

Purchase Order



State of West Virginia
 Department of Administration
 Purchasing Division
 2019 Washington Street East
 Post Office Box 50130
 Charleston, WV 25305-0130

PURCHASE ORDER NO.
 MA05SW19

PAGE
 1

BLANKET RELEASE
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CORRECT PURCHASE ORDER NUMBER
 MUST APPEAR ON ALL PACKAGES,
 INVOICES, AND SHIPPING PAPERS.
 QUESTIONS CONCERNING THIS PUR-
 CHASE ORDER SHOULD BE DIRECTED
 TO THE BUYER AS NOTED BELOW.

CHANGE ORDER

SEE REVERSE SIDE FOR
 TERMS AND CONDITIONS

INVOICE TO
 ALL STATE AGENCIES
 AND POLITICAL SUBDIVISIONS
 VARIOUS LOCALES AS INDICATED
 BY ORDER

VENDOR
 *709002529 304-347-7300
 IBM CORPORATION
 145 SUMMERS STREET SUITE 200
 CHARLESTON WV 25301

SHIP TO

AGENCY COPY

ALL STATE AGENCIES
 AND POLITICAL SUBDIVISIONS
 VARIOUS LOCALES AS INDICATED
 BY ORDER

DATE PRINTED		TERMS OF SALE		FEIN/SSN		FUND	
07/02/2008		NET 30		130871985			
SHIP VIA		FOB		FREIGHT TERMS		ACCOUNT NUMBER	
BEST WAY		DESTINATION		PREPAID		MUL-MUL	
LINE	QUANTITY	UOP	VENDOR ITEM NO		UNIT PRICE	AMOUNT	
	DELIVERY DATE	CAT. NO	ITEM NUMBER				
BLANKET OPEN-END STATEWIDE CONTRACT							
TO ESTABLISH A MASTER TERMS AND CONDITIONS CONTRACT FOR USE BY ALL WEST VIRGINIA STATE AGENCIES AND POLITICAL SUBDIVISIONS.							
*****THE FOLLOWING IS INCORPORATED HEREIN BY REFERENCE AND MADE A PART HEREOF.*****							
IBM CUSTOMER AGREEMENT, DATED MAY 28, 1993							
FIRST AND SECOND AMENDMENT TO THE IBM AGREEMENT, SEE ATTACHED.							
VENDOR'S CONTACT INFORMATION:							
EARL PALMER							
304-347-7241 (P)							
EPALMER@US.IBM.COM							
0001	07/15/2008	EA	920-49			.0000	
SYSTEMS/EXECUTIVE SOFTWARE FOR LARGE SYSTEMS							
EXHIBIT 3							
						PURCHASING DIVISION CERTIFIED ENCUMBERED JUL - 9 2008 <i>Beverly Toler</i>	
IF APPROVAL AS TO FORM IS REQUIRED BY ATTORNEY GENERAL, CHECK HERE <input checked="" type="checkbox"/>						OPEN END	
						TOTAL 304 558 8802	

