



IBM United Kingdom Limited
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Registered Office: PO Box 41,
North Harbour, Portsmouth,
PO6 3AU (hereinafter "IBM")

Agreement for Services Acquired from an IBM Business Partner

This IBM Agreement for Services Acquired from an IBM Business Partner ("Agreement") governs IBM's delivery of certain IBM Services which Customer acquires through an IBM Business Partner. Such Services are delivered by IBM under terms which are in addition to the terms of this Agreement (for example, a statement of work) IBM licensed program products and IBM Machines are not acquired from IBM Business Partners under this Agreement. In the event that your IBM Business Partner is no longer able to offer Services, for any reason, you may continue to receive Services by contacting IBM and signing a separate IBM agreement that enables IBM to establish charges and generate invoices.

1. Definitions

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

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.

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

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

2. IBM Business Partners

IBM has signed agreements with certain organisations (called "IBM Business Partners") to promote, market, and support certain Services. Customer may order Services that are promoted or marketed to Customer by IBM Business Partners or other suppliers, however, i) this Agreement applies only if an Attachment or Transaction Document (as defined in Section 3 below) 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 services that they supply to Customer under their agreements.

3. Agreement Structure

Additional terms for Services are in documents called "Attachments" and "Transaction Documents" provided by IBM. In general, Attachments contain terms that may generally govern Customer's use of a Service, or may apply to more than one Services transaction, while Transaction Documents (such as a statement of work, supplement, schedule, invoice, exhibit, change authorisation, 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.

4. Changes to the Agreement

4.1 In order to maintain flexibility in our business relationship, IBM may propose changes to the terms of this Agreement, Services by giving you three months' written notice. However, these changes are not retroactive. You acknowledge your agreement to have these changes apply, as of the effective date IBM specifies in the notice, only to new orders, renewals, and ongoing transactions that do not expire by 1) placing new orders for Services after the change effective date, 2) allowing transactions to renew after receipt of the change notice, or 3) failing to terminate ongoing transactions that do not expire prior to the change effective date.

For ongoing 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 unfavourable.

4.2 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:

- a. you place a new order for a Service after the specified effective date;
- b. you do not object to renewal for a Service within 90 days after notification of the change; or
- c. 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 Service ongoing transaction within 90 days after notification of the change.

4.3 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.

5. Charges and Payment

When Customer orders a Service through an IBM Business Partner, the IBM Business Partner establishes the charges and terms governing payment of the charges. Customer will make payment directly to Customer's IBM Business Partner.

However, IBM may charge Customer directly for some expenses incurred to perform Customer's Service request (for example, actual travel and living expenses and out-of-pocket expenses). IBM will not incur these expenses without Customer's prior approval. IBM will invoice Customer for such expenses. Amounts are due upon receipt of invoice and are payable as IBM specifies. Customer agrees to pay accordingly, including any late payment fee.

6. Warranty

6.1 Warranty for 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. Customer agrees to provide timely written notice of any failure to comply with this warranty so that IBM can take corrective action.

6.2 Extent of Warranty

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

Items Not Covered By Warranty.

IBM does not warrant uninterrupted or error-free operation of any deliverable or Service or that IBM will correct all defects. Unless IBM specifies otherwise, it provides Materials and non-IBM Services **WITHOUT WARRANTIES OF ANY KIND**. However, non-IBM suppliers may provide their own warranties to you.

7. Service Terms

7.1 Personnel

Each party will assign personnel that are qualified to perform the tasks required of such party under this Agreement and is responsible for the supervision, direction, control, and compensation of its personnel. Subject to the foregoing, each party may determine the assignment of its personnel and its contractors.

IBM may engage subcontractors to provide or assist in providing Services, in which case IBM remains responsible for the fulfillment of its obligations under this Agreement and for the performance of the Services.

Both parties agree that during and for one year following the completion of the services engagement period, neither party will directly solicit for employment personnel of the other assigned to this services engagement. This does not prohibit either party from giving consideration to any application for employment submitted on an unsolicited basis or in response to a general advertisement of employment opportunities.

