



IBM WORLD TRADE CORPORATION
New Orchard Road Armonk New York 10504 USA

IBM CUSTOMER AGREEMENT-OFFSHORE/CONTRACT IBM CU CLIENTUL- OFFSHORE

Customer Name / Nume Client:

IBM Subsidiary Name / Numele Filialei IBM:

IBM ROMANIA S.R.L.

Customer Address / Adresa Client:

IBM Subsidiary Address / Adresa Filialei IBM:

Piata Montreal nr. 10 , World Trade Center, Intr. D, Et.3,
Sector 1, BUCURESTI

Customer Number / Numar Client:

Agreement Number / Numar Contract:

This IBM Customer Agreement-Offshore (called the "Agreement") governs transactions by which Customer ("you") purchase Machines, license ICA Programs, and obtain Program licenses from IBM World Trade Corporation ("IBM"), and acquire Services.

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

Warranty and installation responsibilities under this Agreement are performed by a local service organization (which may be a subcontractor) chosen by IBM or which may be the local IBM subsidiary or a Branch Office. Other services may be provided by the local International Business Machines Corporation subsidiary under a separate agreement. You are responsible for importation.

By signing below, both of us agree to the terms of this Agreement without modification. Once signed, 1) any reproduction of this Agreement, an Attachment, or Transaction Document made by reliable means (for example, photocopy or facsimile) is considered an original and 2) all Products and Services ordered under this Agreement are subject to it. The countersignature of IBM on this Agreement and any related documents may be replaced by a written confirmation by an IBM subsidiary that IBM has accepted this Agreement or the related document.

Acest Contract IBM Offshore cu Clientul (numit "Contractul") guverneaza tranzactiile prin care Clientul ("Dvs.") cumparati Masini, licente de Programe ICA, obtineti licente de programe de la IBM World Trade Corporation ("IBM") si achizitionati Servicii.

Prezentul Contract, impreuna cu Anexele si Documentele Tranzactionale aplicabile acestuia, reprezinta Contractul integral referitor la aceste tranzactii si inlocuieste orice comunicari prealabile, orale sau scrise, intre noi.

Conform acestui Contract, responsabilitatile de garantie si instalare revin organizatiei locale de service (care poate fi un subcontractor) desemnata de IBM sau care poate fi filiala IBM locala sau o Sucursala. Alte servicii pot fi asigurate de catre filiala locala a Corporatiei IBM printr-un contract separat. Dvs. Sunteti responsabil pentru import.

Prin aplicarea semnaturii mai jos, ne declaram de acord cu termenii prezentului Contract, fara modificare. O data semnat, 1) orice copie a acestui Contract, o Anexa sau un Document Tranzactional efectuata prin mijloace adecvate (de exemplu, fotocopie sau facsimil) este considerata ca original si 2) toate Produsele si Serviciile comandate sub acest Contract se vor supune acestuia. Contrasemnatura data de catre IBM pentru acest Contract si pentru orice document aferent poate fi inlocuita de o confirmare scrisa data de catre o filiala a IBM, mentionind ca IBM a acceptat prezentul Contract sau documentul aferent.

Agreed to: **CUSTOMER**

Agreed to: **IBM WORLD TRADE CORPORATION**

Authorized signature

Date

Name (type or print)

Authorized Signature

Date

Name (type or print)

Agreed to: **IBM Romania S.R.L.**

Authorized Signature

Date

Name (type or print):

1. Part 1- GENERAL

1.1 Definitions

Country of Installation is the country to which the Product is destined to be delivered, as specified in the Transaction Documents.

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

Date of Delivery is the date IBM makes delivery of the Product to you or your agent at the distribution platform specified in the Transaction Documents prior to customs clearance.

Date of Installation is the following:

1. for a Machine,
 - a) for an IBM Machine that IBM is responsible for installing, the earlier of the business day after the day IBM installs it or two months after the Date of Delivery;
 - b) for a CSU Machine and a non-IBM Machine, twenty five (25) days after shipment, unless otherwise specified by IBM.
 - c) when a CSU Machine is delivered for connection to a non-CSU Machine delivered by IBM, the Date of Installation of the CSU Machine will be the later of the two installation dates described in a and b above.
2. 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 (the number of days from the Date of Shipment allotted for the importation of Programs and which is specified in the Transaction Documents),
 - 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.

Date of Shipment is the date the Product is delivered to the carrier at the source of supply specified in the Transaction Documents.

Designated Machine is either 1) the machine on which you will use an ICA Program for processing and which IBM requires you to identify 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. With regard to your Enterprise, the term "Enterprise" applies only to the portion of the Enterprise located in the country in which the Products are installed or the Services are performed.

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

1. Partea 1- INFORMATII GENERALE

1.1 Definitii

Tara de Instalare este tara in care Produsul trebuie sa fie livrat, asa cum se specifica in Documentele Tranzactionale.

Masina Customer-Set-Up (CSU) este o masina IBM pe care Dvs. o instalati conform instructiunilor date de catre IBM.

Data Livrarii este data la care IBM livreaza Produsul catre Dvs. sau catre reprezentantul Dvs. pe platforma de distributie mentionata in Documentele Tranzactionale, inainte de efectuarea formalitatilor vamale.

Data Instalarii va fi dupa cum urmeaza:

1. pentru o Masina,
 - a) pentru o masina IBM pentru care IBM are responsabilitatea instalarii, ziua lucratoare imediat urmatoare zilei in care IBM instaleaza Masina sau doua luni dupa Data de Livrare;
 - b) pentru o Masina CSU sau o Masina non-IBM, a 25-a zi dupa transport, daca nu este specificat altfel de catre IBM;
 - c) in cazul in care o Masina CSU este livrata in scopul conectarii acesteia cu o Masina non-CSU livrata de catre IBM, Data Instalarii Masinii CSU va fi data cea mai indepartata dintre cele doua date de instalare descrise la punctele a si b de mai sus.
2. pentru un Program,
 - a) de licenta, cel mai tarziu
 - i) ziua urmatoare expirarii perioadei de testare; sau
 - ii) a doua zi lucratoare dupa perioada standard de aprobare pentru tranzitul Programului (numarul de zile trecute de la Data Expedierii ce sunt alocate pentru importul de Programe si care sunt mentionate in Documentele Tranzactionale);
 - b) copie, data (specificata intr-un Document Tranzactional) la care IBM va va acorda autorizatia de a efectua o copie a Programului, si
 - c) componenta platibila, data la care Dvs. distribuiti o copie a unei componente platite, in sprijinul utilizarii autorizate a Programului.

Data Expedierii este data la care Produsul este predat transportatorului la Sursa de Aprovizionare mentionata in Documentele Tranzactionale.

Masina Desemnata este fie 1) masina pe care Dvs. veti folosi un Program ICA in scopul procesarii si pe care IBM va solicita sa o identificati prin tip/model si numar de serie sau 2) orice masina pe care Dvs. folositi Programul ICA, daca IBM nu va solicita sa efectuati respectiva identificare.

Intreprindere este orice entitate legala (cum ar fi o corporatie) si filialele in care aceasta detine o cota mai mare de 50%. Referitor la Intreprinderea Dvs., termenul "Intreprindere" se aplica numai pentru partea de Intreprindere aflata in tara in care Produsele sunt instalate sau in care sunt prestate Serviciile.

Program ICA este un Program IBM licentiat conform Partii a IV-a din acest Contract.

Cod Intern Licentiat (numit "CIL") este un Cod de Masina utilizat de anumite Masini pe care IBM le nominalizeaza (numite "Masini Specifice").

Masina este o masina, optiunile sale, imbuntatirile, elementele sau accesoriile, sau alta combinatie a acestora. Termenul "Masina" include o masina IBM si orice masina non-IBM (incluzand alte echipamente) pe care IBM vi le

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. Services (other than installation and warranty, which, where applicable, are performed by the local IBM subsidiary or a local support organization, i.e. designee, on behalf of IBM) are assigned to the local IBM subsidiary; local law and local jurisdiction apply to you and that subsidiary; and invoices for Services are issued by the local IBM subsidiary. If no local IBM subsidiary exists in the relevant country, Services (other than installation and warranty) cannot be included in this Agreement, unless specifically stated otherwise.

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.,

Western Europe countries are: 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.

poate furniza.

Cod Masina este un microcod, un cod de masina intrare/iesire (numit „BIOS”), programe utilitare, dispozitive de drivere si programe de diagnoza livrate cu o Masina IBM.

Materiale inseamna orice literatura sau alte lucrari de autor (cum ar fi programele, listing-urile de programe, instrumentele de programare, documentatia, rapoartele, schitele si altele similare) pe care IBM vi le poate livra, ca parte a acestor Servicii. Termenul „Materiale” nu include Programe, Cod Masina sau CIL.

Program non-IBM este un Program licentiat conform unui acord separat de licentiere cu o terta parte.

Alt Program IBM este un Program IBM licentiat conform unui acord separat de licentiere, cum ar fi Acordul International de Licentiere a Programelor IBM.

Produs este o Masina sau un Program.

Programul este reprezentat de urmatoarele instrumente, incluzind originalul si toate copiile integrale sau partiale:

1. instructiuni si date instalate;
2. componente;
3. continut audio-visual (cum ar fi imagini, text, inregistrari sau fotografii); si
4. materiale licentiate aferente.

Termenul "Program" include orice Program ICA, Alt Program IBM sau un Program non-IBM pe care IBM vi le poate furniza. Termenul nu include Cod Masina, CIL sau Materiale.

Serviciu inseamna efectuarea unei activitati, furnizarea de sfaturi si consultanta, asistenta, sustinere sau acces la o resursa (cum ar fi accesul la o baza de date continand informatii) pe care IBM le poate pune la dispozitia Dvs. Serviciile (altele decat instalarea si garantia, care, acolo unde este aplicabil, sunt realizate de catre filiala IBM sau de catre organizatia locala, de ex. un delegat in numele IBM) sunt atribuite filialei locale IBM; legea locala si jurisdicia locala se va aplica pentru Dvs. Si acea filiala; facturile pentru Servicii vor fi emise de catre filiala locala IBM. Daca nu exista filiala locala IBM in tara respectiva, Serviciile (altele decat instalarea si garantia) nu pot fi incluse in acest Contract, in afara cazului in care se stabileste in mod special altfel.

