

IBM Agreement for Machines

This IBM Agreement for Machines (called the "Agreement") governs transactions by which Customer purchases Machines from IBM Canada Ltd. ("IBM").

1. Attachments and Transaction Documents

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

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

2. Definitions

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

Date of Installation –

- a. for an IBM Machine that IBM is responsible for installing, the business day after the day IBM installs it or, if Customer defers installation, makes it available to Customer for subsequent installation by IBM; and
- b. for a Customer-set-up Machine and a non-IBM Machine, the second business day after the Machine's standard transit allowance period.

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

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

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

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

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

3. Acceptance of Terms

Customer accepts the terms in Attachments and Transaction Documents by i) signing them (by hand or electronically), ii) using the Machine, or allowing others to do so, or iii) making any payment for the Machine.

A Machine becomes subject to this Agreement when IBM accepts Customer's order by sending Customer a Transaction Document, or shipping the Machine.

Any Attachment or Transaction Document will be signed by both parties if requested by either party.

4. Charges and Payment

4.1 Charges

A Transaction Document specifies the amount payable for Machines based on one-time or recurring charges. Additional charges may apply (such as special handling expenses). IBM will inform Customer in advance whenever additional charges apply.

Recurring charges for a Machine begin on its Date of Installation. Unless otherwise provided in this Agreement (including any applicable Attachment or Transaction Document) IBM does not give credits or refunds for any prepaid or other charges already due or paid.

4.2 Usage Charges

One-time and recurring charges may be based on measurements of actual or authorized use (for example, authorized capacity for Machines). Customer agrees to provide actual usage data as described in an Attachment or Transaction Document.

If a Transaction Document provides an estimated total charge for usage charges, the estimate is for planning purposes only. IBM invoices charges based on Customer's actual or authorized use, subject to any specified minimum commitment.

If Customer makes changes to its environment that impact usage charges (for example, change authorized capacity for Machines), Customer agrees to promptly notify IBM and pay any applicable charges. Charges will be adjusted accordingly. In the event that IBM changes the basis of measurement, its terms for changing charges will apply.

4.3 Changes to Charges

From time to time, IBM may change its charges. Customer receives the benefit of a decrease in charges for amounts that become due on or after the effective date of the decrease.

Unless provided otherwise in an Attachment or Transaction Document, IBM may increase recurring charges for Machines provided under this Agreement, by giving Customer three months' written notice. An increase applies on the first day of the invoice or charging period on or after the effective date IBM specifies in the notice.

IBM may increase one-time charges without notice. If IBM increases a one-time charge, IBM will announce it as effective either immediately, or at a future date. When the increase is effective immediately, the lower charge will apply to orders IBM received before the announcement date if Customer's requested delivery date falls within three months after the announcement date.

IBM may change the terms of the prior sentence on three months' written notice. .

Upon reasonable notice, IBM may verify the usage data and other information affecting the calculation of charges under this Agreement. Such verification will be conducted in a manner that minimizes disruption to Customer's business and may be conducted on Customer's premises, during Customer's normal business hours. Customer agrees to i) provide records, system tools outputs, and other electronic or hard copy system information reasonably necessary for such verification, and ii) promptly pay any additional, valid charges and other liabilities determined as a result of such verification.

4.4 Payment

Amounts are due upon receipt of invoice and payable as specified in a Transaction Document. Customer agrees to pay accordingly, including any late payment fee. Payment may be made electronically to an account specified by IBM or by other means agreed to by the parties.

4.5 Taxes

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

5. Changes to the Agreement Terms

In order to maintain flexibility in our business relationship, IBM may change the terms of this Agreement by providing Customer at least three months' written notice. However, these changes are not retroactive. They apply, as of the effective date IBM specifies in the notice, only to new orders, on-going transactions that do not expire, and transactions with a defined renewable contract period. For transactions with a defined renewable contract period, Customer may request that IBM defer the change effective date until the end of the current contract period

Customer acknowledges its agreement to have these changes apply for such transactions by i) placing new orders for Machines after the change effective date, ii) failing to request that the change effective date be deferred until the start of the next renewal period, iii) allowing transactions to renew after receipt

of the change notice, or iv) failing to terminate non-expiring transactions prior to the change effective date. Changes to charges are implemented as described in the Charges and Payment section above. Otherwise, for a change to be valid, both parties must sign it.