7.2 Materials Ownership and License

An Attachment or Transaction Document will specify Materials to be delivered to Customer and identify them as "Type I Materials," "Type II Materials," or otherwise as both parties agree. If not specified, Materials will be considered Type II Materials.

Customer will own the copyright in Materials created as part of a Service that are identified as "Type I Materials." Customer grants IBM an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works based on, Type I Materials.

IBM or its suppliers will own the copyright in Materials created as part of a Services transaction that are identified as Type II Materials. IBM grants Customer an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute (within Customer's Enterprise only) copies of Type II Materials.

IBM or its suppliers retains ownership of the copyright in any of IBM's or its suppliers' works that pre-exist or were developed outside of this Agreement and any modifications or enhancements of such works that may be made under this Agreement. To the extent they are embedded in any Materials, such works are licensed in accordance with their separate licenses provided to Customer, if any, or otherwise as 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.

7.3 Customer Resources

If Customer is making available to IBM any facilities, software, hardware or other resources in connection with our performance of Services, Customer agrees to obtain any licenses or approvals related to these resources that may be necessary for IBM to perform the Services and develop Materials. IBM will be relieved of its obligations that are adversely affected by Customer's failure to promptly obtain such licenses or approvals. Customer agrees to reimburse IBM for any reasonable costs and other amounts that IBM may incur from Customer's failure to obtain these licenses or approvals.

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 a Service under this Agreement, ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data, and iii) backup and recovery of the database and any stored data.

7.4 Service for Machines

IBM provides certain types of Service to keep Machines in, or restore them to, conformance with their specifications. 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 authorisation 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); and
- d. 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 authorises IBM to do so.

7.4.1 Replacements

When 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 or maintenance 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.

7.4.2 Items Not Covered

Repair and exchange Services do not cover:

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

7.5 Warranty Service Upgrade

For certain Machines, Customer may select a Service upgrade from the standard type of warranty Service for the Machine. Customer may be charged 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.

7.6 Automatic Maintenance Coverage (following warranty)

If Customer has a current maintenance agreement with IBM, all IBM Machines Customer acquires under this Agreement will automatically be covered by billable maintenance Service, unless Customer requests otherwise in writing, following expiration of the warranty. The type of Service will be that provided for IBM Machines of the same type installed at that location. If there are no similar IBM Machines, then the type of Service will be the basic Service available for that Machine type. Customer may cancel the automatic coverage by notifying IBM in writing within one month after the date of the Machine's first maintenance Service invoice. However, Customer will be charged for any maintenance Service which IBM has performed at Customer request.

7.7 Other Maintenance Coverage

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

7.8 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.

7.9 Termination and Withdrawal of a Service

Either party may terminate a Service transaction if the other materially fails to meet its obligations concerning the Service.

Customer may terminate a Service on notice to IBM and your IBM Business Partner provided you have met minimum requirements. Check with your IBM Business Partner to determine if any charges apply.

IBM may withdraw a Service or support for an eligible Machine on three months' written notice to Customer. If IBM withdraws a Service for which Customer has prepaid and IBM has not yet fully provided it to Customer, Customer will receive 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.

8. Intellectual Property Protection

8.1 Third Party Claims

If a third party claims that a Material 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;
- b. allows IBM to control, and cooperates with IBM in, the defense and any related settlement negotiations; and
- c. is and remains in compliance with Customer's obligations under section 8.2 (Remedies) below.

8.2 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 Material, 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 terminate use of the Material and, if applicable, return the Material to IBM, on IBM's written request. Customer's IBM Business Partner will then give Customer a credit for the amount Customer paid for the creation of the returned Material.

8.3 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 Material, 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 Material by Customer or a third party on Customer's behalf;
- c. the combination, operation, or use of the Materials 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 Material outside Customer's Enterprise; or
- e. infringement by a Machine of a licensed program product alone.

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

9. Limitation of Liability

9.1 Items for which IBM May be Liable

For the purposes of this section, a "Default" means any act, statement, omission or negligence on the part of IBM in connection with, or in relation to, the subject matter of an Agreement in respect of which IBM is legally liable to Customer, whether in contract or in tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default.