Specificatia este un document care ofera informatii specifice unui Produs. IBM pune la dispozitie Specificatiile Masinii IBM intr-un document numit "Specificatii Oficiale Publicate" si Specificatiile Programelor ICA intr-un document intitulat "Specificatii ale Programului Licentiat".

Mediul Operational Specificat este reprezentat de catre Masinile si Programele cu care un Program ICA este proiectat sa opereze, asa cum sunt acestea descrise in Specificatiile Programului ICA.

Tarile Europei Occidentale sunt: Andora, Austria, Belgia, Cipru, Republica Ceha, Danemarca, Estonia, Finlanda, Franta, Germania, Grecia, Ungaria, Islanda, Irlanda, Italia, Letonia, Liechtenstein, Lituania, Luxembourg, Malta, Monaco, Olanda, Norvegia, Polonia, Portugalia, San Marino, Slovacia, Slovenia, Spania, Suedia, Elvetia, Regatul Unit al Marii Britanii, Statul Vatican, si orice tara devenita ulterior membra a Uniunii Europene de la data integrarii.

1.2 Agreement Structure

IBM provides additional terms for Products and Services in documents called "Attachments" and "Transaction Documents" which are also part of this Agreement. Depending on their country of use, Attachments may have different names. All transactions have one or more associated Transaction Documents (such as an invoice, supplement or order form, schedule, exhibit, statement of work, change authorization, or addendum). Attachments and Transaction Documents will be signed by IBM and you if requested by IBM or you.

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.

Products become subject to this Agreement when IBM accepts your order by confirming acceptance of your order in writing, but no later than when the Products are provided to you.

1.3 Delivery

IBM will try to meet your delivery requirements for Products and Services you order, and will inform you of their status. The price for Products includes carriage to the distribution platform. The distribution platform will be specified in the Transaction Documents.

1.4 Charges and Payment

The amount payable for a Product or Service will be based on one or more of the following types of charges: one-time, recurring, time and materials, or fixed price. Depending on the Product, Service or circumstances, additional charges may apply (such as special handling or travel related expenses). IBM will inform you in advance whenever additional charges apply.

Charges for a Machine are one-time. Charges for a Program are based on the extent of use authorized and will be either one-time or recurring or a combination of both. One-time charges for Programs and the first of the recurring charges for a Program begin upon 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 speci-

1.2 Structura Contractului

IBM pune la dispozitie termeni suplimentari pentru Produse si Servicii in documente numite „Anexe” si „Documente Tranzactionale”, care fac parte de asemenea din prezentul Contract. In functie de tara in care ele se aplica, Anexele pot avea diverse denumiri. Toate tranzactiile detin unul sau mai multe Documente Tranzactionale asociate (cum ar fi o factura, suplimente, planuri, expuneri, ordine de lucru, autorizari de modificare sau addendum-uri). Anexele si Documentele Tranzactionale vor fi semnate de catre IBM si Dvs., daca acest lucru este cerut de catre IBM sau Dvs..

Daca exista vreo contradictie intre termenii mentionati in diverse documente, termenii mentionati intr-o Anexa vor prevala in fata celor mentionati in prezentul Contract. Termenii folositi intr-un Document Tranzactional vor prevala asupra termenilor folositi in ambele documente mentionate anterior.

Acceptati termenii din Anexe si Documente Tranzactionale 1) semnandu-le, 2) folosind Produsul sau Serviciile sau permitand altora sa le foloseasca, sau 3) onorand orice tip de plata pentru Produs sau Servicii.

Produsele devin obiectul acestui Contract atunci cand IBM accepta comanda Dvs., confirmand in scris acceptanta comenzii Dvs., dar nu mai tarziu de momentul in care Produsele sunt furnizate catre Dvs.

1.3 Livrare

IBM va incerca sa indeplineasca cerintele Dvs. de livrare pentru Produsele si Serviciile pe care Dvs. le comandati si va va informa in legatura cu faza in care se afla comanda respectiva. Pretul Produselor include transportul pana la Platforma de Distributie. Platforma de Distributie va fi specificata in Documentul Tranzactional.

1.4 Costuri si Plata

Sumele de plata pentru un Produs sau Serviciu se vor baza pe unul sau mai multe dintre urmatoarele tipuri de tarifyare: aplicabil intr-o singura transa, periodice, timp si material sau pret fix. In functie de Produs, Serviciu sau circumstante, se pot aplica tarifye suplimentare (ca de exemplu cheltuieli de manevrare sau cheltuieli de transport). IBM va va informa in prealabil de fiecare data cand se vor aplica astfel de tarifye suplimentare.

Costurile pentru o Masina sunt platibile intr-o singura transa. Costurile pentru un Program sunt calculate in functie de perioada de extindere autorizata a utilizarii programului si vor fi fie platibile intr-o singura transa, periodice sau o combinatie a celor doua. Costurile platibile intr-o singura transa pentru Programe si primul din costurile periodice percepute pentru un Program vor fi aplicabile incepand cu Data Instalarii acestuia. Costurile pentru Servicii sunt facturate dupa cum specifica IBM, care pot fi in avans, periodice pe durata desfasurarii Serviciilor, sau dupa completarea Serviciilor.

Serviciile pentru care Dvs. platiti in avans trebuie folosite in perioada de contract aplicabila. Cu exceptia cazului in care IBM specifica altceva, IBM nu returneaza sumele sau creditele pentru Servicii platite in avans care nu au fost folosite.

Costuri

Tarifyele aplicabile intr-o singura transa sau tarifyele periodice se bazeaza pe masurarea folosirii actuale sau autorizate (de exemplu, numarul de utilizatori sau marimea procesorului pentru Programe sau citirile metrice pentru Serviciile de intretinere sau timpul de conectare

fies. 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:
 - a) IBM ships you the Machine or makes the Program available to you;
 - b) you make an authorized copy of a Program or distribute a chargeable component of a Program to another Machine; or
 - c) 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. Recurring charges are invoiced in advance and prorated when they are due on a date other than at the start of the recurring charge period.

a) One-Time Charges

One-time Charges will be invoiced upon shipment. You agree to pay in full all charges to IBM in the currency specified in the Transaction Document by bank transfer upon receipt of invoice. Optionally, you may prepay such charges by bank transfer 10 (ten) days prior to the scheduled Date of Shipment; a prepayment discount will be applicable to such prepayment. Notwithstanding the foregoing, for Machine orders IBM reserves the right to require prior to production 1) payment in full by bank transfer or, 2) if mutually agreed, a) a letter of credit issued in favour of IBM, b) a bank guarantee or c) a promissory note. The letter of credit, bank guarantee or promissory note must be obtained and its related costs paid by you and in US Dollars or any other currency specified by IBM in writing to cover the value of each shipment. The payment due date will be the Date of Shipment. In addition, i) the letter of credit must be irrevocable and in a form confirmed by a bank acceptable to IBM, not expire earlier than 30 (thirty) days after the estimated Date of Shipment, provide for partial shipments and partial payments in case of partial shipments and be negotiable by

pentru Servicii de retea). Sunteti de acord sa furnizati date de folosinta actuale, daca IBM specifica acest lucru. Daca efectuati schimbari asupra mediului sau de lucru, care au impact asupra costurilor de utilizare (de exemplu, schimba marimea procesorului sau configuratia Programelor), atunci sunteti de acord sa trimiteti o notificare prompta IBM si sa platiti orice costuri aplicabile. Costurile periodice vor fi ajustate in consecinta. Cu exceptia cazului in care IBM convine altfel, IBM nu acorda credite sau rambursari pentru costuri deja datorate sau platite. In eventualitatea ca IBM isi schimba bazele de masurare, se vor aplica termenii referitori la modificarea costurilor.

Veti primi sumele rezultate dintr-o scadere a tarifulor pentru sume ce devin scadente la sau dupa data efectiva a scaderii.

IBM poate majora costurile periodice pentru Produse si Servicii, cat si pentru Serviciile furnizate conform acestui Contract, instiintandu-va in scris cu trei luni inainte. O majorare se aplica incepand cu data facturii sau cu prima zi a perioadei de facturare, la data sau dupa data efectiva pe care IBM o specifica in notificare.

IBM poate majora costurile platibile intr-o singura transa fara notificare. Totusi, majorarea costurilor platibile intr-o singura transa nu vi se aplica in urmatoarele situatii:

1. IBM primeste comanda Dvs. inainte de data anuntarii majorarii si
2. unul din urmatoarele evenimente are loc in termen de trei luni de la primirea de catre IBM a comenzii Dvs.:
 - a) IBM va expediaza Masina sau va pune Programul la dispozitie;
 - b) efectuati o copie autorizata a unui Program sau distribuiti o componenta platibila a unui Program unei alte Masini; sau
 - c) tariful majorat de utilizare a unui Program devine scadent.

Plata

Sumele sunt scadente la primirea facturii si platibile dupa cum specifica IBM intr-un Document Tranzactional. Sunteti de acord sa platiti in conformitate, inclusiv orice penalitate de intarziere. Costurile periodice sunt facturate in avans si repartizare proportional atunci cand sunt datorate la o alta data decat data de incepere a perioadei de plata a costurilor periodice.

a) Costuri platibile intr-o singura transa

Costurile platibile intr-o singura transa se factureaza la livrare. Sunteti de acord sa platiti integral toate costurile datorate IBM in moneda specificata in Documentul Tranzactional prin transfer bancar la primirea facturii. Optional, puteti plati in avans astfel de costuri, prin transfer bancar, cu zece (10) zile inainte de data programata pentru expediere; pentru o astfel de plata se aplica un discount pentru plata in avans. Cu toate acestea, pentru comenzile de masini, IBM isi rezerva dreptul ca inainte de luarea in productie sa pretinda: 1) plata in totalitate prin transfer bancar sau, 2) daca se agreeaza de comun acord, a) scrisoare de credit emisa in favoarea IBM b) garantie bancara sau c) bilet la ordin. Scrisoarea de credit, garantia bancara sau biletul la ordin trebuie sa fie obtinute, iar costurile lor aferente sa fie platite de catre Dvs. in Dolari SUA sau in alta moneda mentionata de catre IBM in scris si sa acopere valoarea fiecarei expedieri. Data scadentei platii va fi data expedierii. In plus, i) scrisoarea de credit trebuie sa fie irevocabila, intr-o forma-tip confirmata de o banca acceptabila IBM, sa nu expire mai devreme de treizeci

IBM upon submission to the confirming bank of the related commercial invoices and shipping documents; ii) the bank guarantee must be irrevocable and issued in a form and by a bank acceptable to IBM; iii) the promissory note must be issued in a form and by a bank acceptable to IBM or, if issued by you, then guaranteed ("Avalised") by a bank acceptable to IBM. In case of payment via promissory note, you will be responsible for and bear the expenses related to obtaining all approvals and licenses, including customs clearance, required under applicable laws of the Country of Installation for the issuance and export of promissory notes.

b) Recurring Charges (Programs)

Unless otherwise mutually agreed, the following payment terms shall apply for Programs subject to recurring charges and recurring charges combined with one-time charges as specified in a Transaction Document:

- i) You will pay the recurring charges and the recurring charges combined with one-time charges, as specified in a Transaction Document.
- ii) IBM must receive the payment for the initial invoice of such charges at least 10 (ten) days prior to the estimated Date of Shipment, respectively prior to a group change initiated by you and/or prior to your use of an additional license.
- iii) Thereafter invoices will be issued quarterly in advance on a calendar year basis covering all charges of the respective quarter and payable net upon receipt. As an option, you may pay the recurring charges in advance for periods of twelve (12) months by bank transfer. A prepayment discount will be applicable to such advance payment. IBM must receive the payment for the initial invoice of the recurring charges plus related one-time charges at least ten (10) days prior to the estimated Date of Shipment, respectively prior to a group change initiated by you and/or prior to your use of an additional license. Thereafter invoices will be issued in advance and payable net upon receipt. Except for a price increase resulting from a Machine group change, the pre-paid license charge will not be subject to change throughout the pre-paid period.

iv) In the case of a new recurring charge resulting from a Machine group change, an additional charge to be pre-paid will be due ten (10) days prior to the Date of Shipment of the Machine upgrade and will be equal to the difference between the pre-paid charge applicable to the original Machine and the then current recurring charge applicable for the upgraded Machine. The period of prepayment will be from the Date of Installation of the Machine upgrade to the expiration of the pre-paid period of the original Machine.

c) All Charges

You agree to pay all charges in the currency stated in the Transaction Document.

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 in accordance with your country legislation. You are responsible for any personal property taxes for each Product from

(30) de zile de la data de Expediere estimata, sa faca referire la expedieri partiale si plati partiale in cazul unor expedieri partiale si sa fie negociabila de catre IBM la prezentarea catre banca confirmata a facturilor comerciale si documentelor de expediere aferente; ii) garantia bancara trebuie sa fie irevocabila si trebuie sa fie emisa intr-o forma-tip de catre o banca acceptabila IBM; iii) biletul la ordin trebuie sa fie emis intr-o forma si de o banca acceptabila de IBM sau, daca este emis de catre Dvs., sa fie garantat ("Avalizat") de o banca acceptabila IBM. In cazul unei plati printr-un bilet la ordin, Dvs. veti fi raspunzator pentru, si va suporta cheltuielile aferente, obtinerii tuturor aprobarilor si licentelor, incluzand vanuirea, conform legilor aplicabile ale tarii in care se va efectua instalarea, pentru emiterea si exportul biletelor la ordin.

b) Costuri Periodice (Program)

Cu exceptia cazului in care partile convin de comun acord altfel, urmasorii termeni de plata vor fi aplicabili Programelor care se supun costurilor periodice ca si costurilor periodice combinate cu costurile platibile intr-o singura transa, asa cum se specifica intr-un Document Tranzactional:

- i) Veti plati costurile periodice si costurile periodice combinate cu costurile platibile intr-o singura transa, asa cum se specifica intr-un Document Tranzactional.
- ii) IBM trebuie sa primeasca plata facturii initiale pentru aceste costuri, cel putin cu zece (10) zile in avans fata de data estimata pentru expediere, respectiv fata de o modificare a grupei initiata de Dvs. si/sau in avans fata de folosirea de catre Dvs. a unei licente suplimentare.
- iii) Facturile urmatoare vor fi emise trimestrial, in avans, pe baza unui calendar anual, acoperind toate costurile respectivului trimestru si fiind platibile integral la primirea facturii. Optional, puteti plati costurile periodice in avans pentru o perioada de douasprezece (12) luni prin transfer bancar. Acestei plati in avans i se va aplica un discount de plata anticipata. IBM trebuie sa primeasca plata facturii initiale pentru costurile periodice si pentru costurile platibile intr-o singura transa cu cel putin zece (10) zile in avans fata de data expedierii, respectiv fata de o schimbare a grupei, initiata de catre Dvs. si/sau in avans fata de folosirea de catre Dvs. a unei licente suplimentare. Facturile urmatoare vor fi emise in avans si sunt platibile integral la primire. Exceptand cazul cresterii pretului rezultand dintr-o schimbare a Grupei de Masini, costul licentei platite in avans nu va face obiectul unei modificari pe durata perioadei de plata in avans.

iv) In cazul unui nou cost periodic ce apare ca urmare a modificarii Grupei de Masini, un cost suplimentar ce trebuie achitat in avans devine scadent cu zece (10) zile inaintea Datei de Expediere a upgrade-ului Masinii si va fi egal cu diferenta dintre costul platit anticipat, aplicabil Masinii initiale, si costul periodic aplicabil la acea data Masinii imbunatatite. Perioada de efectuare a platii anticipate va fi de la data instalarii upgrade-ului Masinii pana la expirarea perioadei de efectuare a platii anticipate pentru masina initiala.

c) Toate costurile

Sunteti de acord sa platiti toate tarifele in moneda stabilita in Documentul Tranzactional.

In cazul in care vreo autoritate impune o plata, taxa, impozit sau tarif, excluzand pe acelea pe venitul net al IBM, ca urmare a oricarei tranzactii derulate prin acest Contract, atunci sunteti de acord sa platiti acea suma in concordanta cu legislatia din tara Dvs.. Sunteti responsabil in

the date IBM ships it to you.

If you are required to apply an income withholding tax, you agree to use the rate stipulated in the applicable double taxation treaty between your country and the USA and to provide IBM with a certificate of payment of the withheld amount issued by the applicable tax authority. In addition, if the applicable legislation in your country obligates you to deduct any duty, tax, levy or fee, except the income withholding tax specified above, such amount will be added to the charges stemming from this Agreement and shown separately on the invoice. You agree to pay such duty, tax, levy or fee to the appropriate authorities and to pay IBM the charges stipulated by this Agreement.

Adjustments, taxes and additional charges chargeable to you under this Agreement may be billed subsequent to shipment of a Product or performance of a Service and are payable in full, in the currency specified in the relevant Transaction Document, within 30 days of the date of such billing.

Failure by you to provide prepayment or to establish a letter of credit, bank guarantee or promissory note in accordance with the relevant provisions of this Agreement will entitle IBM to cancel this Agreement or any order under it without liability on its part.

In case of delayed payment IBM may charge interest at the rate specified in the Transaction Documents for amounts overdue.

You will bear the full cost and responsibility for obtaining all necessary consents from any government or related authority to enable you to clear the Products from customs for importation into the country of installation.

By signing this Agreement you also confirm that there are no hindrances, whether legal or otherwise, to your fulfilling your payment obligations under this Agreement.

1.5 Changes to the Agreement Terms

1.5.1 In order to maintain flexibility in our business relationship, IBM may propose changes to the terms of this Agreement and Product and Service offerings by giving you 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, renewals, and on-going transactions that do not expire (except that changes to license termination terms are effective only for new orders). For on-going transactions with a defined renewable contract period, you may request that IBM defer the effective date of a notified change until the end of the current contract period if (i) the change affects your current contract period, and (ii) you consider the change unfavorable.

1.5.2 You agree that any of the following actions (or failure to take action) by you will indicate your consent to a notified change, and will result in implementation of the change for all applicable transactions as of the specified effective date:

i) you place a new order for a Product or Service after

legatura cu impozitele pe bunuri personale pentru fiecare Produs, de la data la care IBM transporta Produsul catre Dvs..

In cazul in care sunteti obligat sa aplicati un impozit pe venit prin retinere la sursa, sunteti de acord sa folositi rata specificata in tratatul privind dubla impunere intre tara Dvs. si SUA si sa furnizati IBM un certificat pentru plata sumei retinute, emis de autoritatile fiscale din tara Dvs.. In plus, daca legislatia aplicabila din tara Dvs. va obliga sa deduceti o plata, taxa, impozit sau tarif, exceptand impozitul pe venit prin retinere la sursa specificat mai sus, aceasta suma se va adauga la costurile ce reies din acest Contract si va fi evidentiata separat pe factura. Sunteti de acord sa onorati o astfel de plata, taxa, impozit sau tarif autoritatilor corespunzatoare si sa platiti IBM costurile stipulate de acest Contract.

Ajustarile, impozitele si costurile suplimentare ce va pot fi impuse conform prezentului Contract, pot fi facturate ulterior expedierii unui Produs sau prestarii unui Serviciu si sunt platibile integral, in moneda specificata in Documentul Tranzactional aferent, in termen de treizeci (30) de zile de la data respectivei facturari.

Neindeplinirea de catre Dvs. a obligatiei de a asigura plata in avans sau de a prezenta o scrisoare de credit, o garantie bancara sau un bilet la ordin in conformitate cu prevederile specifice ale prezentului Contract, ii va da dreptul firmei IBM sa rezilieze prezentul Contract sau orice comanda aferenta acestuia, fara vreo obligatie din partea sa.

In cazul intarzierii platii, IBM poate percepe dobanzi la rata specificata in Documentul Tranzactional pentru sumele restante.