Don E. Wayfield
 APPROVED AS TO FORM BY

JO ANN ADKINS *7/2/08*
 BY *[Signature]*
 PURCHASING DIVISION AUTHORIZED SIGNATURE

**GENERAL TERMS & CONDITIONS
PURCHASE ORDER/CONTRACT**

1. **ACCEPTANCE:** Seller shall be bound by this order and its terms and conditions upon receipt of this order.
2. **APPLICABLE LAW:** The laws of the State of West Virginia and the *Legislative Rules* of the Purchasing Division shall govern all rights and duties under the Contract, including without limitation the validity of this Purchase Order/Contract.
3. **NON-FUNDING:** All services performed or goods delivered under State Purchase Orders/Contracts are to be continued for the terms of the Purchase Order/Contract, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods, this Purchase Order/Contract becomes void and of no effect after June 30.
4. **COMPLIANCE:** Seller shall comply with all Federal, State and local laws, regulations and ordinances including, but not limited to, the prevailing wage rates of the WV Division of Labor.
5. **MODIFICATIONS:** This writing is the parties final expression of intent. No modification of this order shall be binding unless agreed to in writing by the Buyer.
6. **ASSIGNMENT:** Neither this Order nor any monies due, or to become due hereunder may be assigned by the Seller without the Buyer's consent.
7. **WARRANTY:** The Seller expressly warrants that the goods and/or services covered by this order will: {a} conform to the specifications, drawings, samples or other description furnished or specified by the Buyer; {b} be merchantable and fit for the purpose intended; and/or {c} be free from defect in material and workmanship.
8. **CANCELLATION:** The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
9. **SHIPPING, BILLING & PRICES:** Prices are those stated in this order. No price increase will be accepted without written authority from the Buyer. All goods or services shall be shipped on or before the date specified in this Order.
10. **LATE PAYMENTS:** Payments may only be made after the delivery of goods or services. Interest may be paid on late payments in accordance with the *West Virginia Code*.
11. **TAXES:** The State of West Virginia is exempt from Federal and State taxes and will not pay or reimburse such taxes.
12. **RENEWAL:** Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
13. **BANKRUPTCY:** In the event the vendor/contractor files for bankruptcy protection, this Contract may be deemed null and void, and terminated without further order.
14. **HIPAA Business Associate Addendum -** The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, and available online at the Purchasing Division's web site (<http://www.state.wv.us/admin/purchase/vrc/hipaa.htm>) is hereby made part of the agreement. Provided that, the Agency meets the definition of a Covered Entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the vendor.
15. **West Virginia Alcohol & Drug-Free Workplace Act:** If this Contract constitutes a public improvement construction contract as set forth in Article 1D, Chapter 21 of the West Virginia Code ("The West Virginia Alcohol and Drug-Free Workplace Act"), then the following language shall hereby become part of this Contract: "The contractor and its subcontractors shall implement and maintain a written drug-free workplace policy in compliance with the West Virginia Alcohol and Drug-Free Workplace Act, as set forth in Article 1D, Chapter 21 of the West Virginia Code. The contractor and its subcontractors shall provide a sworn statement in writing, under the penalties of perjury, that they maintain a valid drug-free work place policy in compliance with the West Virginia Alcohol and Drug-Free Workplace Act. It is understood and agreed that this Contract shall be cancelled by the awarding authority if the Contractor: 1) Fails to implement its drug-free workplace policy; 2) Fails to provide information regarding implementation of the contractor's drug-free workplace policy at the request of the public authority; or 3) Provides to the public authority false information regarding the contractor's drug-free workplace policy."



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	DELIVERY DATE	CAT. NO.	ITEM NUMBER				
	<p>LIFE OF CONTRACT: THIS CONTRACT BECOMES EFFECTIVE ON JULY 15, 2008 AND EXTENDS FOR A PERIOD OF ONE (1) YEAR OR UNTIL SUCH "REASONABLE TIME" THEREAFTER AS IS NECESSARY TO OBTAIN A NEW CONTRACT OR RENEW THE ORIGINAL CONTRACT. THE "REASONABLE TIME" PERIOD SHALL NOT EXCEED TWELVE (12) MONTHS. DURING THIS "REASONABLE TIME" THE VENDOR MAY TERMINATE THIS CONTRACT FOR ANY REASON UPON GIVING THE DIRECTOR OF PURCHASING 30 DAYS WRITTEN NOTICE.</p> <p>UNLESS SPECIFIC PROVISIONS ARE STIPULATED ELSEWHERE IN THIS CONTRACT DOCUMENT, THE TERMS, CONDITIONS AND PRICING SET HEREIN ARE FIRM FOR THE LIFE OF THE CONTRACT.</p> <p>RENEWAL: THIS CONTRACT MAY BE RENEWED UPON THE MUTUAL WRITTEN CONSENT OF THE SPENDING UNIT AND VENDOR, SUBMITTED TO THE DIRECTOR OF PURCHASING THIRTY (30) DAYS PRIOR TO THE EXPIRATION DATE. SUCH RENEWAL SHALL BE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT AND SHALL BE LIMITED TO TWO (2) ONE (1) YEAR PERIODS.</p> <p>CANCELLATION: THE DIRECTOR OF PURCHASING RESERVES THE RIGHT TO CANCEL THIS CONTRACT IMMEDIATELY UPON WRITTEN NOTICE TO THE VENDOR IF THE COMMODITIES AND/OR SERVICES SUPPLIED ARE OF AN INFERIOR QUALITY OR DO NOT CONFORM TO THE SPECIFICATIONS OF THE BID AND CONTRACT HEREIN.</p>						
IF APPROVAL AS TO FORM IS REQUIRED BY ATTORNEY GENERAL, CHECK HERE <input type="checkbox"/>						TOTAL	