Circumstances may arise where, because of a Default by IBM in the performance of its obligations under this Agreement 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 and except as expressly required by law without the possibility of contractual waiver, IBM's entire liability for any one Default will not exceed the amount of any direct damages, to the extent actually suffered by Customer as an immediate and direct consequence of the default, up to the greater of (1) € 500,000 (five hundred thousand Euro) or equivalent in local currency or (2) 125% of the charges (if recurring, 12 months' charges apply) for the Service that is the subject of the claim.

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

- a. payments referred to in the Intellectual Property Protection section above; and
- b. damages for bodily injury (including death) and damage to real property and tangible personal property for which IBM is legally liable.

9.2 Items for Which IBM is Not Liable

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

- a. loss of, or damage to, data;
- b. special, incidental, exemplary, indirect or consequential damages; or
- c. wasted management time or lost profits, business, revenue, goodwill, or anticipated savings.

10. General 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 Service under this Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this Agreement.
- c. This Agreement and any transaction under it do not create an agency, joint venture, or partnership between 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 authorises IBM to process Customer's employee and contractor business contact information, in connection with IBM Services or in furtherance of IBM's business relationship with Customer, including for marketing purposes. Customer also agrees that such contact details can be disclosed and processed by International Business Machines Corporation and its subsidiaries as well as IBM Business Partners and subcontractors, for the purpose described above. Customer acknowledges that such companies may be located in countries outside the European Union where data protection laws may not be as comprehensive as in the Customer's country. International Business Machines Corporation and its subsidiaries, IBM Business Partners and subcontractors are mainly in the information technology business, including the supply and resale of hardware and software products and services, as well as outsourcing, consulting and financing services and related activities. Customer represents that, prior to disclosing such contact information to IBM, Customer has obtained, where required by applicable law, the informed consent of the individuals whose contact information is disclosed and has delivered any notices to such individuals and taken any other required action as deemed necessary to comply with the applicable data privacy laws to entitle International Business Machines Corporation and its subsidiaries, IBM Business Partners and subcontractors to process (including by e-mail) such contact information for the purpose described in this item. Such notice shall also state that such individual's business contact information will be or has been incorporated into IBM's marketing and customer databases and that any request of such individuals to exercise their rights to access, rectify, cancel or oppose can be exercised by writing a letter, including a copy of the data subject's identification card, to IBM United Kingdom Limited, PO Box 41, North Harbour, Portsmouth, Hampshire, PO6 3AU.
- 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 damage to real or tangible personal property for which IBM is legally liable to that third party. Consequently, Customer may not seek liability from IBM for damages that Customer suffers as a result of such third party claims.

- g. Customer is responsible for selecting the Services that meet its needs and for the results obtained from the use of the Services, 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.

11. 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.

12. Geographic Scope and Governing Law

Except as may be agreed between the parties, or as legally required, all Customer's rights, all IBM's obligations and all licenses (except for Licensed Internal Code and as specifically granted) are valid only in the United Kingdom. The laws of England govern this Agreement and both parties agree to submit all disputes relating to this Agreement to the exclusive jurisdiction of the English Courts. Except where required by law, IBM has no obligation to provide any services for Machines located outside the United Kingdom.

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.

Nothing stated in this paragraph shall have the effect of excluding or limiting liability for fraud. This Agreement, including its applicable Attachments and Transaction Documents, is the complete agreement regarding transactions by which Customer acquires IBM Services through an IBM Business Partner, 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) estimated charges for any Service; ii) performance or function of any Service; iii) the experiences or recommendations of other parties; or iv) 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 recognised 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 Services provided under this Agreement are subject to it.

Agreed to:

_____ (“Customer”)

{Customer Legal Name}

By _____

Authorised signature

Title:

Name (type or print):

Date:

Customer identification number:

Customer address:

Agreed to:

IBM United Kingdom Limited (“IBM”)

By _____

Authorised signature

Title:

Name (type or print):

Date:

Agreement number:

IBM address: