

IBM International Customer Agreement

The Customer Lead Company and IBM Lead Company agree to coordinate the activities of the customer Enterprise companies and IBM Enterprise companies in their respective Enterprises, under this IBM International Customer Agreement (called the "Agreement"). When used in this Agreement, "IBM" means the IBM Enterprise company that is providing Products and Services, and "you" means the customer Enterprise company that is ordering them, subject to the Agreement.

This Agreement governs transactions by which you purchase Machines, license ICA Programs, obtain Program licenses, and acquire Services from IBM. However, each such transaction remains legally independent of all others (even if the transactions occur at the same time) unless specifically agreed otherwise by you and IBM.

This Agreement is written in English and signed with the understanding that the Lead Companies are bound by its terms. The Lead Companies will distribute copies of the Agreement to their respective Enterprise companies. The respective Enterprise companies will acknowledge acceptance of these terms through a document called the Acceptance Transaction Document which incorporates this Agreement by reference.

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

By signing below, both of us agree to the terms of this Agreement without modification. Once signed, 1) unless prohibited by applicable law or specified otherwise, any reproduction of this Agreement, an Attachment, or Transaction Document made by reliable means (for example, photocopy or facsimile) is considered an original and 2) all Products and Services ordered under this Agreement are subject to it.

Agreed to:
Customer Lead Company
Lead Company name:

Agreed to:
IBM Lead Company
Lead Company name:

By _____
Authorized signature

By _____
Authorized signature

Name (type or print):

Name (type or print):

Date:

Date:

Customer Lead Company address:

Agreement number:

IBM Lead Company address:

After signing, please return a copy of this Agreement to the "IBM Lead Company address" shown above.
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IBM International Customer Agreement

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IBM International Customer Agreement

Part 1 - General

1.1 Definitions

Customer Lead Company is the legal entity within your Enterprise that signs this Agreement.

Customer-set-up Machine is an IBM Machine that you install according to IBM's instructions.

Date of Installation is the following:

1. for an IBM Machine that IBM is responsible for installing, the business day after the day IBM installs it or, if you defer installation, makes it available to you for subsequent installation by IBM;
2. for a Customer-set-up Machine and a non-IBM Machine, the second business day after the Machine's standard transit allowance period; and
3. for a Program --
 - (a) basic license, the later of the following:
 - (i) the day after its testing period ends; or
 - (ii) the second business day after the Program's standard transit allowance period,
 - (b) copy, the date (specified in a Transaction Document) on which IBM authorizes you to make a copy of the Program, and
 - (c) chargeable component, the date you distribute a copy of the chargeable component in support of your authorized use of the Program.

Designated Machine is either 1) the machine on which you will use a Program for processing and which IBM requires you to identify to it by type/model and serial number, or 2) any machine on which you use the ICA Program if IBM does not require you to provide this identification.

Enterprise is any legal entity (such as a corporation) and the subsidiaries it owns by more than 50 percent. An Enterprise also includes other entities which are mutually agreed-to, as listed in Schedule A.

IBM Lead Company is the legal entity within International Business Machines Corporation's Enterprise that signs this Agreement. The IBM Lead Company and Customer Lead Company are referred to together as "Lead Companies."

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

Licensed Internal Code (called "LIC") is Machine Code used by certain Machines IBM specifies (called "Specific Machines").

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

Machine Code is microcode, basic input/output system code (called "BIOS"), utility programs, device drivers, and diagnostics delivered with an IBM Machine.

Materials are literary works or other works of authorship (such as programs, program listings, programming tools, documentation, reports, drawings and similar works) that IBM may deliver to you as part of a Service. The term "Materials" does not include Programs, Machine Code, or LIC.

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

Other IBM Program is an IBM Program licensed under a separate IBM license agreement, e.g. IBM International Program License Agreement.

Product is a Machine or a Program.

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

1. machine-readable instructions and data;
2. components;
3. audio-visual content (such as images, text, recordings, or pictures); and
4. related licensed materials.

The term "Program" includes any ICA Program, Other IBM Program, or non-IBM Program that IBM may provide to you. The term does not include Machine Code, LIC, or Materials.

Service is performance of a task, provision of advice and counsel, assistance, support, or access to a resource (such as access to an information database) IBM makes available to you.

Specifications is a document that provides information specific to a Product. IBM provides an IBM Machine's Specifications in a document entitled "Official Published Specifications" and an ICA Program's Specifications in a document entitled "Licensed Program Specifications."

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

1.2 Agreement Structure

IBM provides additional terms for Products and Services in documents called "Attachments" and "Transaction Documents" which become part of the Agreement only for those transactions to which the Attachments and Transaction Documents apply. Depending upon their country of use, Attachments may have different names. All transactions have one or more associated Transaction Documents (such as an invoice, supplement, schedule, exhibit, statement of work, change authorization, or addendum). Attachments and Transaction Documents will be signed by both of us if requested by either of us.

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

You accept the terms in Attachments and Transaction Documents by 1) signing them, 2) using the Product or Service, or allowing others to do so, or 3) making any payment for the Product or Service.

A Product or Service becomes subject to this Agreement when IBM accepts your order by 1) sending you a Transaction Document, 2) shipping the Machine or making the Program available to you, or 3) providing the Service.

1.3 Delivery

IBM will try to meet your delivery requirements for Products and Services you order, and will inform you of their status. Transportation charges, if applicable, will be specified in a Transaction Document.

1.4 Charges and Payment

The amount payable for a Product or Service is 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 you in advance whenever additional charges apply.

Recurring charges for a Product begin on (or, in some countries, after) its Date of Installation. Charges for Services are billed as IBM specifies which may be in advance, periodically during the performance of the Service, or after the Service is completed.

Services for which you prepay must be used within the applicable contract period. Unless IBM specifies otherwise, IBM does not give credits or refunds for unused prepaid Services.

Charges

One-time and recurring charges may be based on measurements of actual or authorized use (for example, number of users or processor size for Programs, meter readings for maintenance Services or connect time for network Services). You agree to provide actual usage data if IBM specifies. If you make changes to your environment that impact use charges (for example, change processor size or configuration for Programs), you agree to promptly notify IBM and pay any applicable charges. Recurring charges will be adjusted accordingly. Unless IBM agrees otherwise, IBM does not give credits or refunds for charges already due or paid. In the event that IBM changes the basis of measurement, its terms for changing charges will apply.

