NOTICE: PLEASE CAREFULLY READ THE FOLLOWING TERMS UNDER WHICH INTERNATIONAL BUSINESS MACHINES CORPORATION ("IBM") WILL PROVIDE THIS SERVICE TO YOU.

IBM WILL PROVIDE THIS SERVICE TO YOU ONLY IF: 1) YOU ARE ACQUIRING THIS SERVICE FOR A MACHINE WHICH IS NORMALLY USED FOR BUSINESS, PROFESSIONAL, OR TRADE PURPOSES, RATHER THAN PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES; 2) YOU COMPLETE THE ONLINE PROCESS IN IBM’S INTERNET WEBSITE TO ACTIVATE THE SERVICE WITHIN 30 DAYS OF PURCHASE (UNLESS IBM AGREES OTHERWISE); AND 3) YOU ACCEPT THE TERMS OF THIS AGREEMENT. YOU CONFIRM YOUR ACCEPTANCE OF THIS AGREEMENT ELECTRONICALLY IN IBM’S INTERNET WEBSITE, BY “CLICKING” YOUR AFFIRMATIVE ACCEPTANCE, DURING YOUR COMPLETION OF THE ONLINE PROCESS TO ACTIVATE THIS SERVICE. IF YOU DO NOT MEET THESE CONDITIONS OR YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT, PROMPTLY NOTIFY YOUR PLACE OF PURCHASE AND REQUEST A REFUND OR A CREDIT TO YOUR DEBIT OR CREDIT CARD IN THE AMOUNT YOU PAID FOR THIS SERVICE. ONCE YOU ACTIVATE THIS SERVICE, IBM WILL NOT PROVIDE A REFUND OR CREDIT YOUR DEBIT OR CREDIT CARD.

.1 Scope and Agreement Acceptance

.1.1 Scope

This IBM Migration Services for Data for Open Systems ServicePac Agreement ("Agreement") governs IBM’s provision and your use of IBM Migration Services for Data for Open Systems ("Services") for this transaction for a ServicePac part number that you order from IBM or an IBM Business Partner. A list of eligible ServicePac part numbers can be found in the section below entitled ServicePac Part Numbers and Descriptions. These migrations require that the source and target storage servers are attached to and accessible by supported versions of the IBM AIX, HP-UX, Sun Solaris, Linux and/or Microsoft Windows server(s), and are located within a single site. For a comprehensive list of supported operating systems, refer to the IBM Internet website at: http://www-935.ibm.com/services/us/index.wss/summary/its/a1002451.

.1.2 Acceptance

This Agreement is the complete agreement regarding IBM’s provision and your use of the Services and replaces any prior oral or written communications between you and IBM regarding this transaction. In entering into this Agreement neither party is relying on any representation that is not specified in the Agreement including without limitation any representations concerning: 1) estimated completion dates, hours, or fees to provide the Services; 2) performance or function of any product or system; 3) the experiences or recommendations of other parties; or 4) results or savings you may achieve. Additional or different terms in any written communication from you (such as a purchase order) are void.

By signing this Agreement electronically, each of us accepts the terms of this Agreement, without modification, on behalf of its Enterprise (an “Enterprise” is any legal entity (such as a corporation) and the subsidiaries it owns by more than 50 percent. The term “Enterprise” applies only to the portion of the Enterprise located in the United States). Once signed, 1) any reproduction of this Agreement made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original and 2) the Services are subject to it.

.2 IBM Business Partners

IBM has signed agreements with certain organizations ("IBM Business Partners") to promote, market, and support certain Services. When you order Services that are promoted or marketed to you by IBM Business Partners or other suppliers, however, 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, obligations that either has to you, or any products or services that they supply to you under their agreements.

.3 Facilities and Hours of Coverage

.a The Services will be provided at the address you specify as the migration location when you register for this Service.
The Services will be provided during normal business hours, 08:00 a.m. to 05:00 p.m. Monday through Friday, spanning a series of contiguous business days, in your time zone, except national holidays, unless otherwise specified.

.4 IBM’s Responsibilities

IBM will: a) conduct a conference call with you to review your ServicePac order after you activate the Services; b) provide an Information Technology (“IT”) Services specialist to perform the tasks in accordance with the description specified in this Agreement for the ServicePac part number you order; and c) deliver to you upon completion of the Services one copy of a report (“Migration Control Book”) that outlines the tasks that were performed by the IT Services specialist during the Services (for example, migration schedule, summary of migration activities, and volume(s) of data migrated). IBM’s responsibilities under this Agreement are complete when IBM delivers the Migration Control Book to you. IBM or third parties have all right, title, and interest (including ownership of copyright) in the Migration Control Book. IBM grants you an irrevocable, nonexclusive, worldwide, paid-up license to use, reproduce, display, and distribute, within your Enterprise only, copies of the Migration Control Book. You agree to reproduce the copyright notice and any other legend of ownership on any copies made under the license granted herein. IBM provides the Migration Control Book WITHOUT WARRANTIES OF ANY KIND.

.5 ServicePac Part Numbers and Descriptions

The Services provided to you will be in accordance with the description of the tasks specified below for the ServicePac part number you order:

65Y0644 - IBM Migration Services for data for open systems – two (2) terabytes of data from up to two (2) servers – ServicePac

Plan and migrate up to 2 terabytes of your data from up to 2 servers at a single location. Review your test plan. Verify that the data has been migrated and document the results of the migration activities in a Migration Control Book.

65Y0636 - IBM Migration Services for data for open systems – five (5) terabytes of data from up to five (5) servers – ServicePac

Plan and migrate up to 5 terabytes of your data from up to 5 servers at a single location. Review your test plan. Verify that the data has been migrated and document the results of the migration activities in a Migration Control Book.

65Y0645 - IBM Migration Services for data for open systems – ten (10) terabytes of data from up to ten (10) servers – ServicePac

Plan and migrate up to 10 terabytes of your data from up to 10 servers at a single location. Review your test plan. Verify that the data has been migrated and document the results of the migration activities in a Migration Control Book.

The following ServicePacs can only be ordered with one of the above migration ServicePacs for a 2, 5 or 10 terabyte Migration: 65Y0644, 65Y0636, or 65Y0645.

65Y5195 – Addition to IBM Migration Services for data for open systems – additional terabyte - ServicePac

This ServicePac authorizes one additional terabyte of your data to be migrated in conjunction with the prerequisite ServicePac for a 2, 5 or 10 terabyte migration: 65Y0644, 65Y0636, or 65Y0645.

65Y5196 – Addition to IBM Migration Services for data for open systems – additional server - ServicePac

This ServicePac authorizes the migration of data from one additional server in conjunction with the prerequisite ServicePac for a 2, 5 or 10 terabyte migration: 65Y0644, 65Y0636, or 65Y0645.

To perform any of the above migrations, IBM will utilize IBM’s TDMF (“Transparent Data Migration Facility”) software tool, and perform the activities below.

.5.1 IBM Responsibilities
**Activity - 1 Project Initiation**

The purpose of this activity is to review the migration tasks, software and hardware prerequisites and mutually agree to a start date for the data migration. IBM will conduct a planning session, on a mutually agreed upon date, to assess your migration readiness.

IBM will:

.a identify the specific volume(s) of data to be migrated to the System Storage disk systems;
.b review the specific hardware/software tool(s) to be used during the performance of the migration;
.c review the prerequisites for the Services, which may include, but not be limited to, hardware and software;
.d review your current environment;
.e identify the migration tasks and activities to be completed;
.f assist and provide guidance in preparation of your test plan;
.g develop a data migration plan that includes the identification of servers and estimated timelines planned for the migration; and
.h document the migration schedule and activities in the data migration plan.

**Activity - 2 Data Migration**

The purpose of this activity is to perform the migration activities outlined in the data migration plan, spanning a series of contiguous business days, and create a Migration Control Book.

IBM will:

.a review the test plan you provided to the IBM Services specialist
.b verify the required system software levels;
.c install TDMF on your designated system(s);
.d perform migration activities as defined in the data migration plan;
.e verify that the data has been migrated;
.f remove TDMF from your system(s);
.g include the data migration plan in the Migration Control Book; and
.h document the final migration activities in the Migration Control Book.

.6 Your Responsibilities

.6.1 You agree to:

.c follow the procedure in IBM’s Internet website to activate the Services;
.d designate a technically-qualified representative, who has authority to act on your behalf in matters regarding the Services, to be the focal point for all communications with IBM relative to this Service transaction;
.e prior to IBM’s performance of the Services, adequately back up and secure all programs, and data residing on your system(s); perform a functional full system backup prior to Data Migration activity; and maintain a current complete backup of the data in your environment at all times. IBM shall bear no responsibility whatsoever for any loss of data as a result of our performance of Services hereunder;
.f provide IBM with sufficient, free, and safe access to your premises and to your servers, during the hours specified herein or at another time to which we mutually agree, as reasonably necessary for IBM to perform its obligations under this Agreement;
.g provide suitable workspace with telephone access for IBM’s IT Service specialist while working on your premises;
.h have all the hardware/software prerequisites and other information agreed to during the planning session available at your location, prior to the Data Migration activity, including all fstab, vfstab, and/or /etc/filesystem information; site, prior to the Data Migration activity;
.i ensure that you are at the latest supported system software levels based on the IBM interoperability matrix prior to the Data Migration activity;

.j provide IBM's IT Services specialist with a copy of your test plan prior to the Data Migration activity;

.k identify the server(s) on which TDMF will be installed;

.l provide instructions or any unique requirements in your environment to the IBM's IT Services specialist during the planning session;

.m perform the necessary steps that set up the host to connect to and use the IBM storage volumes including:

()1 installing necessary adapters and drivers; and

()2 modifying the proper configuration files for logical unit numbers support (e.g., sd.conf file);

.n assume responsibility for system diagnosis and problem resolution for hardware and software vendor compatibility issues;

.o provide the IBM's IT Services specialist with root user access and administrator access to all servers from which data will be migrated;

.p create a recovery plan to be followed in the event of unforeseen problems;

.q make any required repairs to machines not covered by either IBM Warranty or IBM Maintenance;

.r on the Sun Solaris system, if applicable, execute the "reboot -r" command with IBM's IT Services specialist present, prior to the Data Migration activity;

.s ensure the source and target storage servers are locally attached to and accessible by the IBM AIX, HP-UX, Sun Solaris and/or Microsoft Windows server(s) prior to the Data Migration activity; and

.t execute your test plan to ensure data integrity after completion of the data migration.