Dvs. veti suporta integral costul si veti purta intreaga raspundere pentru obtinerea tuturor aprobarilor necesare de la orice organism guvernamental sau autoritate competente pentru a va permite sa indepliniti toate formalitatile vamale in vederea importului Produselor in tara de instalare.

Semnand acest Contract, confirmati ca nu exista obstacole, nici legale nici de alta natura, care v-ar putea impiedica sa va onorati plata obligatiilor sale conform prezentului Contract.

1.5 Modificari ale Termenilor Contractului

1.5.1 Pentru a mentine flexibilitatea relatiilor dintre Parti, IBM poate propune modificari asupra termenilor acestui Contract si asupra Produselor si Serviciilor oferite, adresandu-va o notificare scrisa cu trei luni inainte. Aceste schimbari nu sunt retroactive. Ele se aplica cu incepere de la data efectiva specificata de IBM in notificare, numai noilor comenzi, reinnoirilor sau tranzactiilor in derulare ce nu expira (exceptand modificarile aduse termenilor de incetare a licentei care intra in vigoare numai pentru comenzile noi). Pentru tranzactiile in derulare cu o perioada contractuala ce poate fi reinnoita, puteti solicita IBM sa amane data de incepere a unei modificari pana la sfarsitul perioadei contractuale curente, daca (i) modificarea afecteaza perioada contractuala curenta a Dvs., sau (ii) considerati modificarea ca fiind nefavorabila.

1.5.2 Sunteti de acord ca oricare din actiunile Dvs. urmatoare (sau esecul luarii masurilor corespunzatoare), vor insemna aprobarea din partea Dvs. a unei modificari si va rezulta introducerea modificarii pentru toate tranzactiile aplicabile la data de incepere specificata:

i) faceti o noua comanda pentru un Produs sau

the specified effective date;

ii) you do not object to renewal for a Product or Service offering within 90 days after notification of the change; or

iii) you do not request either deferral of the change effective date until the end of the current contract period or termination per current Agreement terms for a Product or Service offering on-going transaction within 90 days after notification of the change.

1.5.3 Changes to charges for Products and Services will be implemented as described in the Charges and Payment section above.

1.5.4 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 to you regarding any claim of infringement.

Serviciu, dupa data de incepere specificata;

ii) nu obiectati la reinnoirea unei oferte de Produs sau Serviciu, in 90 de zile de la instiintarea de modificare; sau

iii) nu solicitati fie amanarea datei de incepere a modificarii pana la sfarsitul perioadei contractuale curente, fie terminarea aplicabilitatii prevederilor din Contract, pentru o oferta de Produs sau Serviciu dintr-o tranzactie aflata in derulare, in 90 de zile de la instiintarea de modificare.

1.5.3 Modificarile aduse costurilor Produselor si Serviciilor vor fi introduse asa cum au fost descrise in capitolul Costuri si Plata de mai sus.

1.5.4 Pentru ca o modificare sa fie valabila, ambele Parti trebuie sa o semneze. Termenii suplimentari sau diferiti in orice forma de comunicare scrisa din partea Dvs. (cum ar fi o comanda) sunt nuli.

1.6 Parteneri de Afaceri IBM

IBM a semnat acorduri cu anumite organizatii (denumite "Partenerii de Afaceri IBM") pentru a promova, comercializa si asista unele Produse si Servicii. Atunci cand Dvs. comandati Produse si Servicii IBM (comercializate catre Dvs. prin Partenerii de Afaceri IBM) conform acestui Contract, IBM confirma ca este responsabil pentru furnizarea Produselor si Serviciilor catre Dvs. conform garantiilor si altor termeni ai acestui Contract. IBM nu este raspunzator pentru 1) actiunile Partenerilor de Afaceri IBM, 2) orice obligatii aditionale pe care acestia le au catre Dvs., 3) orice produse sau servicii pe care acestia vi le furnizeaza conform acordurilor lor.

1.7 Brevete si Drepturi de Autor

In scopul acestui capitol, termenul "Produs" include Materiale, Cod Masina si CIL.

Daca o terta parte pretinde ca un Produs pe care IBM v-ii furnizeaza incalca brevetul sau dreptul de autor al acelei parti, IBM va va apara impotriva acelei reclamatii pe cheltuiala IBM si va plati toate cheltuielile, daunele si onorariile avocailor, pe care o instanta le hotaraste cu titlu definitiv sau care sunt incluse intr-o solutionare aprobata de catre IBM, cu conditia ca Dvs.:

1. sa notificati IBM cu privire la acea reclamatie in mod prompt, in scris; si
2. sa permiteti IBM sa verifice si sa cooperati cu IBM in legatura cu apararea si cu orice negocieri aferente solutionarii.

Remedii

In cazul aparitiei sau a probabilitatii aparitiei unei astfel de reclamatii, sunteti de acord ca IBM sa va ofere posibilitatea sa utilizati in continuare Produsul, sa il modifice, sau sa il inlocuiasca cu unul care este cel putin echivalent din punct de vedere functional. Daca IBM hotaraste ca nici una din aceste alternative nu este in mod rezonabil posibila, sunteti de acord sa restituiti Produsul catre IBM la solicitarea scrisa IBM. IBM va va da atunci un credit egal cu:

1. pentru o Masina, valoarea contabila neta inregistrata de Dvs., cu conditia ca acesta sa se fi conformat principiilor generale acceptate ale contabilitatii;
2. pentru un Program ICA, suma platita de Dvs. sau tarifele pe 12 luni (care este mai mica); si
3. pentru Materiale, suma pe care ati platit-o IBM pentru producerea Materialelor.

Acestea sunt toate obligatiile IBM fata de Dvs. in ceea ce priveste orice reclamatie de incalcare.

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 other products not provided by IBM as a system, or the combination, operation or use of a Product with any product, data, apparatus, or business method that IBM did not provide, 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), 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 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

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.

Reclamatii pentru care IBM nu este raspunzator

IBM nu are nici o obligatie in ceea ce priveste orice reclamație bazata pe urmatoarele:

1. orice furnizati Dvs. si care este incorporat intr-un Produs sau concordanta IBM cu proiectele, specificatiile sau instructiunile puse la dispozitie de catre Dvs. sau de catre o terta parte in numele Dvs.;
2. modificarea unui Produs facuta de catre Dvs. sau utilizarea unui Program ICA in alt fel decat se arata in Mediul Operational Specificat;
3. combinarea, operarea sau folosirea unui Produs cu orice produs ce nu a fost furnizat de catre IBM ca sistem sau combinarea, operarea sau folosirea unui Produs cu orice produs, data, aparat sau mod de operare ce nu au fost furnizate de IBM sau distribuirea, operarea sau folosirea unui Produs in beneficiul unei terte parti din afara Intreprinderii Dvs.; sau
4. incalcari aduse de un Produs non-IBM sau de un Alt Program IBM.

1.8 Limitarea raspunderii

Pot aparea situatii in care, datorita neexecutarii obligatiilor de catre IBM, sau a altei responsabilitati, sunteti indreptatit sa recuperati daunele de la IBM. In fiecare astfel de caz, indiferent de motivul pentru care sunteti indreptatit sa pretineti despagubiri de la IBM (inclusiv o nerespectare fundamentala a conditiilor, neglijenta, declaratii inexacte sau alte pretentii legate de contract sau un prejudiciu), IBM nu este raspunzator decat de:

1. platile mentionate in capitolul "Brevete si drepturi de autor" de mai sus;
2. daunele pentru vatamare corporala (inclusiv decesul) si pagube aduse bunurilor mobile si imobile; si
3. valoarea oricaror alte daune directe efective pana la 100.000 USD sau costurile (daca sunt periodice se aplica costurile pentru 12 luni) pentru Produsele si Serviciile care fac obiectul reclamatiei, care din aceste sume este mai mare. In scopul acestui capitol, termenul "Produs" include Materiale, Cod Masina si CIL.

Aceasta limita se aplica, de asemenea, la oricare dintre subcontractantii IBM sau oricaror persoane insarcinate cu dezvoltarea de Program. Aceasta este maximum pentru care IBM si subcontractantii sai sau persoanele insarcinate cu dezvoltarea de Program, sunt raspunzatori in mod colectiv.

Situatiile in care IBM nu este raspunzator

In nici o imprejurare IBM, subcontractantii IBM sau persoanele insarcinate cu dezvoltarea Programelor nu sunt raspunzatori pentru oricare din urmatoarele, chiar daca au fost informati in legatura cu posibilitatea aparitiei lor:

1. pierderea sau deteriorarea datelor;
2. daune speciale, incidentale sau indirecte sau orice daune cu consecinte economice; sau
3. pierderea profiturilor, veniturilor, a activitatii, a reputatiei sau a economiilor.

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. 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 three years after the cause of action arose.
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 IBM Enterprise or to a successor organization by merger or acquisition does not require your consent. 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 Services 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.
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, and do not remarket them in competition with IBM's author-

1.9 Principii Generale ale Relatiei Noastre Contractuale

1. Nici una dintre Parti nu ii acorda celeilalte dreptul de a folosi marile comerciale, numele comerciale, sau alte denumiri ale sale (sau ale oricarei Intreprinderi ce apartine Partii respective) in orice actiune promotionala sau publicatie fara consimtamant scris prealabil.
2. Toate informatiile schimbate sunt neconfidentiale. Daca oricare dintre Parti cere schimbul de informatii confidentiale, acesta se va realiza sub un acord de confidentialitate semnat.
3. Fiecare Parte este libera sa intre in contracte similare cu alte parti.
4. Fiecare Parte ii acorda celeilalte numai licentele si drepturile specificate. Nu sunt acordate alte licente sau drepturi (inclusiv licente sau drepturi supuse patentelor);
5. Fiecare Parte poate comunica cu cealalta prin mijloace electronice iar o astfel de comunicare este considerata acceptabila ca un inscris semnat. Un cod de identificare (denumit "ID utilizator") continut intr-un document electronic este suficient pentru a verifica identitatea expeditorului si autenticitatea documentului;
6. Fiecare dintre Parti va acorda celeilalte Parti posibilitatea rezonabila de indeplinire inainte de a pretinde ca cealalta Parte □ nu si-a indeplinit obligatiile;
7. Nici una din Parti nu va intenta o actiune in justitie ce rezulta din acest Contract sau este referitoare la acest Contract, la mai mult de trei ani dupa ce a aparut cauza actiunii;
8. Nici una dintre Partii nu este raspunzatoare pentru neindeplinirea obligatiilor a carei cauza nu este sub controlul sau; si
9. Nici una dintre Parti nu poate transfera acest Contract, in totalitate sau partial, fara consimtamantul prealabil scris al celeilalte Parti. Orice incercare de a face acest lucru este nula. Nici una dintre Parti nu va intarzia fara motiv un astfel de consimtamant. Transferul acestui Contract, in intregime sau partial, in cadrul Intreprinderii IBM sau in cadrul unei organizatii succesoare aparute prin fuziune sau achizitie, nu necesita consimtamantul celuilalt. IBM poate sa-si transfere drepturile de plata fara a obtine consimtamantul Dvs., conform acestui Contract. Nu este considerat un transfer, faptul ca IBM separa o parte a activitatii sale in asa fel incat afecteaza toti clientii in acelasi fel.
10. Sunteti de acord sa nu revineti un Serviciu fara consimtamantul prealabil scris al IBM. Orice incercare de a face acest lucru este nula.
11. Sunteti de acord ca acest Contract nu va crea un drept de actiune juridica din partea unei terte parti si ca IBM nu este responsabil pentru orice reclamatii ale unei terte parti impotriva Dvs., cu exceptia cazurilor descrise in capitolul Brevete si Drepturi de Autor de mai sus sau a cazurilor permise de capitolul Limitarea Raspunderii pentru vatamare corporala (inclusiv decesul) sau pagube aduse bunurilor mobile si imobile, pentru care IBM este legal responsabil.
12. Sunteti de acord sa achizitionati Masini cu intentia de a le utiliza in cadrul Intreprinderii Dvs. si nu pentru revinderea, inchirierea sau transferarea lor unei terte parti, in afara cazului cand se aplica una din urmatoarele conditii:
 - a) va ocupati de finantarea inchirierii Masinilor; sau
 - b) le cumparati fara discount sau reducere si nu le recomercializati la concurenta cu persoanele autorizate de

ized remarketers.

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 contact information, including names, phone numbers, and 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, Business Partners, and assignees of International Business Machines Corporation and its subsidiaries for uses consistent with their collective business activities, including communicating with you (for example, for processing orders, for promotions, and for market research).

17. You agree to comply with all applicable export and import laws and regulations and to cooperate in any inspections required by such laws and regulations. You agree that IBM's performance under this Agreement is subject to export licensing, and that such licensing is beyond IBM's control and that IBM does not assume any responsibility for it. You agree to provide any information necessary to apply for such approvals and to comply with all conditions of such approvals.

18. You hereby represent and warrant to IBM that you have all right, power and authority to accept this Agreement and to perform your obligations hereunder in accordance with all applicable laws and regulations, including without limitation, government procurement laws. You are responsible for promptly obtaining and providing to IBM all required approvals, consents, authorizations, conditions and assistance necessary for the fulfillment of the Agreement. IBM will be relieved of the performance of any obligations that may be affected by your failure to fulfill your responsibilities.

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

All your rights and all obligations of IBM are valid only in the Country of Installation with regard to a Product or the country in which a Service is performed or, if IBM agrees, the country where the Product is placed in productive use, ex-

IBM pentru recomercializare.

13. Sunteți de acord să permiteți IBM să realizeze modificările constructive obligatorii pe o Mașină (cum ar fi cele necesare pentru siguranță). Fiecare componentă pe care IBM o îndepărtează devine proprietatea IBM. Declarați că aveți permisiunea proprietarului sau a oricărui detinator de drepturi reale accesorii, să transferați proprietatea și posesia componentelor îndepărtate către IBM.

14. Sunteți de acord că sunteți răspunzător pentru rezultatele obținute din folosirea Produselor și a Serviciilor.

15. Sunteți de acord să puneți la dispoziția IBM acces suficient, liber și sigur la facilitățile sale pentru ca IBM să-și îndeplinească obligațiile.

16. Sunteți de acord să permiteți Corporației IBM și companiilor sale auxiliare să păstreze și să folosească informațiile Dvs. referitoare la persoane de contact, inclusiv nume, numere de telefon, adrese de e-mail, oriunde acestea își desfășoară activitatea. Aceste informații vor fi prelucrate și utilizate numai în legătura cu relațiile de activitate între Parti și pot fi furnizate și contractorilor, Partenerilor de Afaceri, subordonatilor Corporației IBM și companiilor auxiliare ale acesteia pentru a fi utilizate conform domeniilor de activitate colective, inclusiv comunicarea cu Dvs. (de exemplu, pentru comenzile de procesare, pentru promovii și pentru studii de piață).

17. Sunteți de acord că trebuie să vă conformați tuturor legilor și regulamentelor aplicabile de export și de import și să colaborați în cadrul oricărui verificări prevăzute de astfel de legi și reglementări. Sunteți de acord că prestația IBM în cadrul acestui Contract face obiectul licențierilor de export, iar această licențiere nu este sub controlul IBM și, totodată, IBM nu își asumă responsabilitatea pentru aceasta. Sunteți de acord să furnizați orice informație necesară pentru a solicita astfel de aprobări și pentru a îndeplini toate condițiile acestor aprobări.

18. Dvs. Declarați și garantați IBM că aveți toate drepturile, puterea și autoritatea de a accepta acest Contract și de a vă respecta obligațiile în conformitate cu toate legile și regulamentele aplicabile, incluzând, fără limitare, legile guvernamentale de achiziții publice. Sunteți răspunzător pentru obținerea și furnizarea imediată către IBM a tuturor aprobărilor, încuviințarilor, autorizațiilor, condițiilor și asistenței necesare pentru îndeplinirea Contractului. IBM va fi exonerat de respectarea oricărui obligații ce pot fi afectate de neîndeplinirea responsabilităților Dvs.

1.10 Terminarea Contractului

Oricare dintre Parti poate termina acest Contract prin notificare scrisă către cealaltă după expirarea sau terminarea obligațiilor sale.

Oricare dintre Parti poate termina acest Contract dacă cealaltă nu se conformează oricărui termenii săi, cu condiția ca acelaia ce nu se conformează să-i fie dată notificare scrisă și o perioadă rezonabilă pentru a se conforma.

Orice termeni ai acestui Contract care prin natura lor se extind dincolo de terminarea Contractului rămân în vigoare până la îndeplinirea lor și se aplică în egală măsură succesorilor și mandatarilor Partilor.

1.11 Delimitare geografică și legea aplicabilă

Toate drepturile Dvs. și toate obligațiile IBM sunt valabile numai în țara de instalare în legătura cu un Produs sau în țara în care un Serviciu este prestat sau, dacă IBM este de acord, țara în care Produsul este introdus în producție,

cept that all licenses are valid as specifically granted.

Both you and IBM consent to the application of the substantive laws of Austria exclusive of its conflict of laws provisions 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.

Arbitration

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.

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.

1.12 Language

This Agreement was originally written in English and translated into Romanian. In case of conflict between the two versions, the original text prevails.

2.PART 2 - WARRANTIES

2.1 The IBM Warranties

Unless IBM specifies otherwise, the following warranties apply only to the Country of Installation

Warranty for IBM Machines

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.

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. For a Machine installed in a place where the IBM subsidiary or local support organization regularly has no trained personnel, charges for travel time and expense will apply. Such places will be specified at your request, if applicable.

exceptand licentele care sunt valabile conform acordurilor pe baza carora v-au fost acordate.

Atat Dvs., cat si IBM consimt la aplicarea legilor Austriei pentru a guverna, interpreta, si pune in aplicare toate drepturile, indatoririle si obligatiile Dvs. si ale IBM rezultate din sau legate in orice modalitate de subiectul acestui Contract, fara referire la conflictul principiilor juridice.

Arbitrajul

Toate divergentele rezultate din acest Contract sau legate de incalcarea, incetarea sau nulitatea acestuia vor fi solutionate in mod definitiv pe baza Regulilor de Arbitraj si Conciliere ale Centrului International de Arbitraj de pe langa Camera Economica Federala din Viena, Austria (Regulile din Viena), de catre trei arbitri numiti in conformitate cu aceste Reguli. Arbitrajul va avea loc la Viena, Austria, iar limba oficiala a dezbaterilor va fi engleza. Hotararea arbitrilor va fi definitiva si obligatorie pentru amandoua partile. Ca urmare, partile, in conformitate cu paragraful 598(2) al Codului de Procedura Civila al Austriei renunta la aplicarea paragrafului 595(1) punctul 7 al numitului Cod. IBM poate, totusi, sa initieze proceduri in fata unei instante competente din tara de instalare.

In eventualitatea in care oricare din prevederile acestui Contract nu va fi valabila sau nu va putea fi pusa in practica, celelalte prevederi ale Contractului raman in vigoare.

Nimic din acest Contract nu afecteaza vreunul din drepturile statutare ale consumatorilor la care nu se poate renunta sau nu pot fi limitate prin contract.

Conventia Natiunilor Unite pentru Contracte de vanzari internationale de bunuri nu se aplica.

1.12 Limba contractului

Acest contract a fost redactat in original in limba engleza si tradus in limba romana. In cazul unor contradictii intre cele doua versiuni, textul original prevaleaza.

2. PARTEA 2 - GARANTIILE

2.1 Garantiile IBM

In afara cazului in care IBM specifica in alt mod, urmatoarele garantii se aplica numai in tara de instalare.

Garantii pentru Masinile IBM

Garantia pentru Masinile IBM achizitionate in Europa Occidentala va fi valabila si aplicabila in toate tarile din Europa Occidentala, cu conditia ca Masinile sa fi fost anuntate si disponibile in aceste tari.