6. IBM Business Partners

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

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

7. Production Status

Each IBM Machine is manufactured from parts that may be new or used. In some cases, a Machine may not be new and may have been previously installed. Regardless, IBM's applicable warranty terms described in section 12 apply.

8. Delivery

Delivery dates are estimates unless otherwise specifically agreed in a Transaction Document. Transportation charges, if applicable, will be specified in a Transaction Document.

9. Title and Risk of Loss

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

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

10. Installation

Customer agrees to provide an environment meeting the requirements for the Machine as specified in its published documentation.

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

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

11. Upgrades and Engineering Changes

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

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

Many upgrades and engineering changes require the removal of parts and the transfer of ownership and possession of the removed parts to IBM. Customer is responsible for the return of all removed parts to IBM upon installation of the upgrade or engineering change. As applicable, Customer represents that Customer has permission from the owner and any lien holders to i) install upgrades and engineering changes and ii) transfer ownership and possession of removed parts to IBM. Customer further

represents that all removed parts are genuine, unaltered, and in good working order. A part that replaces a removed part will assume the warranty or maintenance service status of the replaced part.

12. Machine Code

Machine Code is licensed under the terms and restrictions of the Machine Code license agreement (e.g., IBM License Agreement for Machine Code, IBM Agreement for Licensed Internal Code, or an equivalent) provided with the Machine Code. Customer acceptance of the terms of this Agreement includes acceptance of IBM's Machine Code license agreements, current versions of which are available at the following URL: http://www.ibm.com/servers/support/machine_warranties/support_by_product.html or by contacting an IBM representative. Machine Code license agreements may be amended by IBM from time to time. Such amended license terms will apply only to Machine Code that is supplied after such amended terms become effective.

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 Customer has acquired IBM's written authorization. Customer agrees to use Machine Code only as specified in this Agreement and as may be further authorized or restricted in its applicable license agreement. Without limiting additional restrictions in the applicable license, Customer may not:

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

International Business Machines Corporation, one of its subsidiaries, or a third party owns Machine Code including the original and all whole or partial copies of Machine Code. Machine Code is copyrighted and licensed (not sold).

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

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

13. Warranty

13.1 Warranty for Machines

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

The warranty period for an IBM Machine is a fixed period commencing on its Date of Installation and specified in a Transaction Document. During the warranty period, IBM provides repair and exchange service for the IBM Machine, without charge, under the type of service IBM designates for the IBM Machine. If an IBM Machine does not function as warranted during the warranty period and IBM is unable to either i) make it do so or ii) replace it with one that is at least functionally equivalent, Customer may return it to IBM for a refund.

13.2 Warranty for Systems

When IBM specifies in an Attachment or Transaction Document that it is providing Machines to Customer that are intended to operate together as a system, IBM warrants that those Machines are compatible and, when installed in accordance with their Specifications, will operate with one another. This warranty is in addition to IBM's other applicable warranties.

13.3 Extent of Warranty

The warranty 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, improper maintenance by Customer or a third party, or failure or damage caused by a product for which IBM is not responsible. The warranty for IBM Machines is voided by removal or alteration of Machine or parts identification labels.

THIS WARRANTY IS CUSTOMER'S EXCLUSIVE WARRANTY AND REPLACES 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 AND ANY WARRANTY OF NON-INFRINGEMENT.

13.4 Items Not Covered by Warranty

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

IBM will identify IBM Machines that it does not warrant.

Unless otherwise specified in an Attachment or Transaction Document, IBM provides non-IBM Machines (including those provided with, or installed on, an IBM Machine at Customer's request) **WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND**. However, non-IBM manufacturers, suppliers, or publishers may provide their own warranties to Customer.

14. Warranty Service

14.1 Warranty Service

IBM provides certain types of warranty service to keep Machines in, or restore them to, conformance with their Specifications during the Machine's warranty period as specified in the Warranty for Machines section above. IBM will inform Customer of the available types of service for a Machine. At its discretion, IBM will i) either repair or exchange the failing Machine and ii) provide the service either at Customer's location or a service center. IBM manages and installs selected engineering changes that apply to IBM Machines and may also perform preventive maintenance.

Any feature, conversion, or upgrade IBM services must be installed on a Machine which is i) the designated, serial-numbered Machine, if applicable, and ii) at an engineering-change level compatible with the feature, conversion, or upgrade.

When the type of service requires that Customer deliver the failing Machine to IBM, Customer agrees to ship it suitably packaged (prepaid unless IBM specifies otherwise) to a location IBM designates. After IBM has repaired or exchanged the Machine, IBM will deliver it to Customer at IBM's expense unless IBM specifies otherwise. IBM is responsible for loss of, or damage to, Customer's Machine while it is i) in IBM's possession or ii) in transit in those cases where IBM is responsible for the transportation charges.

Customer agrees:

- a. to obtain authorization from the owner to have IBM service a Machine that Customer does not own;
- b. where applicable, before IBM provides service, to --
 - (1) follow the problem determination and service request procedures that IBM provides,
 - (2) secure all programs, data, and funds contained in a Machine, and
 - (3) inform IBM of changes in a Machine's location.
- c. to follow the service instructions that IBM provides (which may include installing Machine Code and other software updates either downloaded from an IBM Internet Web site or copied from other electronic media);
- d. unless otherwise agreed in an Attachment or Transaction Document, Customer is responsible for i) any data and the content of any database Customer makes available to IBM in connection with warranty service under this Agreement, ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data, and iii) backup and recovery of the database and any stored data, and
- e. when Customer returns a Machine to IBM for any reason --
 - (1) to securely erase from any Machine all programs not provided by IBM with the Machine and data, including without limitation, the following: i) information about identified or identifiable individuals or legal entities ("Personal Data") and ii) Customer's confidential or proprietary information and other data. If removing or deleting Personal Data is not possible, Customer agrees to transform such information (e.g., by making it anonymous) so that it no longer qualifies as Personal Data under applicable law;
 - (2) to remove all funds from Machines returned to IBM. IBM is not responsible for any funds, programs not provided by IBM with the Machine, or data contained in a Machine that Customer returns to IBM; and

- (3) IBM may ship all or part of the Machine or its software to other IBM or third party locations around the world to perform its responsibilities under this Agreement, and Customer authorizes IBM to do so.

14.2 Replacements

When warranty service involves the exchange of a part or Machine, the item IBM replaces becomes its property and the replacement becomes Customer's. Customer represents that all removed items are genuine and unaltered. The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty service status of the replaced item. Before IBM exchanges a part or Machine, Customer agrees to remove all features, parts, options, alterations, and attachments not under IBM's service. Customer also agrees to i) ensure that the part or Machine is free of any legal obligations or restrictions that prevent its exchange and ii) transfer ownership and possession of removed parts to IBM.

Service for some IBM Machines involves IBM providing Customer with an exchange replacement for installation by Customer. Such exchange replacements may be i) a part of a Machine (called a Customer Replaceable Unit, or "CRU," e.g., keyboard, memory, or hard disk drive), or ii) an entire Machine. Customer may request IBM to install the replacement CRU or Machine, however, Customer may be charged for the installation. IBM provides information and replacement instructions with Customer's Machine and at any time on Customer's request. IBM specifies in the materials shipped with a replacement whether the failing CRU or Machine must be returned to IBM. When return is required, return instructions and a container are shipped with the replacement, and Customer may be charged for the replacement if IBM does not receive the failing CRU or Machine within 15 days of Customer's receipt of the replacement.

14.3 Items Not Covered

Warranty service does not cover:

- a. accessories, supply items, consumables (such as batteries and printer cartridges), and structural parts (such as frames and covers);
- b. failures caused by a product for which IBM is not responsible;
- c. service of Machine alterations; or
- d. service of a Machine to which any of the warranty exclusions or limitations in the above section, Items Not Covered by Warranty, apply.

14.4 Warranty Service Upgrade

For certain Machines, Customer may select a service upgrade from the standard type of warranty service for the Machine. IBM charges for the service upgrade during the warranty period.

Customer may not terminate the service upgrade or transfer it to another Machine during the warranty period.

15. Intellectual Property Protection

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

15.1 Third Party Claims

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

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

15.2 Remedies

If such a claim is made or appears likely to be made, Customer agrees to permit IBM to enable Customer to continue to use the Machine, 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, Customer agrees to

return the Machine to IBM on IBM's written request. IBM will then give Customer a credit equal to Customer's net book value calculated according to generally-accepted accounting principles.

15.3 Claims for Which IBM is Not Responsible

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

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

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

16. Limitation of Liability

16.1 Items for which IBM May be Liable

Circumstances may arise where, because of a default on IBM's part or other liability, Customer is entitled to recover damages from IBM. Regardless of the basis on which Customer is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM's entire liability for all claims in the aggregate arising from or related to each Machine or otherwise arising under this Agreement will not exceed the amount of any actual direct damages up to the greater of \$100,000, or the charges (if recurring, 12 months' charges apply) for the Machine that is the subject of the claim. For purposes of this Limitation of Liability section, the term "Machine" also includes Machine Code.