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

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

IBM may increase one-time charges without notice. However, an increase to one-time charges does not apply to you if 1) IBM receives your order before the announcement date of the increase and 2) one of the following occurs within three months after IBM's receipt of your order:

1. IBM ships you the Machine or makes the Program available to you;
2. you make an authorized copy of a Program or distribute a chargeable component of a Program to another Machine;
or
3. a Program's increased use charge becomes due.

Payment

Amounts are due upon receipt of invoice and payable as IBM specifies in a Transaction Document. You agree to pay accordingly, including any late payment fee.

If any authority imposes a duty, tax, levy, or fee, excluding those based on IBM's net income, upon any transaction under this Agreement, then you agree to pay that amount as specified in an invoice or supply exemption documentation. You are responsible for personal property taxes for each Product from the date IBM ships it to you.

1.5 Changes to the Agreement Terms

In order to maintain flexibility in our business relationship, IBM may change the terms of this Agreement by giving you three months' written notice. However, these changes are not retroactive. You acknowledge your agreement to have these changes apply, as of the effective date IBM specifies in the notice, only to new orders, renewals, and on-going transactions that do not expire by 1) placing new orders for Products or Services after the change effective date, 2) allowing transactions to renew after receipt of the change notice, or 3) failing to terminate ongoing transactions that do not expire prior to the change effective date. For on-going transactions with a defined renewable contract period, you may request that IBM defer the change effective date until the end of the current contract period if 1) the change affects your

current contract period and 2) you consider the change unfavorable. Changes to charges will be implemented as described in the Charges and Payment section above.

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

1.6 IBM Business Partners

IBM has signed agreements with certain organizations (called "IBM Business Partners") to promote, market, and support certain Products and Services. When you order IBM Products or Services (marketed to you by IBM Business Partners) under this Agreement, IBM confirms that it is responsible for providing the Products or Services to you under the warranties and other terms of this Agreement. IBM is not responsible for 1) the actions of IBM Business Partners, 2) any additional obligations they have to you, or 3) any products or services that they supply to you under their agreements.

1.7 Patents and Copyrights

For purposes of this section, the term "Product" includes Materials, Machine Code and LIC

If a third party claims that a Product IBM provides to you infringes that party's patent or copyright, IBM will defend you against that claim at its 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 you:

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

Remedies

If such a claim is made or appears likely to be made, you agree to permit IBM to enable you 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, you agree to return the Product to IBM on its written request. IBM will then give you a credit equal to:

1. for a Machine, your net book value provided you have followed generally-accepted accounting principles;
2. for an ICA Program, the amount paid by you or 12 months' charges (whichever is less); and
3. for Materials, the amount you paid IBM for the creation of the Materials.

This is IBM's entire obligation and your exclusive remedy regarding any claim of infringement.

Claims for Which IBM is Not Responsible

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

1. anything you provide which is incorporated into a Product or IBM's compliance with any designs, specifications, or instructions provided by you or by a third party on your behalf;
2. your modification of a Product, or an ICA Program's use in other than its Specified Operating Environment;
3. the combination, operation, or use of a Product with any product, data, apparatus, or business method that IBM did not provide if the infringement would not have occurred were it not for such combination, operation or use, or the distribution, operation or use of a Product for the benefit of a third party outside your Enterprise; or
4. infringement by a non-IBM Product or an Other IBM Program alone.

1.8 Limitation of Liability

Circumstances may arise where, because of a default on IBM's part or other liability, you are entitled to recover damages from IBM. In each such instance, regardless of the basis on which you are entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), except as expressly required by law without the possibility of contractual waiver or limitation, IBM is liable for no more than:

1. payments referred to in the Patents and Copyrights section above;
2. damages for bodily injury (including death) and damage to real property and tangible personal property; and
3. the amount of any other actual direct damages up to the greater of U.S. \$100,000 (or equivalent in local currency) or the charges (if recurring, 12 months' charges apply) for the Product or Service that is the subject of the claim. For purposes of this item, the term "Product" includes Materials, Machine Code, and LIC.

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.

Items for Which IBM is Not Liable

Except as expressly required by law without the possibility of contractual waiver or limitation, under no circumstances is IBM, its subcontractors, or Program developers liable for any of the following even if informed of their possibility:

1. loss of, or damage to, data;
2. special, incidental, or indirect damages or for any economic consequential damages; or
3. lost profits, business, revenue, goodwill, or anticipated savings.

1.9 General Principles of Our Relationship

1. Neither of us grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent.
2. All information exchanged is nonconfidential. If either of us requires the exchange of confidential information, it will be made under a signed confidentiality agreement.
3. Each of us is free to enter into similar agreements with others.

4. Each of us grants the other only the licenses and rights specified. No other licenses or rights (including licenses or rights under patents) are granted.
5. Each of us may communicate with the other by electronic means and such communication is acceptable as a signed writing to the extent permissible under applicable law. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity.
6. Each of us will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations.
7. Neither of us will bring a legal action arising out of or related to this Agreement more than two years after the cause of action arose unless otherwise provided by applicable law without the possibility of contractual waiver or limitation.
8. Neither of us is responsible for failure to fulfill any obligations due to causes beyond its control.
9. Neither of us may assign this Agreement, in whole or in part, without the prior written consent of the other. Any attempt to do so is void. Neither of us will unreasonably withhold such consent. The assignment of this Agreement, in whole or in part, within the Enterprise of which either of us is a part or to a successor organization by merger or acquisition does not require the consent of the other. IBM is also permitted to assign its rights to payments under this Agreement without obtaining your consent. It is not considered an assignment for IBM to divest a portion of its business in a manner that similarly affects all of its customers.
10. You agree not to resell any Service without IBM's prior written consent. Any attempt to do so is void.
11. You agree that this Agreement will not create any right or cause of action for any third party, nor will IBM be responsible for any third party claims against you except as described in the Patents and Copyrights 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.
12. You agree to acquire Machines with the intent to use them within your Enterprise and not for reselling, leasing, or transferring to a third party, unless either of the following applies:
 - (a) you are arranging lease-back financing for the Machines; or
 - (b) you purchase them without any discount or allowance.
13. You agree to allow IBM to install mandatory engineering changes (such as those required for safety) on a Machine. Any parts IBM removes become IBM's property. You represent that you have the permission from the owner and any lien holders to transfer ownership and possession of removed parts to IBM.
14. You agree that you are responsible for the results obtained from the use of the Products and Services.
15. You agree to provide IBM with sufficient, free, and safe access to your facilities and systems for IBM to fulfill its obligations.
16. You agree to allow International Business Machines Corporation and its subsidiaries to store and use your business contact information, including names, business phone numbers, and business e-mail addresses, anywhere they do business. Such information will be processed and used in connection with our business relationship, and may be provided to contractors acting on IBM's behalf, Business Partners who promote, market, and support certain IBM Products and Services, and assignees of International Business Machines Corporation and its subsidiaries for uses consistent with our business relationship.
17. Each of us will comply with all applicable laws and regulations (such as those governing export control and import).

