to allow IBM to install mandatory engineering changes (such as those required for safety) on a Machine.

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

3.4 Machine Code

3.4.1 Machine Code is licensed under the terms and restrictions of the Machine Code licence agreement (e.g. IBM Licence Agreement for Machine Code, IBM Agreement for Licensed Internal Code, or an equivalent) provided with the Machine Code. The Customer's acceptance

of the terms of this Agreement includes acceptance of IBM's Machine Code licence agreements, current versions of which are available at the following URL: http://www.ibm.com/servers/support/machine_warranties/support_by_product.html or by contacting an IBM representative. Machine Code licence agreements may be amended by IBM from time to time. Such amended licence terms will apply only to Machine Code that is supplied after such amended terms become effective.

3.4.2 Machine Code is licensed only for use to enable a Machine to function in accordance with its Specifications and only for the capacity and capability for which the Customer has acquired IBM's written authorisation. The Customer agrees to use Machine Code only as specified in this Agreement and as may be further authorised or restricted in its applicable licence agreement. Without limiting additional restrictions in the applicable licence, the Customer may not:

- a. otherwise copy, display, transfer, adapt, modify, or distribute (electronically or otherwise) Machine Code, except as IBM may authorise in the Machine's user documentation or in writing to the Customer;
- b. reverse assemble, reverse compile, otherwise translate, or reverse engineer Machine Code unless expressly permitted by applicable law without the possibility of contractual waiver;
- c. sublicense or assign the licence for Machine Code; or
- d. lease Machine Code or any copy of it.

3.4.3 International Business Machines Corporation, one of its subsidiaries, or a third party owns Machine Code including all copyrights in Machine Code and all copies of Machine Code (this includes the original Machine Code, copies of the original Machine Code, and copies made from copies). Machine Code is copyrighted and licensed (not sold).

3.4.4 Title will not be transferred when IBM supplies features, conversions or upgrades which consist solely of Machine Code.

3.4.5 The capacity of certain Machines is limited by technological measures in Machine Code. The Customer agrees to IBM's implementation of such technological measures to limit Machine capacity.

3.5 Disposal of Machines

3.5.1 In accordance with the Waste Electrical and Electronic Equipment Regulations 2006 on waste electrical and electronic equipment (WEEE), when any Machine supplied under this Agreement replaces a machine put on the market before August 13, 2005, IBM will collect and dispose of such replaced machine provided that IBM is required to do so by applicable law. IBM may charge for such collection and disposal to the extent permitted by applicable law.

3.5.2 The Customer is responsible for making the WEEE available for collection from the Customer's premises within 30 days after supply of the replacement Machine.

3.5.3 Whenever IBM collects and disposes of the Customer WEEE, based on a legal or contractual obligation, the Customer agrees:

- a. to securely erase from any WEEE all programs not provided by IBM with the original equipment and data, including without limitation the following: i) information about identified or identifiable individuals or legal entities ("Personal Data") and ii) the Customer's confidential or proprietary information and other data. If removing or deleting Personal Data is not possible, the Customer agrees to transform such information (e.g., by making it anonymous) so that it no longer qualifies as Personal Data under applicable law;
- b. to remove all funds, if any, from WEEE returned to IBM;

- c. IBM is not responsible for saving or protecting any funds, programs not provided by IBM with the original equipment, or any data contained in a WEEE that the Customer returns to IBM; and
- d. IBM may ship all or part of the WEEE or its software to other IBM or third party locations around the world to perform its responsibilities under this Agreement, and the Customer authorises IBM to do so.

4. ICA Programs

4.1 Licence

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

4.1.1 Authorised Use

Under each licence, IBM authorises the Customer to:

- a. use the ICA Program's machine-readable portion on only the Designated Machine. If the Designated Machine is inoperable, the Customer may use another machine temporarily. If the Designated Machine cannot assemble or compile the ICA Program, the Customer may assemble or compile the ICA Program on another machine. If the Customer changes a Designated Machine previously identified to IBM, the Customer agrees to notify IBM of the change and its effective date;
- b. use the ICA Program to the extent of authorisations the Customer has obtained;
- c. make and install copies of the ICA Program, to support the level of use authorised, provided the Customer reproduces the copyright notices and any other legends of ownership on each copy or partial copy; and
- d. use any portion of the ICA Program IBM i) provides in source form, or ii) marks restricted (for example, "Restricted Materials of IBM") only to:
 - (1) resolve problems related to the use of the ICA Program, and
 - (2) modify the ICA Program so that it will work together with other products.

4.1.2 The Customer's Additional Obligations

For each ICA Program, the Customer agrees to:

- a. comply with any additional or different terms in its Licensed Program Specifications or an Attachment or Transaction Document;
- b. ensure that anyone who uses it (accessed either locally or remotely) does so only for the Customer's authorised use and complies with IBM's terms regarding ICA Programs; and
- c. maintain a record of all copies and provide it to IBM at its request.

4.1.3 Actions The Customer May Not Take

The Customer agrees not to:

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

4.2 Distributed System Licence Option

- 4.2.1 For some ICA Programs, the Customer may make a copy under a Distributed System Licence Option (called a "DSLO" copy). IBM charges less for a DSLO copy than for the original licence

(called the "Basic" licence). In return for the lesser charge, the Customer agrees to do the following while licensed under a DSLO:

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

4.3 Program Services

- 4.3.1 IBM provides Program Services for warranted ICA Programs. If IBM can reproduce the Customer's reported problem in the Specified Operating Environment, IBM will issue defect correction information, a restriction, or a bypass. IBM provides Program Services for only the unmodified portion of a current release of an ICA Program.
- 4.3.2 IBM provides Program Services i) on an on-going basis (with at least six months' written notice before IBM terminates Program Services), ii) until the date IBM specifies, or iii) for a period IBM specifies.

4.4 Compliance Verification

- 4.4.1 IBM's right to verify the Customer's usage data and other information affecting the calculation of charges also includes the right to verify the Customer's compliance with other terms of this Agreement (including applicable Attachments and Transaction Documents) relating to the Customer's use of ICA Programs at all sites and for all environments in which the Customer installs or uses ICA Programs for any purpose. IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.
- 4.4.2 The Customer agrees to create, retain, and provide to IBM and its auditors written records, system tools outputs, and other system information sufficient to provide auditable verification that the Customer's installation and use of ICA Programs complies with the Agreement terms, including IBM's applicable licensing and pricing terms. IBM will notify the Customer in writing if any such verification indicates that the Customer is not in compliance with Agreement terms. The rights and obligations in this section remain in effect during the period any ICA Programs are licensed to the Customer and for two years thereafter.

4.5 Licence Termination

- 4.5.1 The Customer may terminate the licence for an ICA Program at any time on one month's written notice to IBM.
- 4.5.2 For ICA Program licences that the Customer acquired for a one-time charge, replacement licences may be acquired for an upgrade charge, if available. When the Customer obtains licences for these replacement ICA Programs, the Customer agrees to terminate the licence of the replaced ICA Programs when charges become due, unless IBM specifies otherwise.
- 4.5.3 IBM may terminate the Customer's licence if the Customer fails to comply with the licence terms. If IBM does so, the Customer's authorisation to use the ICA Program is also terminated.

5. Services

5.1 Personnel

- 5.1.1 Each party will assign personnel that are qualified to perform the tasks required of such party under this Agreement and is responsible for the supervision, direction, control, and compensation of its personnel. Subject to the foregoing, each party may determine the assignment of its personnel and its contractors.
- 5.1.2 IBM may engage subcontractors to provide or assist in providing Services, in which case IBM remains responsible for the fulfilment of its obligations under this Agreement and for the performance of the Services.
- 5.1.3 Both parties agree that during and for one year following the completion of the services engagement period, neither party will directly solicit for employment personnel of the other assigned to this services engagement. This does not prohibit either party from giving consideration to any application for employment submitted on an unsolicited basis or in response to a general advertisement of employment opportunities.