This limit also applies to any of IBM's subcontractors. It is the maximum for which IBM and its subcontractors are collectively responsible. The following amounts are not subject to a cap on the amount of damages:

- a. payments referred to in the Intellectual Property Protection section above; and
- b. damages for bodily injury (including death) and physical harm to real property and tangible personal property caused by IBM's negligence.

16.2 Items for Which IBM is Not Liable

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

- a. loss of, or damage to, data;
- b. special, incidental, consequential or indirect damages (other than as part of the payments referred to in the Intellectual Property Protection section or for bodily injury including death caused by our negligence) including, but not limited to, lost profits, business, revenue, goodwill or anticipated savings; or
- c. exemplary damages.

17. General Principles of Our Relationship

17.1 Notices and Communications

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

17.2 Assignment and Resale

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

Customer agrees to acquire Machines with the intent to use them within its Enterprise and not for remarketing, leasing, or transferring to a third party, unless Customer is arranging lease-back financing for the Machines.

17.3 Compliance with Laws

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

Each party will comply with applicable export and import laws and regulations, including but not limited to, those that apply to goods of US origin and those that restrict or prohibit export for certain end users or to certain end users.

17.4 Dispute Resolution

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

17.5 Other Principles of Our Relationship

- a. Neither party grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent.
- b. The exchange of any confidential information will be made under a separate, signed confidentiality agreement. However, to the extent confidential information is exchanged in connection with any Machine under this Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this Agreement.
- c. This Agreement and any transaction under it do not create an agency, joint venture, or partnership between Customer and IBM. Each party is free to enter into similar agreements with others to develop, acquire, or provide competitive products and services.
- d. Each party grants only the licenses and rights specified in this Agreement. No other licenses or rights (including licenses or rights under patents) are granted either directly, by implication, or otherwise. The rights and licenses granted to Customer under this Agreement may be terminated if Customer fails to fulfill its applicable payment obligations.
- e. Customer authorizes International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors and IBM Business Partners) to store and use Customer's business contact information wherever they do business, in connection with IBM products and services or in furtherance of IBM's business relationship with Customer.
- f. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is IBM responsible for any third party claims against Customer except as described in the Intellectual Property Protection section above or as permitted by the Limitation of Liability section above for bodily injury (including death) or physical harm to real or tangible personal property caused by IBM's negligence for which IBM is legally liable to that third party.

- g. Customer is responsible for selecting the Machines that meet its needs and for the results obtained from the use of the Machines, including Customer's decision to implement any recommendation concerning Customer's business practices and operations.
- h. Where approval, acceptance, consent or similar action by either party is required under this Agreement, such action will not be unreasonably delayed or withheld.
- i. Neither party is responsible for failure to fulfill any non-monetary obligations due to events beyond its control.
- j. As reasonably required by IBM to fulfill its obligations under this Agreement, Customer agrees to provide IBM with sufficient and safe access (including remote access) to Customer's facilities, systems, information, personnel, and resources, all at no charge to IBM. IBM is not responsible for any delay in performing or failure to perform caused by Customer's delay in providing such access or performing other Customer responsibilities under this Agreement.

18. Data Privacy

18.1 Data Privacy – All Customers Except Public Bodies Who Are Subject to Public Sector Privacy Legislation

For purposes of this section, "Personal Data" refers to information relating to an identified or identifiable individual made available by one of the parties, its personnel or any other individual to the other in connection with this Agreement. In addition to each party's obligations under existing agreements, the following provisions apply in the event that one party makes Personal Data available to the other:

- a. General
 - (1) Each of party is responsible for complying with any obligations applying respectively to each party under applicable Canadian data privacy laws and regulations ("Laws").
 - (2) Neither party will request Personal Data beyond what is necessary to fulfill the purpose(s) for which it is requested. The purpose(s) for requesting Personal Data shall be reasonable. Each party will agree in advance as to the type of Personal Data which is required to be made available.
- b. Security Safeguards
 - (1) Each party acknowledges that it is solely responsible for determining and communicating to the other the appropriate technological, physical and organizational security measures required to protect Personal Data.
 - (2) Each party will ensure that Personal Data is protected in accordance with the security safeguards communicated and agreed to by the other.
 - (3) Each party will ensure that any third party to whom Personal Data is transferred is bound by the applicable terms of this section.
 - (4) Additional or different services required to comply with the Laws will be deemed a request for new services.
- c. Use