1.10 Agreement Termination

Either of us may terminate this Agreement on written notice to the other following the expiration or termination of the terminating party's obligations.

Either of us may terminate this Agreement if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time to comply.

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

1.11 Geographic Scope and Governing Law

The rights, duties, and obligations of each of us are valid only in the country in which the transaction is performed or, if IBM agrees, the country where the Product is placed in productive use, except that all licenses are valid as specifically granted.

Both you and IBM consent to the application of the laws of the country in which the transaction is performed to govern, interpret, and enforce all of your and IBM's rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

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

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

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

IBM International Customer Agreement

Part 2 - Warranties

2.1 The IBM Warranties

Unless IBM specifies otherwise, the following warranties apply only in the country of acquisition.

Warranty for IBM Machines

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

The warranty period for a Machine is a specified, fixed period commencing on its Date of Installation. During the warranty period, IBM provides repair and exchange Service for the Machine, without charge, under the type of Service IBM designates for the Machine. If a Machine does not function as warranted during the warranty period and IBM is unable to either 1) make it do so or 2) replace it with one that is at least functionally equivalent, you may return it to IBM and your money will be refunded.

Following expiration of the warranty period all IBM Machines you acquire under this Agreement will automatically receive maintenance Service for a charge unless you request in writing that this Service not be provided.

Additional terms regarding Service for Machines during and after the warranty period are contained in Part 5.

Warranty for ICA Programs

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

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

If an ICA Program does not function as warranted during the first year after you obtain your license and IBM is unable to make it do so, you may return the ICA Program and your money will be refunded. To be eligible, you must have obtained your license while Program Services (regardless of the remaining duration) were available for it. Additional terms regarding Program Services are contained in Part 4.

Warranty for IBM Services

IBM warrants that it performs each IBM Service using reasonable care and skill and according to its current description (including any completion criteria) contained in this Agreement, an Attachment, or a Transaction Document.

Warranty for Systems

Where IBM provides Products to you as a system, IBM warrants that they are compatible and 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 authorized by IBM in writing), accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by you, or failure caused by a product for which IBM is not responsible. With respect to Machines, the warranty is voided by removal or alteration of Machine or parts identification labels.

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

Items Not Covered by Warranty

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

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

Unless IBM specifies otherwise, and to the maximum extent permissible under applicable law, it 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 you. Warranties, if any, for Other IBM Programs and Non-IBM Programs may be found in their license agreements.

IBM International Customer Agreement

Part 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 appropriate warranty terms apply.

3.2 Title and Risk of Loss

IBM transfers title to a Machine to you or, if you choose, your lessor, upon payment of all the amounts due. For a feature, conversion, or upgrade involving the removal of parts which become IBM's property, IBM reserves transfer of title until IBM receives payment of all the amounts due and the removed parts.

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 you or your designated location. Thereafter, you assume the risk. Each Machine will be covered by insurance, arranged and paid for by IBM for you, covering the period until it is delivered to you or your designated location. For any loss or damage, you must 1) report the loss or damage in writing to IBM within 10 business days of delivery and 2) follow the applicable claim procedure.

3.3 Installation

You agree to provide an environment meeting the specified requirements for the Machine.

IBM has standard installation procedures. IBM will successfully complete these procedures before it considers an IBM Machine (other than a Machine for which you defer installation or a Customer-set-up Machine) installed.

You are responsible for installing a Customer-set-up Machine and, unless IBM agrees otherwise, a non-IBM Machine.

Machine Features, Conversions and Upgrades

IBM sells features, conversions and upgrades for installation on Machines, and, in certain instances, only for installation on a designated, serial-numbered Machine. Many of these transactions involve the removal of parts and their return to IBM. As applicable, you represent that you have the permission from the owner and any lien holders to 1) install features, conversions, and upgrades and 2) transfer ownership and possession of removed parts (which become IBM's property) to IBM. You further represent 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. You agree to allow IBM to install the feature, conversion, or upgrade within 30 days of its delivery. Otherwise, IBM may terminate the transaction and you must return the feature, conversion, or upgrade to IBM at your expense.

3.4 Machine Code and LIC

Machine Code is licensed under the terms of the agreement provided with the Machine Code. 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 you are authorized by IBM in writing and for which payment is received by IBM.

Certain Machines IBM specifies (called "Specific Machines") use LIC. IBM identifies Specific Machines in a Transaction Document. International Business Machines Corporation, one of the entities within its Enterprise, or a third party owns LIC including all copyrights in LIC and all copies of LIC (this includes the original LIC, copies of the original LIC, and copies made from copies). LIC is copyrighted and licensed (not sold). LIC is licensed under the terms of the agreement provided with the LIC. LIC is licensed only for use to enable a Specific Machine to function in accordance with its Specifications and only for the capacity and capability for which you are authorized by IBM in writing and for which payment is received by IBM.

The capacity of certain Machines is protected by technological measures in Machine Code and LIC. You agree to IBM's implementation of such technological measures to protect Machine capacity, including measures that may impact availability of data or performance of your Machine.

IBM International Customer Agreement

Part 4 - ICA Programs

4.1 License

When IBM accepts your order, IBM grants you a nonexclusive, nontransferable license to use the ICA Program in the country in which the transaction is performed. ICA Programs are owned by International Business Machines Corporation, one of its subsidiaries, or a third party and are copyrighted and licensed (not sold).

Authorized Use

Under each license, IBM authorizes you to:

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

Your Additional Obligations

For each ICA Program, you agree to:

1. comply with any additional terms in its Specifications or a Transaction Document;
2. ensure that anyone who uses it (accessed either locally or remotely) does so only for your authorized use and complies with IBM's terms regarding ICA Programs; and
3. maintain a record of all copies and provide it to IBM at its request.

Actions You May Not Take

You agree not to:

1. reverse assemble, reverse compile, or otherwise translate the ICA Program unless expressly permitted by applicable law without the possibility of contractual waiver; or
2. sublicense, assign, rent, or lease the ICA Program.