.6.2 Your Acknowledgement

You acknowledge that IBM will be using IBM's TDMF software tool to perform the migration Services contained in this Agreement. Upon completion of these Services, all copies of TDMF will be removed from your facilities. You shall have no right to make use of TDMF. No right is granted to you to make any copies of TDMF in any form. You shall not reverse assemble or reverse compile TDMF in whole or part. No license to you under any trademark, patent, copyright, and mask work protection right or any other intellectual property right is either granted or implied by the use of TDMF at your facilities.

.7 Charges, Payment, and Taxes

.7.1 When you Order the Services from IBM

A one-time charge, which is determined by the ServicePac part number you order, will apply for the Services. Pre-payment of the total amount of the charges for the ServicePac part number you order is required at the time you order the Services. Except for debit and credit card transactions, amounts are due upon receipt of invoice. You are responsible for any taxes resulting from this Agreement.

.7.2 When You Order the Services from an IBM Business Partner

When you order the Services from an IBM Business Partner, the IBM Business Partner establishes the charges for the Services and the terms governing the payment of the charges.

.7.3 Additional Charges

Additional charges will apply for delays caused by your failure to fulfill your responsibilities, as specified under Your Responsibilities, under this Agreement. In such case, a) if you order the Services from IBM, you agree to pay IBM charges, at IBM's prevailing hourly labor rate, plus travel and living expenses, if any, in accordance with the payment terms of this Agreement; or b) if you order the Services from an IBM Business Partner, your IBM Business Partner will inform you of such additional charges, and you will make payment directly to your IBM Business Partner.

.8 Proof of Entitlement

Confirmation of your payment (for example, a receipt from IBM or your IBM Business Partner, as applicable) is your proof of entitlement to the Services.
.9 Warranty for Services
IBM warrants that the Services will be performed using reasonable care and skill in accordance with the description of the tasks specified in this Agreement for the ServicePac part number you ordered.

THIS WARRANTY IS YOUR 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.

.10 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) damages for bodily injury (including death) and damage to real property and tangible personal property, and 2) the amount of any other actual direct damages or loss up to the charge for the Service that is the subject of the claim. This limit also applies to any of IBM’s subcontractors. It is the maximum for which IBM and its subcontractors are collectively responsible.

Under no circumstances is IBM or its subcontractors liable for any of the following even if informed of their possibility: 1) loss of, or damage to, your records or data, or 2) special, incidental, or indirect damages or for any economic, consequential damages or 3) lost profits, business, revenue, goodwill, or anticipated savings.

.11 General
.u IBM reserves the right to subcontract Services, or any part of them, to subcontractors selected by IBM.
.v To the extent applicable to this transaction, each of us is responsible for the supervision, direction, control, and compensation of our respective personnel.
.w Each of us may communicate with the other by electronic means and such communication is acceptable as a signed writing to the extent permissible under applicable law. An identification code (called a “user ID”) contained in an electronic document is legally sufficient to verify the sender’s identity and the document’s authenticity.
.x Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.
.y Each of us is free to enter into similar agreements with others.
.z Each of us grants the other only the license and rights specified in the applicable license agreements. No other licenses or rights (including licenses or rights under patents) are granted.
.aa You agree not to resell the Services without IBM’s prior written consent. Any attempt to do so is void.
.bb You are responsible for selecting the Services that meets your needs and for the results obtained from the use of the Services.
.cc The exchange of any confidential information will be made under a signed confidentiality agreement.
.dd You authorize International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors and IBM Business Partners) to store and use your business contact information wherever they do business, in connection with IBM products and services or in furtherance of IBM’s business relationship with you.
.ee Neither of us will bring a legal action, regardless of form, arising out of or related to this Agreement or the transaction under it more than two years after the cause of action arose. After such time limit, any legal action arising out of this Agreement or the transaction under it and all respective rights related to any such action lapse, unless otherwise required by applicable law without the possibility of contractual waiver or limitation.
.ff Neither of us is responsible for failure to fulfill any obligations due to causes beyond its control.
.gg You may not assign, or otherwise transfer, this Agreement or your rights under it, or delegate your obligations, without IBM’s prior written consent. Any attempt to do so is void.
.hh No right or cause of action for any third party is created by this Agreement or the transaction under it, nor is IBM responsible for any third party claims against you except as permitted by the Limitation of
Liability section herein for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable to that third party.

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.

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.

12 Geographic Scope and Governing Law

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

Both parties agree to the application of the laws of the State of New York to govern, interpret, and enforce all of your 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.