Each party agrees that Personal Data will only be used, accessed, managed, transferred, disclosed to third parties or otherwise processed to fulfill the purpose(s) for which it was made available.
- d. Access Requests
 - (1) Each of party agrees to reasonably cooperate with the other in connection with requests to access or amend Personal Data.
 - (2) Each party agrees to reimburse the other for any reasonable charges incurred in providing each other assistance.
 - (3) Each party agrees to amend Personal Data only upon receiving instructions to do so from the other party or its personnel.
- e. Retention

Each party will promptly return to the other or destroy all Personal Data which is no longer necessary to fulfill the purpose(s) for which it was made available, unless otherwise instructed by the other or its personnel or required by law.

18.2 Data Privacy – Public Body Customers Only Who Are Subject to Public Sector Privacy Legislation

For purposes of this section, "Personal Data" refers to information relating to an identified or identifiable individual made available by IBM, our personnel, or any other individual to Customer in connection with this Agreement. In addition to each party's obligations under any existing agreements, the following provisions shall apply in the event that IBM makes Personal Data available to Customer:

a. General

- (1) Each party is responsible for complying with any obligations applying respectively to each of the parties under applicable Canadian data privacy laws and regulations.
- (2) Customer will not request Personal Data beyond what is necessary to fulfill the purpose(s) for which it is requested. The purpose(s) for requesting the Personal Data shall be reasonable.

b. Security Safeguards

- (1) IBM acknowledges that it is solely responsible for determining and communicating to Customer the appropriate technological, physical and organizational security safeguards required to protect Personal Data.
- (2) Customer will ensure that Personal Data is protected in accordance with the security safeguards communicated to Customer.
- (3) Customer will ensure that any third party to whom Personal Data is transferred is bound by the applicable terms of this section.

c. Use

Customer agrees that Personal Data will only be used, accessed, managed, transferred, disclosed to third parties or otherwise processed to fulfill the purpose(s) for which it was made available.

d. Access Requests

- (1) The parties will reasonably cooperate with each other in connection with requests to access or amend Personal Data.
- (2) Customer agrees to amend Personal Data only upon receiving instructions to do so from IBM or its personnel.

e. Retention

Customer will promptly return to IBM or destroy all Personal Data which is no longer necessary to fulfill the purpose(s) for which it was made available, unless otherwise instructed by IBM or its personnel, or required by law.

19. Agreement Termination

Either party may terminate this Agreement on written notice to the other following the expiration or termination of the terminating party's obligations under this Agreement, including any applicable Attachment or Transaction Document.

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

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

20. Geographic Scope and Governing Law

The rights, duties, and obligations of each party are valid only in Canada except that all licenses are valid as specifically granted.

Both parties agree to the application of the laws in the Province of Ontario to govern, interpret, and enforce all of Customer's and IBM's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

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

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

This Agreement, including its applicable Attachments and Transaction Documents, is the complete agreement regarding transactions by which Customer purchases Machines from IBM, and replaces any prior oral or written communications between Customer and IBM. In entering into this Agreement, including each Attachment and Transaction Document, neither party is relying on any representation that is not specified in this Agreement including without limitation any representations concerning: i) performance or function of any Machine or system, other than as expressly warranted in the Warranty section above; ii) the experiences or recommendations of other parties; or iii) results or savings Customer may achieve. Additional or different terms in any written communication from Customer (such as a purchase order) are void.

Each party accepts, on behalf of its Enterprise, the terms of this Agreement by signing this Agreement (or another document that incorporates it by reference) by hand or, where recognized by law, electronically. Once signed, i) any reproduction of this Agreement, an Attachment, or Transaction Document made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original and ii) all Machines ordered under this Agreement are subject to it.

(Remove the following "English Language in Province of Quebec" Clause, if not required)

Both of us agree to write this document in English. Les parties ont convenu de rédiger le présent document en langue anglaise.

Agreed to:

Customer Legal Name

Agreed to:

IBM Canada Ltd.

By _____

Authorized signature

Title:

By _____

Authorized signature

Title:

Name (type or print):

Name (type or print):

Date:

Date:

Customer identification number:

Agreement number:

Customer address:

IBM address:

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