4.2 Program Components Not Used on the Designated Machine

Some ICA Programs have components that are designed for use on machines other than the Designated Machine on which the ICA Program is used. You may make copies of a component and its documentation in support of your authorized use of the ICA Program. For a chargeable component, you agree to notify IBM of its Date of Installation.

4.3 Distributed System License Option

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

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

4.4 Program Testing

IBM may provide a testing period for certain ICA Programs to help you evaluate if they meet your needs. If IBM offers a testing period, it will start 1) the second business day after the ICA Program's standard transit allowance period, or 2) on another date specified in a Transaction Document. IBM will inform you of the duration of the ICA Program's testing period.

IBM does not provide testing periods for DSLO copies.

4.5 Program Services

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

IBM provides Program Services 1) on an on-going basis (with at least six months' written notice before IBM terminates Program Services), 2) until the date IBM specifies, or 3) for a period IBM specifies.

4.6 License Termination

You may terminate the license for an ICA Program at any time upon one month's written notice to IBM.

Licenses for certain replacement ICA Programs may be acquired for an upgrade charge. When you obtain licenses for these replacement ICA Programs, you agree to terminate the license of the replaced ICA Programs when charges become due, unless IBM specifies otherwise.

IBM may terminate your license if you fail to comply with the license terms. If IBM does so, your authorization to use the ICA Program is also terminated.

IBM International Customer Agreement

Part 5 - Services

5.1 Personnel

Each of us is responsible for the supervision, direction, control, and compensation of our respective personnel.

IBM reserves the right to determine the assignment of its personnel.

IBM may subcontract a Service, or any part of it, to subcontractors selected by IBM.

5.2 Materials Ownership and License

IBM specifies Materials to be delivered to you. IBM identifies them as being "Type I Materials," "Type II Materials," or otherwise as we both agree. If not specified, Materials will be considered Type II Materials.

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

Type II Materials are those, created during the Service performance period or otherwise (such as those that preexist the Service), in which IBM or third parties have all right, title, and interest (including ownership of copyright). IBM delivers one copy of the specified Materials to you. IBM grants you an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute, within your Enterprise only, copies of Type II Materials.

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

5.3 Service for Machines (during and after warranty)

IBM provides certain types of Service to keep Machines in, or restore them to, conformance with their Specifications. IBM will inform you of the available types of Service for a Machine based on its country of installation. At its discretion, IBM will 1) either repair or exchange the failing Machine and 2) provide the Service either at your location or a service center.

When the type of Service requires that you deliver the failing Machine to IBM, you agree 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 you at its expense unless IBM specifies otherwise. IBM is responsible for loss of, or damage to, your Machine while it is 1) in IBM's possession or 2) in transit in those cases where IBM is responsible for the transportation charges.

Any feature, conversion, or upgrade IBM services must be installed on a Machine which is 1) for certain Machines, the designated, serial-numbered Machine and 2) at an engineering-change level compatible with the feature, conversion, or upgrade.

IBM manages and installs selected engineering changes that apply to IBM Machines and may also perform preventive maintenance.

You agree to:

1. obtain authorization from the owner to have IBM service any Machine that you do not own;
2. where applicable, before IBM provides Service --
 - (a) follow the problem determination, problem analysis, and service request procedures that IBM provides,
 - (b) secure all programs, data, and funds contained in a Machine, and
 - (c) inform IBM of changes in a Machine's location; and
3. 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).

Replacements

When Service involves the exchange of a Machine or part, the item IBM replaces becomes its property and the replacement becomes yours. You represent 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 Machine or part, you agree to remove all features, parts, options, alterations, and attachments not under IBM's service. You also agree to ensure that the item is free of any legal obligations or restrictions that prevent its exchange.

IBM Machines may contain parts designated as Customer Replaceable Units (called "CRUs"), e.g., mouse, keyboard, speaker, memory, and hard disk drive. IBM provides replacement CRUs to you for installation by you. You may request IBM to install a CRU, however, you may be charged for the installation. IBM provides CRU information and replacement instructions with your Machine and at any time on your request. IBM specifies in the materials shipped with a replacement CRU whether a defective CRU must be returned to IBM. When return is required, 1) return instructions and a container are shipped with the replacement CRU, and 2) you may be charged for the replacement CRU if IBM does not receive the defective CRU within 30 days of your receipt of the replacement.

Items Not Covered

Repair and exchange Services do not cover:

1. accessories, supply items, and certain parts, such as batteries, frames, and covers;
2. Machines damaged by misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by you;
3. Machines with removed or altered Machine or parts identification labels;
4. failures caused by a product for which IBM is not responsible;
5. service of Machine alterations;
6. service of a Machine on which you are using capacity or capability, other than that authorized by IBM in writing.

Warranty Service Upgrade

For certain Machines, you 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.

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

5.4 Automatic Maintenance Coverage (following warranty)

All IBM Machines you acquire under this Agreement will automatically be covered by billable maintenance Service, unless you request otherwise in writing, following expiration of their 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. You 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, you will be charged for any maintenance Service which IBM has performed at your request.

5.5 Other Maintenance Coverage

Whenever you order maintenance Service for Machines that are not subject to automatic maintenance coverage, IBM will inform you 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, you may have IBM restore it for a charge.

Alternatively, you may withdraw your request for maintenance Service. However, you will be charged for any maintenance Service which IBM has performed at your request.

5.6 Automatic Service Renewal

Renewable Services renew automatically for a same length contract period unless either of us 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.

5.7 Termination and Withdrawal of a Service

Either of us may terminate a Service if the other does not meet its obligations concerning the Service.

You may terminate a Service, on notice to IBM provided you have met all minimum requirements and paid any adjustment charges specified in the applicable Attachments and Transaction Documents. For a maintenance Service, you may terminate without adjustment charge provided any of the following circumstances occur:

1. you permanently remove the eligible Product, for which the Service is provided, from productive use within your Enterprise;
2. the eligible location, for which the Service is provided, is no longer controlled by you (for example, because of sale or closing of the facility); or
3. the Machine has been under maintenance Service for at least six months and you give IBM one month's written notice prior to terminating the maintenance Service.

You agree to pay IBM for 1) all Services IBM provides and any Products and Materials IBM delivers through Service termination, 2) all expenses IBM incurs through Service termination, and 3) any charges IBM incurs in terminating the Service.