Pentru fiecare masina IBM, IBM garanteaza ca aceasta nu are nici un defect din punct de vedere al materialului si al executiei si ca este executata in conformitate cu Specificatiile tehnice.

Perioada de garantie pentru o masina este o perioada specificata, fixa, incepand cu data instalarii. In timpul perioadei de garantie, IBM asigura Service de reparatii si de inlocuire piese pentru Masini, gratuit, in cadrul tipului de Service desemnat pentru masina respectiva de catre IBM. Daca o masina nu functioneaza asa cum s-a garantat in timpul perioadei de garantie iar IBM nu poate fie 1) sa asigure functionarea ei corespunzatoare 2) sa o inlocuiasca pe aceasta cu o alta care este cel putin echivalenta din punct de vedere functional, Dvs. puteti returna catre IBM iar IBM va va inapoia banii. Pentru Masinile instalate in locuri in care filiala IBM sau organizatia locala nu are personal instruit, se vor aplica taxe pentru timpul si chel-

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 WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF 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, it provides Materials, non-IBM Products and non-IBM Services **_WITHOUT WARRANTIES OF ANY KIND.** However, non-IBM manu-

tuilele de deplasare. La solicitarea Dvs., aceste locuri vor fi specificate, in cazul in care exista.

Termenii suplimentari referitori la Serviciile pentru Masini pe timpul si dupa perioada de garantie sunt continuti in Partea 5.

Garantie pentru Programele ICA

IBM garanteaza ca fiecare Program ICA garantat se va conforma Specificatiilor, in cazul utilizarii sale in Mediul Operational Specificat.

Perioada de garantie pentru un Program ICA expira atunci cand Service-ul de Program nu mai este disponibil. In timpul perioadei de garantie, IBM asigura gratuit Service-ul de Program referitor la defecte. Service-ul de Program pentru un Program ICA garantat este disponibil cel putin un an dupa valabilitatea sa generala.

Daca un Program ICA nu functioneaza asa cum s-a garantat in timpul primului an dupa obtinerea licentei de catre Dvs., iar IBM nu poate asigura functionarea sa corespunzatoare, puteti returna Programul ICA catre IBM, iar IBM va va inapoia banii. Pentru a deveni eligibil, Dvs. trebuie sa fi obtinut licenta, in timp ce Service-ul Programului (in diferent de durata restanta) era la dispozitia acestuia. Termenii suplimentari referitori la Service-ul Programului sunt continuti in Partea 4.

Garantie pentru Serviciile IBM

Pentru fiecare Serviciu IBM, IBM garanteaza ca il desfasoara cu grija si resursele necesare si conform cu descrierea sa curenta (inclusiv orice criteriu de finalizare), continuta in acest Contract, in Anexa sau intr-un Document Tranzactional.

Garantie pentru Sisteme

Acolo unde IBM va va asigura Produse sub forma de sistem, IBM garanteaza ca acestea sunt compatibile si vor opera impreuna. Aceasta garantie este suplimentara celorlalte garantii aplicabile ale IBM.

2.2 Extinderea Garantiei

Garantiile de mai sus nu se vor aplica in masura in care a intervenit folosirea necorespunzatoare (inclusiv dar nelimitata la utilizarea capacitatii sau capabilitatii oricarei Masini, alta decat cea autorizata de IBM in scris), accident, modificare, mediu de operare sau mediu fizic nepotrivit, altul decat Mediul Operational Specificat, intretinere necorespunzatoare din partea Dvs. sau in cazul oricarui defect cauzat de un produs pentru care IBM nu este raspunzator. Cu privire la Masini, Garantia este anulata de indepartarea sau modificarea etichetelor de identificare de pe Masini sau componente.

ACESTE GARANTII SUNT GARANTIILE DVS. EXCLUSIVE SI INLOCUIESC TOATE CELELALTE GARANTII SAU CONDITII, EXPRESE SAU IMPLICITE, INCLUZAND, DAR NELIMITATE LA, GARANTIILE IMPLICITE SAU LA CONDITIILE DE VANDABILITATE SAU DE ADECVARE PENTRU UN ANUMIT SCOP.

Componente neacoperite de Garantie

IBM nu garanteaza operarea neintrerupta sau lipsita de erori a unui Produs sau Serviciu sau ca IBM va corecta toate defectele.

IBM va identifica Masinile IBM si Programele ICA pentru care nu ofera garantie.

Cu exceptia cazului in care IBM specifica altceva, IBM furnizeaza Materiale, Produse non-IBM si Servicii non-IBM, **FARA NICI UN FEL DE GARANTIE.** Totusi, produ-

facturers, 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.

3. 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 upon Date of Shipment provided that IBM has received payment in full. Otherwise title passes when IBM receives payment in full. 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 have been received in accordance with Section 5.3.

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, conver-

tororii, cercetatorii, furnizorii sau editorii non-IBM va pot oferi propriile lor garantii. Daca exista garantii pentru Alte Programe IBM si Programe non-IBM, acestea se pot gasi in acordurile lor de licentiere.

3. Partea 3 - MASINI

3.1 Regimul de Productie

Fiecare Masina IBM este fabricata din componente noi sau componente folosite. In unele cazuri, o Masina poate sa nu fie noua si poate sa fi fost instalata anterior. Idiferent de acest fapt, se aplica termenii de garantie corespunzatori ai IBM.

3.2 Titlul de Proprietate si Riscul de Pierdere

IBM va va transfera titlul unei Masini la Data Expedierii cu conditia ca IBM sa fi primit integral sumele scadente. Altfel, titlul se transfera atunci cand IBM primeste integral sumele scadente. Pentru o caracteristica, conversie sau upgrade ce implica inlaturarea de componente ce devin proprietatea IBM, IBM isi rezerva dreptul de a transfera titlul atunci cand IBM primeste sumele scadente si componentele inlaturate, conform Sectiunii 5.3.

Pentru fiecare Masina, IBM poarta riscul pierderii sau deteriorarii Masinii pana la data la care este livrata transportatorului desemnat de IBM pentru a o transporta catre Dvs. sau catre locatia desemnata de Dvs.. In continuare, Dvs. va asumati riscul. Fiecare Masina va beneficia de asigurare, incheiata si platita de IBM pentru Dvs., acoperind perioada ce dureaza pana la livrarea catre Dvs. sau catre locatia desemnata de Dvs.. Pentru orice pierdere sau deteriorare, Dvs. trebuie sa 1) sa informati IBM in scris, in legatura cu pierderea sau deteriorarea, in 10 zile lucratoare de la livrare si 2) sa urmati procedura aplicabila in legatura cu reclamatiiile.

3.3 Instalarea

Sunteti de acord sa oferiti un mediu ce indeplineste cerintele specificate pentru Masina.

IBM detine proceduri de instalare standard. IBM va indeplini cu succes aceste proceduri inainte de a considera o Masina IBM ca fiind instalata (alta decat o Masina pentru care Dvs. amanati instalarea sau o Masina Customer-Set-Up).

Sunteti raspunzator pentru instalarea unei Masini Customer-Set-Up si, daca IBM nu este de acord in alt fel, si pentru instalarea unei Masini non-IBM.

Caracteristici, Conversii si Upgrade-uri de Masini

IBM vinde caracteristici, conversii si upgrade-uri pentru instalare pe Masini, si, in anumite cazuri, doar pentru instalare pe o Masina desemnata, cu numar inseriat. Multe dintre aceste tranzactii implica inlaturarea partilor si returnarea lor catre IBM. Dupa cum este aplicabil, declarati ca aveti permisiunea proprietarului si a oricarui detinator de drepturi reale accesorii pentru a 1) instala caracteristici, conversii si upgrade-uri si 2) transfera proprietatea si posesia componentelor inlaturate (care devin proprietatea IBM) catre IBM. De asemenea, declarati ca toate componentele indepartate sunt originale, nemodificate si in buna stare de functionare. O componenta ce inlocuieste o componenta indepartata preia Garantia sau Service-ul de

sion, 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. For purposes of this subsection, removed parts become the property of: (a) the relevant IBM subsidiary in countries where such subsidiary is located; or (b) IBM upon commencement of the export procedures in all other countries.

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 will identify Specific Machines in a Transaction Document. International Business Machines Corporation, one of its subsidiaries, 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.

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

Your acceptance of the terms of this Agreement includes acceptance of IBM's applicable Machine Code license agreement provided with the Machine Code and of the Agreement for Licensed Internal Code provided with the LIC. Current versions of the IBM License Agreement for Machine Code and the IBM Agreement for Licensed Internal Code are accessible through the following URL: http://www-1.ibm.com/servers/support/machine_warranties/ Machine Code license agreements and the Agreement for Licensed Internal Code may be amended by IBM from time to time. Such amended license terms will apply only to Machine Code and LIC that is supplied after such amended terms become effective.

4. Part 4 - ICA PROGRAMS

4.1 License

When your order is accepted, you will be granted a non-exclusive, nontransferable license to use the ICA Program in the Country of Installation. ICA Programs are owned by International Business Machines Corporation, one of its subsidiaries, or a third party and are copyrighted and licensed (not sold).

intretinere al componentei inlocuite. Sunteti de acord sa permiteti IBM sa instaleze caracteristica, conversia, upgrade-ul in termen de 30 zile de la livrarea sa. Altfel, IBM poate termina tranzactia si Dvs. trebuie sa returnati caracteristica, conversia sau upgrade-ul la IBM, pe cheltuiuala Dvs.. In scopul acestei subsectiuni, o componenta inlaturata devine proprietatea: a) filialei IBM in tara in care este aceasta localizata; sau b) IBM la inceperea procedurilor de export in toate celelalte tari.

3.4 Cod Masina si CIL

Codul de Masina este licentiat conform termenilor acordului furnizat impreuna cu Codul de Masina. Codul de Masina este licentiat numai pentru a permite unei Masini sa functioneze in conformitate cu Specificatia sa si numai pentru capacitatea si capabilitatea pentru care Dvs. sunteti autorizat de IBM in scris si pentru care plata este primita de catre IBM.

Anumite Masini specificate de IBM (denumite "Masini Specificate"), folosesc CIL. IBM va nominaliza Masinile Specifice intr-un Document Tranzactional. Corporatia IBM, una din subsidiarele sale sau o terta parte detine CIL inclusiv toate drepturile de autor si toate copiile CIL (acestea includ si CIL original, copii ale originalului CIL si copii ale copiilor). CIL detine drepturi de autor si este licentiat (nu vandut). CIL este licentiat conform termenilor acordului de licentiere furnizat impreuna cu CIL. CIL este licentiat numai pentru a permite unei Masini Specifice sa functioneze in conformitate cu Specificatiile sale si numai pentru capacitatea si capabilitatea pentru care Dvs. sunteti autorizat de IBM in scris si pentru care plata este primita de catre IBM.

Titlul nu va fi transferat cand IBM furnizeaza caracteristici, conversii si imbunatatiri care constau doar in Codul de Masina sau CIL.

Acceptarea de catre Dvs. a termenilor acestui contract include si acceptarea acordului de licentiere IBM aplicabil pentru Codul de Masina furnizat odata cu Codul de Masina precum si a acordului de licentiere pentru Codul Intern Licentiat furnizat odata cu CIL. Versiunile curente ale Acordului IBM de Licentiere pentru Codul de Masina si a Acordului IBM de Licentiere pentru Codul Intern Licentiat sunt accesibile la URL : http://www-1.ibm.com/servers/support/machine_warranties/. Acordurile de Licentiere pentru Codul de Masina si Acordul pentru Codul Intern Licentiat pot fi amendate din cand in cand de catre IBM. Acesti termeni de licentiere modificati se aplica doar pentru Codul de Masina si CIL care se furnizeaza dupa ce aceste modificari devin efective.

4. Partea 4 - PROGRAME ICA

4.1 Licenta

Atunci cand IBM accepta comanda Dvs., IBM va va atribui o licenta ne-exclusiva si ne-transferabila pentru a utiliza Programul ICA in tara in care este instalat Programul. Programele sunt proprietatea Corporatiei IBM sau a unei dintre filialele acesteia sau a unei terte parti si drepturile sale de autor sunt asigurate si licentiate (nu sunt vandute).

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 chargeable components, you agree to notify IBM of the component's actual date of distribution which is 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

Utilizare autorizata

În cadrul fiecărei licențe, IBM va autoriza:

1. să folosiți porțiunea instalată a Programului ICA doar pe mașina desemnată. Dacă mașina desemnată este inoperabilă, puteți utiliza o altă Mașină, temporar.

□ Dacă mașina desemnată nu poate asambla sau compila Programul ICA, puteți asambla sau compila Programul ICA pe o altă Mașină.

Dacă schimbați o mașină desemnată, identificată în prealabil pentru IBM, sunteți de acord să instiintati IBM asupra schimbării și a datei intrării în vigoare a acesteia;

2. să utilizați Programul ICA în măsura autorizațiilor pe care le-ați dobândit;

3. să realizați și să instalați copii ale Programului ICA, să sprijiniți nivelul de utilizare autorizat, cu condiția ca acesta să reproducă avizele privind dreptul de autor și orice alte explicații privind proprietatea pe orice copie sau copie parțială, și

4. să folosiți orice porțiune a Programului ICA pe care IBM 1) o asigură în forma originală sau 2) în forma restrictivă (de exemplu "Materiale IBM Restrictionate") numai pentru:

a) a rezolva problemele referitoare la utilizarea Programului ICA, și

b) a modifica Programul ICA astfel încât acesta să opereze împreună cu alte produse.

Obligațiile Dvs. suplimentare

Pentru fiecare Program ICA, sunteți de acord:

1. să respectați orice termeni suplimentari ce se găsesc în Specificațiile sale sau într-un Document Tranzacțional.

2. să vă asigurați că oricine utilizează Programul ICA (accesat fie local, fie de la distanță) face acest lucru numai pentru folosința Dvs. și că respectă termenii IBM referitori la Programele ICA; și

3. să păstrați o înregistrare a tuturor copiilor și să o furnizați IBM la cererea acestuia.

Acțiuni pe care nu le puteți întreprinde

Sunteți de acord:

1. să nu dezasmblați, să nu decodificați sau să nu traduceți în vreun alt mod Programul ICA în afara cazului în care este permis în mod expres de legea aplicabilă fără posibilitatea renunțării la obligațiile contractuale, sau

2. să nu sublicenseți, să nu transferați, să nu închiriați sau să nu oferiți în leasing Programul ICA.

4.2 Componentele Programului neutilizate pe mașina desemnată

Unele Programe ICA detin componente care sunt desemnate pentru a fi folosite pe alte mașini decât cea desemnată, pe care este utilizat Programul ICA. Puteți face copii ale unei componente sau a documentației acesteia ca sprijin pentru utilizarea autorizată de către Dvs. a Programului ICA. Pentru componente platibile, sunteți de acord să instiintati IBM asupra datei de distribuție efective a componentei, care este data de instalare a acesteia.

4.3 Opțiuni de licențiere a Sistemului Distribuît

Pentru anumite Programe ICA, puteți face o copie în cadrul unei Opțiuni de Licențiere a Sistemului Distribuît (numită licența "DSLO"). IBM solicită o sumă mai mică pentru o copie DSLO decât pentru licența originală (numită "Licența de Bază"). În schimb, pentru aceste costuri mai mici, sunteți de acord cu următoarele pe perioada atribuirii licenței DSLO:

1. să aveți o licență de Bază pentru Programul ICA;
2. să furnizați documentarea unei eventuale probleme și

- 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 provides 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 on one month's written notice, or at any time during the ICA Program's testing period.

Licenses for certain replacement ICA Programs may be obtained 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.

5. Part 5 - SERVICES

Services may be included under the terms of this Agreement in accordance with the conditions set forth in the Services definition (Section 1.1) and pursuant to a specific written agreement as reflected in the relevant Transaction Document and/or Attachment signed by the local IBM subsidiary and you.

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 will specify Materials to be delivered to you. IBM will identify 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.

sa primiti Service-ul de Program (daca exista) doar prin locatia Licentei de Baza; si

3. sa distribuiti si sa instalati pe masina Desemnata DSLO orice noua versiune, corectie sau deviatie pe care IBM le furnizeaza pentru Licenta de Baza.

4.4 Testarea Programului

IBM ofera o perioada de testare pentru anumite Programe ICA pentru a va ajuta sa apreciati daca acestea sunt in conformitate cu necesitatile Dvs.. Daca IBM ofera o perioada de testare, aceasta va incepe 1) in a doua zi lucratoare dupa Perioada Standard de Aprobare pentru Tranzitul Programului ICA sau 2) intr-o alta data precizata intr-un Document Tranzactional. IBM va va informa in legatura cu durata perioadei de testare a Programului ICA.

IBM nu asigura perioade de testare pentru copiile DSLO.

4.5 Service-ul Programului

IBM asigura Service-ul Programului pentru Programele ICA garantate. Daca IBM poate reproduce problema relatata de catre Dvs. in Mediul Operational Specific, IBM va emite informatii pentru corectarea defectiunii, o restrictie sau o deviere. IBM asigura Service-ul Programului doar pentru portiunea nemodificata a unei versiuni curente a unui Program ICA.

IBM asigura Service-ul Programului 1) in mod continuu (cu o notificare scrisa cu cel putin sase luni inainte ca IBM sa-si incheie Service-ul Programului), 2) pana la data specificata de IBM, sau 3) pentru o perioada de timp specificata de IBM.

4.6 Incetarea Licentei

Puteti inceta licentierea pentru un Program ICA in baza unei notificari cu o luna in avans sau in orice moment, in timpul perioadei de Testare a Programului ICA.

Licentele pentru anumite Programe ICA de inlocuire pot fi achizitionate contra unui cost de upgrade. Cand Dvs. solicitati aceste Programe de inlocuire, sunteti de acord cu incetarea licentierii pentru Programele ICA inlocuite, atunci cand costurile devin scadente, in afara cazului in care IBM specifica altfel.

IBM poate inceta licenta Dvs. daca nu respectati clauzele sale. Daca IBM procedeaza in acest mod, autorizatia Dvs. de a utiliza Programul ICA inceteaza de asemenea.

5. Partea 5 - SERVICII

Serviciile pot fi incluse conform termenilor acestui Contract in conformitate cu conditiile stabilite la definirea Serviciilor (Sectiunea 1.1) si pentru indeplinirea acordului scris specific, asa cum rezulta din Documentul Tranzactional aferent si/sau Anexa aferenta semnata de catre filiala IBM si Dvs..

5.1 Personal

Fiecare dintre Parti este raspunzatoare pentru supravegherea, indrumarea, controlul si remunerarea personalului propriu.

IBM isi rezerva dreptul de a hotari numirea personalului sau.

IBM poate subcontracta un Serviciu sau orice parte a acestuia subcontractorilor selectati de IBM.

5.2 Dreptul de Proprietate asupra Materialelor si Licentierea

IBM va specifica Materialele care urmeaza a fi livrate catre Dvs.. IBM le va identifica ca „Materiale de Tip 1”, „Materiale de Tip 2” sau in alt mod acceptat de catre ambele parti. Daca nu este specificat acest lucru,

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 will retain 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 will deliver 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. 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 return 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 a Machine that you do not own; and
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.

Materialele vor fi considerate „Materiale de Tip 2”.

Materialele de Tip 1 sunt materialele produse in timpul efectuării Serviciilor, asupra carora Dvs. veti avea toate drepturile, titlurile de proprietate si propriile interese (incluzand drepturile de autor). IBM va retine o copie a Materialelor. Dvs. acordati IBM 1) o licenta irevocabila, neexclusiva, universala, platita pentru a utiliza, executa, reproduce, afisa, efectua, si distribui (intern sau extern) copii ale Materialelor de Tip 1, cat si pentru a pregati lucrari derivate bazate pe aceste Materiale de Tip 1 si 2) dreptul de a permite altora sa faca oricare din cele de mai sus.

Materialele de Tip 2 sunt materialele produse in timpul efectuării Serviciilor sau in alt mod (cum ar fi acelea care preexista Serviciilor), asupra carora IBM sau o terta parte are toate drepturile, titlurile de proprietate si propriile interese (incluzand drepturile de autor). IBM va livra o copie a Materialelor specificate catre Dvs.. IBM va va acorda o licenta irevocabila, neexclusiva, universala, platita pentru a utiliza, executa, reproduce, afisa, efectua, si distribui copii ale Materialelor de Tip 2, numai in cadrul Intreprinderii Dvs..

Fiecare dintre Parti este de acord sa reproduca nota privind copyright-ul si orice alta legenda privind dreptul de proprietate pe orice copie facuta in baza licentei acordate conform cu aceasta Sectiune.

5.3 Servicii pentru Masini (in timpul garantiei si dupa garantie)

IBM asigura anumite tipuri de Servicii pentru a conserva Masinile sau pentru a le restaura in conformitate cu Specificatiile lor. IBM va va informa despre toate tipurile de Service pe care le are la dispozitie pentru o Masina. IBM 1) poate repara Masina deteriorata sau o poate schimba si 2) poate asigura Servicii fie la sediul Dvs., fie la un centru de Service, dupa cum considera de cuviinta.

Cand tipul de Service va va impune sa livrati Masina defecta catre IBM, sunteti de acord sa o livrati ambalata corespunzator (cu taxele de expediere platite in avans, in afara cazului in care IBM specifica altfel) catre o locatie desemnata de IBM. Dupa ce IBM a reparat sau schimbat Masina, IBM o va returna catre Dvs., pe cheltuiala IBM, in afara cazului in care IBM specifica altfel. IBM este raspunzator pentru pierderea sau deteriorarea Masinii Dvs. in timp ce aceasta este 1) in posesia IBM sau 2) in tranzit, in acele cazuri cand IBM este raspunzator pentru cheltuielile de transport.

Orice caracteristica, conversie sau upgrade pentru care IBM asigura service, trebuie sa fie instalate pe o Masina care este 1) pentru anumite Masini, Masina Desemnata si inseriata si 2) la un nivel de modificare tehnologica, compatibila cu caracteristicile, conversia sau upgrade-ul. IBM opereaza si instaleaza modificarile constructive care se aplica Masinilor IBM si poate executa, de asemenea, intretinerea preventiva.

Sunteti de acord:

1. sa obtineti autorizarea de la proprietar pentru ca IBM sa presteze serviciile pentru o Masina care nu se afla in proprietatea Dvs.; si
2. unde este cazul, inainte ca IBM sa asigure Service-ul:
 - a) sa urmariti diagnosticarea problemei, analiza problemei si procedeele pentru solicitarea service-ului asigurat de IBM,
 - b) sa asigurati toate programele, informatiile si fondurile continute intr-o Masina, si
 - c) sa informati IBM in legatura cu schimbarea locatiei Masinii.

Replacements

When Service involves the exchange of a Machine or part, the replacement becomes yours and the replaced item becomes the property of: (a) the relevant IBM subsidiary in countries where such subsidiary is located; or (b) IBM upon commencement of the export procedures in all other countries. 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.

Some parts of IBM Machines are designated as Customer Replaceable Units (called, "CRUs"), e.g., keyboards, memory, or hard disk drives. IBM provides CRUs to you for replacement by you. You must return all defective CRUs to IBM within 30 days of your receipt of the replacement CRU. You are responsible for downloading designated Machine Code and LIC updates from an IBM Internet Web site or from other electronic media, and following the instructions that IBM provides.

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; or
5. service of Machine alterations; or
6. service of a Machine on which you are using any 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.

5.4 Other Maintenance Coverage

Whenever you order maintenance Service for Machines that are not subject to maintenance coverage (ie. Maintenance following the warranty period), the IBM subsidiary in the country of installation will inform you of the date on which maintenance Service will begin. Such IBM subsidiary may inspect the Machine within one month following that date. If the Machine is not in an acceptable condition for service, you may have such IBM subsidiary restore it for a charge. Alternatively, you may withdraw your request for maintenance Service. However, you will be charged for any maintenance Service which such IBM subsidiary has performed at your request.

Inlocuiri

Cand Service-ul presupune schimbarea unei Masini sau a unei parti a acesteia, piesa de schimb devine proprietatea Dvs., iar componenta inlocuita devine proprietatea: a) filialei IBM, in tara in care aceasta se afla; sau b) IBM, la inceperea procedurilor de export in toate celelalte tari. Declarati ca toate componentele indepartate sunt originale si nemodificate. Componenta de schimb poate sa nu fie noua, dar trebuie sa fie in stare buna de functionare si, cel putin din punct de vedere functional, echivalenta cu componenta inlocuita. Componenta de schimb preia Garantia sau Service-ul de intretinere al componentei inlocuite. Inainte ca IBM sa schimbe o Masina sau o parte a acesteia, sunteti de acord sa indepartati toate caracteristicile sale, partile, optiunile, modificarile, si anexele care nu se afla sub incidenta service-ului IBM. Sunteti, de asemenea, de acord sa asigurati faptul ca respectiva componenta nu este supusa nici unor obligatii sau restrictii legale, care ar putea impiedica schimbarea sa.

Anumite segmente din Masinile IBM sunt desemnate a fi Unitati Inlocuibile ale Clientului (numite "CRU"), de ex., tastaturi, memorie, driver-e hard-disk-uri. IBM va furnizeaza CRU pentru ca Dvs. sa faceti inlocuirea. Trebuie sa returnati catre IBM toate CRU-urile defecte, in 30 de zile de la primirea de catre Dvs. a CRU-urilor care le inlocuiesc. Sunteti responsabil atat pentru descarcarea Codului Masina si a actualizarilor CIL de pe un web site de Internet IBM sau din alt mediu electronic, cat si pentru urmare instructiunilor pe care IBM le furnizeaza.

Componente neacoperite de service

Service-ul de reparatii si inlocuiri nu acopera:

1. accesoriile, componentele si anumite parti, cum ar fi baterii, cadrul metalic si capace;
2. Masinile deteriorate din cauza intrebuntarii gresite, accidentelor, modificarilor, mediului fizic si operational nepotrivit sau a intretinerii neadecvate de catre Dvs.;
3. Masinile avand etichetele lor identificare sau ale componentelor, indepartate ori modificate;
4. avariile cauzate de un produs pentru care IBM nu este responsabil;
5. Service-ul modificarilor Masinilor;
6. Service-ul pentru o Masina asupra careia Dvs. folositi alta capacitate si capabilitate decat cea aprobata de IBM in scris.

Actualizarea Serviciului de Garantie

Pentru anumite Masini, puteti alege actualizarea serviciului din serviciul de garantie standard pentru Masina. IBM va va taxa pentru actualizarea serviciului in timpul perioadei de garantie.

Nu puteti termina actualizarea serviciului sau nu-l puteti transfera altei Masini pe timpul perioadei de garantie.

5.4 Alte acoperiri de Intretinere

Ori de cate ori Dvs. veti solicita Service-ul de intretinere pentru Masini, ce nu sunt acoperite de intretinere 9de ex. Intretinere dupa perioada de garantie), filiala IBM in tara de instalare va va informa asupra datei la care va incepe Service-ul de intretinere. Filiala IBM respectiva poate inspecta masina in termen de o luna de la acea data. Daca Masina nu se afla intr-o conditie acceptabila pentru service, veti putea solicita filialei IBM respective sa o repare, contra cost. Ca o alternativa, puteti sa va retrageti solicitarea pentru Service-ul de intretinere. Oricum, veti fi obligat la plata pentru orice Service de Intretinere pe care IBM l-a executat la solicitarea Dvs..

Such maintenance coverage will be subject to the terms of a separate maintenance agreement.

5.5 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.

5.6 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.

O astfel de acoperire de intretinere va face obiectul termenilor unui contract de intretinere separat.

5.5 Reinnoire automata a Serviciului

Serviciile ce pot fi reinnoite se reinnoiesc automat pe aceeasi perioada contractuala cu exceptia cazului in care oricare dintre Parti adreseaza o notificare scrisa celeilalte (cu cel putin o luna in avans fata de data de sfarsit a perioadei de contract curente) privind decizia sa de a nu reinnoi.

5.6 Terminarea si Retragerea unui Serviciu

Oricare dintre Parti poate termina un Serviciu daca cealalta Parte nu isi indeplineste obligatiile referitoare la Serviciu.

Puteti termina un Serviciu printr-o notificare trimisa catre IBM cu conditia ca Dvs. sa fi indeplinit toate cerintele minime si sa fi platit toate taxele de ajustare, specificate in Anexe si in Documentele Tranzactionale. In cazul unui Serviciu de intretinere, il puteti termina, fara a plati taxa de ajustare, in situatia aparitiei oricarua din cazurile urmatoare:

1. indepartati permanent produsul eligibil pentru care este oferit Serviciul din uzul productiv in cadrul Intreprinderii Dvs.;
 2. locatia eligibila pentru care este oferit Serviciul nu mai este controlata de catre Dvs. (de exemplu, din cauza vanzarii sau inchiderii unei facilitati);
 3. Masina s-a aflat sub Serviciu de intretinere in ultimele sase luni si Dvs. notificati in scris IBM cu o luna in avans in legatura cu terminarea Serviciului de intretinere.
- Sunteti de acord sa platiti IBM pentru 1) toate Serviciile pe care IBM le ofera si orice Materiale si Produse pe care IBM le furnizeaza pana la terminarea Serviciului, 2) orice cheltuieli datorate de IBM pana la terminarea Serviciului si 3) orice plati datorate de IBM pentru terminarea Serviciului.

IBM poate retrage un Serviciu sau asistenta pentru un Produs eligibil prin notificare scrisa cu trei luni in avans catre Dvs.. Daca IBM retrage un serviciu pentru care Dvs. ati platit in avans, iar IBM nu vi l-a oferit in totalitate, IBM va rambursa proportional plata.

Orice termeni care prin natura lor se extind dincolo de terminarea sau retragerea unui Serviciu raman in vigoare pana la indeplinirea lor, si se aplica succesorilor si mandatarilor nostri.