5.2 Materials Ownership and Licence

- 5.2.1 An Attachment or Transaction Document will specify Materials to be delivered to the Customer and identify them as "Type I Materials", "Type II Materials", or otherwise as both parties agree. If not specified, Materials will be considered Type II Materials.
- 5.2.2 The Customer will own the copyright in Materials created as part of a Service that are identified as "Type I Materials". The Customer grants IBM an irrevocable, nonexclusive, worldwide, paid-up licence to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works based on, Type I Materials.
- 5.2.3 IBM or its suppliers will own the copyright in Materials created as part of a Services transaction that are identified as Type II Materials. IBM grants the Customer an irrevocable, nonexclusive, worldwide, paid-up licence to use, execute, reproduce, display, perform, and distribute (within the Customer's Enterprise only) copies of Type II Materials.
- 5.2.4 IBM or its suppliers retains ownership of the copyright in any of IBM's or its suppliers' works that pre-exist or were developed outside of this Agreement and any modifications or enhancements of such works that may be made under this Agreement. To the extent they are embedded in any Materials, such works are licensed in accordance with their separate licences provided to the Customer, if any, or otherwise as Type II Materials.
- 5.2.5 Each of us agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the licences granted in this section.

5.3 Customer Resources

- 5.3.1 If the Customer is making available to IBM any facilities, software, hardware or other resources in connection with IBM's and the Customer's performance of Services, the Customer agrees to obtain any licences or approvals related to these resources that may be necessary for IBM to perform the Services and develop Materials. IBM will be relieved of its obligations that are adversely affected by the Customer's failure to promptly obtain such licences or approvals. The Customer agrees to reimburse IBM for any reasonable costs and other amounts that IBM may incur from the Customer's failure to obtain these licences or approvals.
- 5.3.2 Unless otherwise agreed in an Attachment or Transaction Document, the Customer is responsible for i) any data and the content of any database the Customer makes available to IBM in connection with a Service under this Agreement, ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data, and iii) backup and recovery of the database and any stored data.

5.4 Service for Machines (during and after warranty)

5.4.1 Service for Machines

- 5.4.1.1 IBM provides certain types of Service to keep Machines in, or restore them to, conformance with their Specifications. IBM will inform the Customer of the available types of Service for a Machine. At its discretion, IBM will i) either repair or exchange the failing Machine and ii) provide the Service either at the Customer's location or a service centre. IBM manages and installs selected engineering changes that apply to IBM Machines and may also perform preventive maintenance.
- 5.4.1.2 Any feature, conversion, or upgrade IBM services must be installed on a Machine which is i) the designated, serial-numbered Machine, if applicable, and ii) at an engineering-change level compatible with the feature, conversion, or upgrade.
- 5.4.1.3 When the type of Service requires that the Customer deliver the failing Machine to IBM, the Customer agrees to ship it suitably packaged (prepaid unless IBM specifies otherwise) to a location IBM designates. After IBM has repaired or exchanged the Machine, IBM will deliver it to the Customer at IBM's expense unless IBM specifies otherwise. IBM is responsible for loss of, or damage to, the Customer's Machine while it is i) in IBM's possession or ii) in transit in those cases where IBM is responsible for the transportation charges.
- 5.4.1.4 The Customer agrees:
- a. to obtain authorisation from the owner to have IBM service a Machine that the Customer does not own;
 - b. where applicable, before IBM provides Service, to:
 - (1) follow the problem determination and service request procedures that IBM provides;
 - (2) secure all programs, data, and funds contained in a Machine; and
 - (3) inform IBM of changes in a Machine's location.
 - c. to follow the Service instructions that IBM provides (which may include installing Machine Code and other software updates either downloaded from an IBM Internet Web site or copied from other electronic media); and
 - d. when the Customer returns a Machine to IBM for any reason:
 - (1) to securely erase from any Machine all programs not provided by IBM with the Machine and data, including without limitation, the following: i) information about identified or identifiable individuals or legal entities ("Personal Data") and ii) the Customer's confidential or proprietary information and other data. If removing or deleting Personal Data is not possible, the Customer agrees to transform such information (e.g., by making it anonymous) so that it no longer qualifies as Personal Data under applicable law;
 - (2) to remove all funds from Machines returned to IBM. IBM is not responsible for any funds, programs not provided by IBM with the Machine, or data contained in a Machine that the Customer returns to IBM; and
 - (3) IBM may ship all or part of the Machine or its software to other IBM or third party locations around the world to perform its responsibilities under this Agreement, and the Customer authorises IBM to do so.

5.4.2 Replacements

- 5.4.2.1 When Service involves the exchange of a part or Machine, the item IBM replaces becomes its property and the replacement becomes the Customer's. The Customer represents that all removed items are genuine and unaltered. The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty or maintenance Service status of the replaced item. Before IBM exchanges a part or Machine, the Customer agrees to remove all features, parts, options, alterations, and attachments not under IBM's service. The Customer also agrees to i) ensure that the part or Machine is free of any legal obligations or restrictions that prevent its exchange and ii) transfer ownership and possession of removed parts to IBM.
- 5.4.2.2 Service for some IBM Machines involves IBM providing the Customer with an exchange replacement for installation by the Customer. Such exchange replacements may be i) a part of a Machine (called a Customer Replaceable Unit, or "CRU", e.g., keyboard, memory, or hard disk drive), or ii) an entire Machine. The Customer may request IBM to install the replacement CRU or Machine, however, the Customer may be charged for the installation. IBM provides information and replacement instructions with the Customer's Machine and at any time on the Customer's request. IBM specifies in the materials shipped with a replacement whether the failing CRU or Machine must be returned to IBM. When return is required, return instructions and a container are shipped with the replacement, and the Customer may be charged for the replacement if IBM does not receive the failing CRU or Machine within 15 days of the Customer's receipt of the replacement.

5.4.3 Items Not Covered

Repair and exchange Services do not cover:

- a. accessories, supply items, consumables (such as batteries and printer cartridges), and structural parts (such as frames and covers);
- b. Machines damaged by misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by the Customer or a third party;
- c. Machines with removed or altered Machine or parts identification labels;
- d. failures caused by a product for which IBM is not responsible;
- e. service of Machine alterations; or
- f. service of a Machine on which the Customer is using capacity or capability, other than that authorised by IBM in writing.

5.5 Warranty Service Upgrade

- 5.5.1 For certain Machines, the Customer may select a Service upgrade from the standard type of warranty Service for the Machine. IBM charges for the Service upgrade during the warranty period.
- 5.5.2 The Customer may not terminate the Service upgrade or transfer it to another Machine during the warranty period.

5.6 Automatic Maintenance Coverage (following warranty)

- 5.6.1 If the Customer has a current maintenance agreement with IBM, all IBM Machines the Customer acquires under this Agreement will automatically be covered by billable maintenance Service, unless the Customer requests otherwise in writing, following expiration of the warranty. The type of Service will be that provided for IBM Machines of the same type installed at that location. If there are no similar IBM Machines, then the type of Service will be

the basic Service available for that Machine type. The Customer may cancel the automatic coverage by notifying IBM in writing within one month after the date of the Machine's first maintenance Service invoice. However, the Customer will be charged for any maintenance Service which IBM has performed at the Customer's request.

5.7 Other Maintenance Coverage

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

5.8 Automatic Service Renewal

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

5.9 Termination and Withdrawal of a Service

- 5.9.1 Either party may terminate a Service transaction if the other materially fails to meet its obligations concerning the Service.
- 5.9.2 The Customer may terminate a Service, on notice to IBM provided the Customer has met all minimum requirements and paid any adjustment charges specified in the applicable Attachments and Transaction Documents.
- 5.9.3 For a maintenance Service, the Customer may terminate without adjustment charge, provided any of the following circumstances occur:
1. The Customer permanently removes the eligible Product, for which the Service is provided, from productive use within the Customer's Enterprise;
 2. the eligible location, for which the Service is provided, is no longer controlled by the Customer (for example, because of sale or closing of the facility); or
 3. the Machine has been under maintenance Service for at least one year and the Customer gives IBM one month's written notice prior to terminating the maintenance Service.
- 5.9.4 The Customer agrees to pay IBM for i) all charges for Services IBM provides and any Products and Materials IBM delivers through Service termination, and ii) reimbursable expenses IBM incurs through Service termination. If the Customer terminates without cause, the Customer also agrees to pay any applicable adjustment or termination charges and for expenses IBM incurs as a result of such termination (which IBM will take reasonable steps to mitigate).
- 5.9.5 IBM may withdraw a Service or support for an eligible Product on three months' written notice to the Customer. If IBM withdraws a Service for which the Customer has prepaid and IBM has not yet fully provided it to the Customer, IBM will give the Customer a prorated refund.
- 5.9.6 Any terms which by their nature extend beyond termination or withdrawal remain in effect until fulfilled and apply to respective successors and assignees.