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

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

IBM International Customer Agreement

Part 6 - Country Unique Terms

The terms of this Agreement apply for all countries specified in Schedule A except that the following terms are country amendments which replace or modify terms in Parts 1 through 5 for the identified country. All terms in Parts 1 through 5 which are not changed by these amendments remain in effect.

This Part 6 is organized as follows:

6.1 contains multiple country amendments to Part 1, section 1.11 Geographic Scope and Governing Law;

6.2 contains the Americas country amendments to other Agreement terms;

6.3 contains the Asia Pacific country amendments to other Agreement terms; and

6.4 contains the Europe, Middle East, and Africa country amendments to other Agreement terms.

6.1 MULTIPLE COUNTRIES

1.11 Geographic Scope and Governing Law

The following replaces the second paragraph in this section as it applies for those countries identified in bold print below:

Both you and IBM consent to the application of the laws of the country in which the transaction is performed to govern, interpret, and enforce all of your and IBM's rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles. However, the phrase "the laws of the country in which the transaction is performed" is replaced by the following phrases:

Americas

- 1) in **Canada**: "the laws in the Province of Ontario";
- 2) in **Mexico**: "the federal laws of the Republic of Mexico";
- 3) in **the United States of America**: "the laws of the State of New York, United States of America";
- 4) in **Venezuela**: "the laws of the Bolivarian Republic of Venezuela";

Asia Pacific

- 5) in **Cambodia and Laos**: "the laws of the State of New York, United States of America";
- 6) in **Australia**: "the laws of the State or Territory in which the transaction is performed";
- 7) in **Hong Kong S.A.R. and Macau S.A.R.**: "the laws of Hong Kong Special Administrative Region of China";

Europe, Middle East, and Africa

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

The following paragraphs pertaining to jurisdiction and arbitration are added to this section as they apply for those countries identified in bold print below:

Jurisdiction

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

Americas

- 1) in **Argentina**: "the Ordinary Commercial Court of the city of Buenos Aires";
- 2) in **Bolivia**: "the courts of the city of La Paz";

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

Europe, Middle East, and Africa

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

Arbitration

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

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

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

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

In **the People’s Republic of China** any disputes arising from or in connection with this Agreement will first be resolved through friendly consultation, failing which either of us has the right to submit the dispute to the China International Economic and Trade Arbitration Commission in Beijing, the PRC, for arbitration in accordance with its arbitration rules in force at the time. The arbitration tribunal will consist of three arbitrators. The language to be used therein will be English and Chinese. An arbitral award will be final and binding on all the parties, and will be enforceable under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958). The arbitration fee will be borne by the losing party unless otherwise determined by the arbitral award. During the course of arbitration, this Agreement will continue to be performed except for the part which the parties are disputing and which is undergoing arbitration.

In **Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia-FYROM, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldavia, Poland, Romania, Russia, Serbia and Montenegro, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan** all disputes arising out of this Agreement or related to its violation, termination or nullity will be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Center of the Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with these rules. The arbitration will be held in Vienna, Austria, and the official language of the proceedings will be English. The decision of the arbitrators will be final and binding upon both parties. Therefore, pursuant to paragraph 598 (2) of the Austrian Code of Civil Procedure, the parties expressly waive the application of paragraph 595 (1) figure 7 of the Code. IBM may, however, institute proceedings in a competent court in the country of installation.

6.2 AMERICAS

The following terms apply to all Americas countries (except Brazil, Canada and the United States) identified in Schedule A unless a specific country term states otherwise.

1.4 Charges and Payment

In the subsection, Charges, the following is added as the first paragraph:

Amounts due are expressed in US dollars.

In the subsection, Payment, the following replaces the first paragraph:

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

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

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

All additional terms apply to the referenced country.

ARGENTINA

1.2 Agreement Structure

In the third paragraph, items 2 and 3 do not apply.

The following replaces the last paragraph:

A Product or Service becomes subject to this Agreement when IBM accepts your order by signing a Transaction Document.

BRAZIL

1.2 Agreement Structure

In the third paragraph, items 2 and 3 do not apply.

The following replaces the last paragraph:

A Product or Service becomes subject to this Agreement when IBM accepts your order by signing a Transaction Document.

1.4 Charges and Payment

In the subsection, Charges, the following is added as the first paragraph:

Amounts due are expressed in local currency.

In the subsection, Payment, the following replaces the first paragraph:

Amounts are due upon receipt of invoice and payable in local currency as IBM specifies in a Transaction Document. You agree to pay accordingly, including any late payment fee. Delinquent amounts are subject to monetary correction based on the inflation index called the "General Price Index" calculated by Getulio Vargas Foundation (IGP-M/FGV), plus interest at the rate of one percent per month, both calculated "pro rata die." The late payment fee is calculated against the resultant delinquent amount at the following rates:

- 1) two percent of the delinquent amount due per the first thirty day period during which any delinquent balance remains unpaid, plus
- 2) ten percent for each successive thirty day period during which any delinquent balance remains unpaid.

CANADA

1.8 Limitation of Liability

The following replaces item 2 in the first paragraph:

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

UNITED STATES OF AMERICA

2.2 Extent of Warranty

The following paragraph is added at the beginning of this section:

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

3.2 Title and Risk of Loss

The following replaces the first paragraph:

When IBM accepts your order, IBM agrees to sell you the Machine described in a Transaction Document. IBM transfers title to you or, if you choose, your lessor when IBM ships the Machine. However, IBM reserves a purchase money security interest in the Machine until IBM receives the amounts due. For a feature, conversion, or upgrade involving the removal of parts which become IBM's property, IBM reserves a security interest until IBM receives payment of all the amounts due and the removed parts. You authorize IBM to file appropriate documents to permit IBM to perfect its purchase money security interest.

6.3 ASIA PACIFIC

The following terms apply to all Asia Pacific countries identified in Schedule A (except Hong Kong)

5.4 Automatic Maintenance Coverage (following warranty)

This section does not apply.

5.5 Other Maintenance Coverage

In the first sentence, the words "that are not subject to automatic maintenance coverage" are deleted.

AUSTRALIA

1.4 Charges and Payment

The following paragraph is added after the third paragraph:

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

In the subsection, Payment, the following replaces the second paragraph:

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

1.7 Patents and Copyrights

In the subsection, Remedies, the following replaces the second paragraph:

Subject to any rights you may have under the Trade Practices Act 1974, this is IBM's entire obligation to you regarding any claim of infringement.

1.8 Limitation of Liability

The following paragraph is added to this section:

Where IBM is in breach of a condition or warranty implied by the Trade Practices Act 1974, IBM's liability is limited to:

1. where IBM supplied Services, the cost of having the Services supplied again; or
2. where IBM supplied goods, the repair or replacement of the goods, or the supply of equivalent goods. Where that condition or warranty relates to right to sell, quiet possession or clear title, or the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, then none of the limitations in this paragraph apply.

PART 2 - WARRANTIES

The following paragraph is added as the first paragraph of this Part:

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

2.2 Extent of Warranty

The second sentence in the first paragraph does not apply.

5.3 Service for Machines (during and after warranty)

In the subsection, Items Not Covered, item 3 does not apply.

HONG KONG S.A.R.

PART 1 through PART 5

As applies to transactions initiated and performed in Hong Kong S.A.R., phrases throughout this Agreement containing the word "country" (for example, "country of acquisition" and "country of installation") are replaced with "Hong Kong S.A.R."

INDIA

1.9 General Principles of Our Relationship

The following replaces item 7:

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

INDONESIA

1.10 Agreement Termination

The following paragraph is added between the second and third paragraphs:

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

JAPAN

1.1 Definitions

The following replaces the Date of Installation definition:

Date of Installation for Machines and Programs is the expiration date of the Inspection Period.

The following is added to this section:

Inspection Period

- a) The Inspection Period for a Machine commences on the day following IBM physical installation of the Machine and expires on the 10th day.
- b) The Inspection Period for a Customer-set-up Machine commences on the day following its shipment from IBM and expires on the 10th day.
- c) The Inspection Period for a Program commences on the day following its shipment date from IBM and expires on the 10th day.

You will inspect and confirm the Machine or Program during this period.

1.10 Agreement Termination

The following paragraph is added to this section:

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

MACAU S.A.R.

PART 1 through PART 5

As applies to transactions initiated and performed in Macau S.A.R., phrases throughout this Agreement containing the word "country" (for example, "country of acquisition" and "country of installation") are replaced with "Macau S.A.R.", except as specified otherwise in the Governing Law clause set out in section 6.1.

MALAYSIA

1.8 Limitation of Liability

In the subsection, Items for Which IBM is Not Liable, the word "special" in item 2 is deleted.

NEW ZEALAND

1.8 Limitation of Liability

The following paragraph is added as the third paragraph of this section:

Where Products or Services are not acquired for the purposes of a business as defined in the Consumer Guarantees Act 1993, the limitations in this section are subject to the limitations in that Act.

PART 2 - WARRANTIES

The following paragraph is added as the first paragraph of this Part:

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

PHILIPPINES

1.8 Limitation of Liability

In the subsection, Items for Which IBM is Not Liable, the following replaces item 2:

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

SINGAPORE

1.8 Limitation of Liability

In the subsection, Items for Which IBM is Not Liable, in item 2, the words "special" and "economic" are deleted.

1.9 General Principles of Our Relationship

In item 11, the following is added:

Subject to the rights provided to IBM's subcontractors and developers as provided in section 1.8 Limitation of Liability, a person who is not a party to this Agreement shall have no right under the Contracts (Right of Third Parties) Act to enforce any of its terms.

TAIWAN

PART 1 through PART 5

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

1.8 Limitation of Liability

The second paragraph is deleted.

6.4 EUROPE, MIDDLE EAST, AFRICA (EMEA)

The following terms apply to all EMEA countries identified in Schedule A unless a specific country term states otherwise.

1.8 Limitation of Liability

In item 3, "U.S. \$100,000" is replaced by "EUR 500,000 (five hundred thousand euro)"

The following terms apply to the referenced region or country.

Western Europe

The following terms apply to all Western European countries (Andorra, Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands, Norway, Poland, Portugal, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom, Vatican State, and any country subsequently added to the European Union, as from the date of accession):

2.1 The IBM Warranties

In the section "Warranty for IBM Machines" the following paragraph is added after the second paragraph:

The warranty for IBM Machines acquired in Western Europe will be valid and applicable in all Western European countries provided the Machines have been announced and made available in such countries.

European Union (EU)

The following section is added for all EU countries:

3.5 Disposal of Machines

As from the effective date in your country of local laws and regulations implementing Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE), the following will apply: when any Machine supplied under this Agreement replaces a machine put on the market before August 13, 2005, then 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. You are responsible for disconnecting replaced machines, removing any data you consider sensitive, and making them available for collection from your loading dock within 30 days after supply of the replacement Machine.

AUSTRIA

1.1 Definitions

Date of Installation

In item 2 the words "standard transit allowance" are replaced by "date of delivery"

In item 3.a.(ii) the words "standard transit allowance" are replaced by "date of delivery"

1.8 Limitation of Liability

This section is replaced in its entirety by:

1. IBM is liable for bodily injuries or for damages caused intentionally or by gross negligence.
2. In the event of damage caused by slight negligence, IBM is liable, regardless of the basis on which you are entitled to claim damages from IBM, per claim only up to an amount of EUR 500,000.-- or, if the price of the Product or Service which caused the damage is higher, up to the amount of the price of the Product or Service which caused the damage (in case of recurring charges, the twelve month charge shall apply). A number of defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one default.
3. IBM is not liable for indirect or consequential damages (e.g. loss of profits, anticipated savings, damage to or loss of data), even if IBM was informed about the possibility of such loss or damage.

1.9 General Principles of Our Relationship

The following is added to item 16:

For purposes of this clause, business contact information also includes information about you as a legal entity.

2.1 The IBM Warranties

Add as first sentence in the section:

The following provisions of this section 2.1 replace any applicable statutory warranties.

In the subsection Warranty for IBM Machines, replace the last sentence of the second paragraph with:

If a Machine does not function as warranted during the warranty period and IBM is unable within a reasonable period of time to either 1) make it do so or 2) replace it with one that is at least functionally equivalent, you may with respect to such defect (at your discretion) request either a reduction in price or the rescission of the order for the applicable Machine. The right to rescission shall not apply in the case of minor defects.

In the subsection, Warranty for ICA Programs, replace the second and third paragraphs with:

Program Services are available for a warranted ICA Program for at least one year following its general availability. IBM provides defect-related Program Services without charge.

If an ICA Program does not function as warranted and IBM is unable to make it do so (e.g. by removing or circumventing the defect in such a way that you are able to use the ICA Program according to its Specifications, or after the date when Program Services cease to be available for the Program), you may in respect of such defect at your discretion either request a corresponding reduction in future license charges, or terminate the license for the applicable Program. In case of minor defects, you shall not be entitled to terminate the license.

In the subsection Warranty for IBM Services, replace the paragraph with:

In the case of contracts for works (Werkleistungsverträge), IBM will use reasonable care and skill to perform each IBM Service according to its current description (including any completion criteria) contained in this Agreement, an Attachment, or a Transaction Document. The warranty period for contracts for works is twelve months.

IBM will remedy any defects covered by warranty, of which written notice has been given by you. If a defect is not remedied within a reasonable period of time, you may with respect to that defect, at your choice, either request a reduction of price, or, if the value or the serviceability of the work is substantially impaired, rescission of the applicable contract for works. In case of minor defects or deviations, you shall not be entitled to rescind.

2.2 Extent of Warranty

The following replaces the subsection, Items Not Covered by Warranty, in its entirety:

No warranty is provided under a contract for services (Dienstleistungsvertrag).

Without prejudice to your rights under other warranty provisions of this Agreement, IBM does not warrant uninterrupted or error-free operation of any Product or Service, or that IBM will correct all defects.

IBM may identify certain Products and Services as "not warranted." In such case, this means that 1) IBM does not provide a manufacturer's guarantee in respect of such Products, and 2) IBM may fulfill its warranty obligations to you directly or through a third party including, for example, the supplier or producer of the relevant Product or Service.

Non-IBM manufacturers, developers, suppliers, or publishers may provide their own guarantees and warranties to you. Warranties, if any, for Other IBM Programs and Non-IBM Programs may be found in their license agreements.

5.3 Service for Machines (during and after warranty)

In the second paragraph, the following is added as the second sentence:

During the warranty period, IBM will reimburse you for the transportation charges for delivery of the failing Machine to IBM.

FRANCE

1.4 Charges and Payment

In the subsection, Charges, the following is added to the end of the third paragraph:

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

GERMANY

1.4 Charges and Payment

In the subsection, Charges, in the fourth paragraph, second sentence item 2), "three months" is replaced with "four months."

1.8 Limitation of Liability

The following replaces section 1.8 in its entirety:

1. IBM is liable without limit for loss or damage caused by a breach of an express guarantee (to be interpreted in the same way as the German term "Garantie"), for bodily injuries (including death) or for damages caused intentionally or by gross negligence.
2. In the event of loss, damage and frustrated expenditures caused by slight negligence or in breach of essential contractual obligations, IBM is liable, regardless of the basis on which you are entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), per claim only up to an amount of EUR 500,000 or, if the price of the Product or Service which caused the loss or damage is higher, up to the amount of the price of the Product or Service which caused the loss or damage. A number of

defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one default.

3. In the event of loss, damage and frustrated expenditures caused by slight negligence, IBM is not liable for any indirect or consequential damages, even if IBM was informed about the possibility of such loss or damage.
4. In case of delay on IBM's part: i) IBM will pay to you an amount not exceeding the loss or damage caused by IBM's delay; and ii) IBM will be liable only in respect of the resulting damages which you suffer, subject to the provisions of paragraphs 1 and 2 of this section 1.8.

1.9 General Principles of Our Relationship

The following replaces item 7:

7. Any claims resulting from this Agreement are subject to a limitation period of three years. However, this period is not to be interpreted as affecting the duration of the warranty period applicable under section 2.1 The IBM Warranties.

2.1 The IBM Warranties

The following paragraph is added at the beginning of this section:

Notwithstanding any other provision of this section 2.1, the statutory warranty period will apply in case you are a consumer or in the case of sections 438 para. 1 no. 2 and 634a para. 1 no. 2 of the German Civil Code.

In the subsection, Warranty for IBM Machines, second paragraph, the following is added as the second sentence:

Unless a longer period is stated in writing, the warranty period for a Machine is twelve months.

In the subsection, Warranty for ICA Programs, the second and third paragraphs are replaced with the following:

Program Services are available for a warranted ICA Program for at least one year following its general availability. IBM provides defect-related Program Services without charge.

If an ICA Program does not function as warranted and IBM is unable to make it do so (e.g. by removing or circumventing the defect in such a way that you are able to use the ICA Program according to its Specifications, or after the date when Program Services cease to be available for the Program), you may in respect of such defect at your discretion either request a corresponding reduction in future license charges, or terminate the respective license for the applicable Program. In the case of minor defects, you will not be entitled to terminate the license.

In the subsection, Warranty for IBM Services, the following replaces the text in its entirety:

In the case of contracts for works (Werkleistungsverträge), IBM warrants 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 warranty period for contracts for works is twelve months.

IBM will remedy any defects covered by warranty, of which written notice has been given by you. If a defect is not remedied within a reasonable period of time, you may with respect to that defect, at your choice, either request a reduction of price, or, if the value or the serviceability of the work is substantially impaired, rescission of the applicable contract for works. In case of minor defects or deviations, you will not be entitled to rescind.

2.2 Extent of Warranty

The second paragraph does not apply.

The following replaces the subsection, Items Not Covered by Warranty in its entirety:

No warranty is provided under a contract for services (Dienstleistungsvertrag).

Without prejudice to your rights under other warranty provisions of this Agreement, IBM does not warrant uninterrupted or error-free operation of any Product or Service, or that IBM will correct all defects.

IBM may identify certain Products and Services as "not warranted." In any such case, this means that 1) IBM does not offer its own manufacturer's guarantee in respect of such Products, and 2) IBM may discharge its statutory warranty obligations to you directly or through a third party including, for example, the supplier or producer of the relevant Product or Service.

Non-IBM manufacturers, developers, suppliers, or publishers may provide their own guarantees and warranties to you. Warranties, if any, for Other IBM Programs, and Non-IBM Programs may be found in their license agreements.

5.3 Service for Machines (during and after warranty)

In the second paragraph, the following is added as the second sentence:

During the warranty period, IBM will reimburse you for the transportation charges for delivery of the failing Machine to IBM.

IRELAND

1.8 Limitation of Liability

The following replaces this section:

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 a transaction under this Agreement in respect of which IBM is legally liable to you whether in contract or tort. A number of Defaults which together result in, or contribute to,

substantially the same loss or damage will be treated as one Default occurring on the date of occurrence of the last such Default.

Circumstances may arise where, because of a Default, you are entitled to recover damages from IBM.

Save in respect of the payments referred to in the Patents and Copyrights section above, this section sets out the extent of IBM's liability and your sole remedy.

1. IBM will accept unlimited liability for death or personal injury caused by the negligence of IBM.
2. Subject always to the **Items for Which IBM is Not Liable** below, IBM will accept unlimited liability for physical damage to your tangible property resulting from the negligence of IBM.
3. Except as provided in items 1 and 2 above, IBM's entire liability for actual damages for any one Default will not in any event exceed the greater of 1) EUR 500,000 (five hundred thousand euro), or 2) 125% of the total purchase price payable or the charges (if recurring, 12 months' charges apply) for the Product or Service directly relating to the Default.

These limits also apply to any of IBM's subcontractors and Program developers. They state the maximum for which IBM and such subcontractors and Program developers are collectively responsible.

Items for Which IBM is Not Liable

Save with respect to any liability referred to in item 1 above, under no circumstances is IBM or any of its subcontractors or Program developers liable for any of the following, even if IBM or they were informed of the possibility of such losses:

1. loss of, or damage to, data;
2. special, indirect, or consequential loss; or
3. loss of profits, business, revenue, goodwill, or anticipated savings.

2.2 Extent of Warranty

The following paragraph is added as the third paragraph of this section:

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

ITALY

1.2 Agreement Structure

The following sentence is added as the last sentence of the third paragraph:

You must give your express acceptance of specific clauses according to articles 1341 and 1342 of the Italian Civil Code.

1.9 General Principles of Our Relationship

Item 16 does not apply.

SOUTH AFRICA, NAMIBIA, LESOTHO, AND SWAZILAND

1.1 Definitions

The following definitions are added to this section:

Base Index is the Index, on which IBM's current Machine prices are based, and is specified on the invoice.

Closing Index is the Index ruling on the business day prior to shipment, and is specified on the invoice.

Index is the South African Rand equivalent to one Euro at any time, and/or any other currency unit as specified by IBM in the Transaction Document.

Index-Linked Machine is any Machine so designated by IBM, the charge for which is subject to a currency adjustment as described in section 1.4 Charges and Payment.

Territory is the Republics of South Africa, Namibia, Lesotho and Swaziland, and any other territory as may be changed or designated by IBM from time to time.

1.4 Charges and Payment

The following is added as the last paragraph of the subsection, Charges:

IBM will increase or decrease the price of Index-Linked Machines by a currency adjustment which is equal to the price specified in the Transaction Documents, adjusted if applicable in respect of a price increase or decrease, multiplied by 75%, multiplied by (Closing Index minus Base Index) divided by the Base Index; i.e. currency adjustment = price x 75% x (Closing Index - Base Index) / Base Index.

SPAIN

5.1 Personnel

The following is added as a second sentence in the first paragraph:

With respect to (a) any of your employees who works on IBM's premises, or (b) any employee of IBM (or any of IBM's subcontractors) who works on your premises, you or IBM (as applicable) will furnish appropriate certification and any

other document which may reasonably be required to confirm compliance by such individual's employer with its statutory obligations relating to the payment of employment remuneration.

SWITZERLAND

1.9 General Principles of Our Relationship

The following is added to item 16:

For purposes of this clause, business contact information also includes information about you as a legal entity.

3.2 Title and Risk of Loss

The following is added to the first paragraph:

In the event that you do not make full payment to IBM when due, IBM may either register retention of title in the official Registry at your expense or revoke the transaction. In the event IBM revokes the transaction, you will immediately return the Machine to IBM upon its request.

TURKEY

3.1 Production Status

The following replaces this section:

IBM fulfills customer orders for IBM Machines as newly manufactured in accordance with IBM's production standards.

3.2 Title and Risk of Loss

Replace the first paragraph with the following:

For each Machine, when IBM accepts your order, IBM agrees to sell you the Machine described in a Transaction Document. IBM transfers title to you, or (if you choose) your lessor, when IBM ships the Machine. However, IBM reserves the right of ownership to the Machine until receipt of payment in full. If you fail to pay, or delay any payment, IBM reserves the right either to require fulfillment of the transaction or to terminate the transaction and recover the Machine. For a feature, conversion, or upgrade involving the removal of parts, which become IBM's property, IBM reserves its rights as stated above until IBM receives payment of all the amounts due and the removed parts. IBM is solely entitled, and if needed, you agree to sign appropriate documents to enforce IBM's above mentioned rights.

UNITED KINGDOM

1.8 Limitation of Liability

The following replaces this section:

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 you, whether in contract or tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default.

Circumstances may arise where, because of a Default, you are entitled to recover damages from IBM.

Save in respect of the payments referred to in the Patents and Copyrights section above, this section sets out the extent of IBM's liability and your sole remedy.

1. IBM will accept unlimited liability for:
 - a. death or personal injury caused by the negligence of IBM; and
 - b. any breach of its obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982, or any statutory modification or re-enactment of either such Section.
2. IBM will accept unlimited liability, subject always to the Items for Which IBM is Not Liable below, for physical damage to your tangible property resulting from the negligence of IBM.
3. IBM's entire liability for actual damages for any one Default will not in any event, except as provided in items 1 and 2 above, exceed:
 - a. in respect of Machines (which for the purposes of this provision includes Machine Code and Licensed Internal Code) the greater of 1) EUR 500,000 (five hundred thousand euro) or equivalent in local currency, or 2) 125% of the total purchase price payable for the Machine directly relating to the Default; and
 - b. in respect of Programs and Services, the greater of 1) EUR 500,000 (five hundred thousand euro) or equivalent in local currency, or 2) 125% of the total purchase price payable or the charges (if recurring, 12 months' charges apply) for the Program or Service directly relating to the Default.

These limits also apply to IBM's subcontractors and Program developers. They state the maximum for which IBM and such subcontractors and Program developers are collectively responsible.

Items for Which IBM is Not Liable

Save with respect to any liability referred to in item 1 above, under no circumstances is IBM or any of its subcontractors or Program developers liable for any of the following, even if IBM or they were informed of the possibility of such losses:

1. loss of, or damage to, data;
2. special, indirect, or consequential loss; or
3. loss of profits, business, revenue, goodwill, or anticipated savings.

IBM International Customer Agreement

SCHEDULE A TO IBM INTERNATIONAL CUSTOMER AGREEMENT

List of Customer and IBM Lead and Local Companies

Revised Schedule (Yes or No):

If revised --

Customer Lead Company Authorized Signature:

Date:

Countries	Geography/Region	Customer Names and Addresses	IBM Organizations
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