APPROVED AS TO FORM BY _____

BY _____
 PURCHASING DIVISION AUTHORIZED SIGNATURE

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<p>OPEN MARKET CLAUSE: THE DIRECTOR OF PURCHASING MAY AUTHORIZE A SPENDING UNIT TO PURCHASE ON THE OPEN MARKET, WITHOUT THE FILING OF A REQUISITION OR COST ESTIMATE, ITEMS SPECIFIED ON THIS CONTRACT FOR IMMEDIATE DELIVERY IN EMERGENCIES DUE TO UNFORESEEN CAUSES (INCLUDING BUT NOT LIMITED TO DELAYS IN TRANSPORTATION OR AN UNANTICIPATED INCREASE IN THE VOLUME OF WORK.)</p> <p>QUANTITIES: QUANTITIES LISTED IN THE REQUISITION ARE APPROXIMATIONS ONLY, BASED ON ESTIMATES SUPPLIED BY THE STATE SPENDING UNIT. IT IS UNDERSTOOD AND AGREED THAT THE CONTRACT SHALL COVER THE QUANTITIES ACTUALLY ORDERED FOR DELIVERY DURING THE TERM OF THE CONTRACT, WHETHER MORE OR LESS THAN THE QUANTITIES SHOWN.</p> <p>ORDERING PROCEDURE: SPENDING UNIT(S) SHALL ISSUE A WRITTEN STATE CONTRACT ORDER (FORM NUMBER WV-39) TO THE VENDOR FOR COMMODITIES COVERED BY THIS CONTRACT. THE ORIGINAL COPY OF THE WV-39 SHALL BE MAILED TO THE VENDOR AS AUTHORIZATION FOR SHIPMENT, A SECOND COPY MAILED TO THE PURCHASING DIVISION, AND A THIRD COPY RETAINED BY THE SPENDING UNIT.</p> <p>BANKRUPTCY: IN THE EVENT THE VENDOR/CONTRACTOR FILES FOR BANKRUPTCY PROTECTION, THIS CONTRACT IS AUTOMATICALLY NULL AND VOID, AND IS TERMINATED WITHOUT FURTHER</p>							
						TOTAL	

IF APPROVAL AS TO FORM IS REQUIRED BY ATTORNEY GENERAL, CHECK HERE

APPROVED AS TO FORM BY _____

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LINE	QUANTITY	UOP	VENDOR ITEM NO.	UNIT PRICE	AMOUNT
	DELIVERY DATE	CAT. NO.	ITEM NUMBER		
	ORDER.				
THE TERMS AND CONDITIONS CONTAINED IN THIS CONTRACT SHALL SUPERSEDE ANY AND ALL SUBSEQUENT TERMS AND CONDITIONS WHICH MAY APPEAR ON ANY ATTACHED PRINTED DOCUMENTS SUCH AS PRICE LISTS, ORDER FORMS, SALES AGREEMENTS OR MAINTENANCE AGREEMENTS, INCLUDING ANY ELECTRONIC MEDIUM SUCH AS CD-ROM. REV. 04/11/2001					

IF APPROVAL AS TO FORM IS REQUIRED BY ATTORNEY GENERAL, CHECK HERE

TOTAL

APPROVED AS TO FORM BY

BY _____
 PURCHASING DIVISION AUTHORIZED SIGNATURE

Second Amendment to AGREEMENT

International Business Machines Corporation and the State of West Virginia entered into that certain MASTER IBM CUSTOMER AGREEMENT BETWEEN IBM AND THE STATE OF WEST VIRGINIA, dated May 28, 1993 and approved by the State of West Virginia Attorney General on June 29, 1993 ("Agreement"), as amended by the ADDENDUM TO THE IBM CUSTOMER AGREEMENT BETWEEN IBM AND THE STATE OF WEST VIRGINIA, also dated May 28, 1993 and approved by the State of West Virginia Attorney General on June 29, 1993 ("First Amendment"). This SECOND ADDENDUM AMENDMENT TO AGREEMENT ("Second Amendment") amends the Agreement, which the parties hereto do mutually agree to amend as follows:

Section 1.10 of the Agreement, as amended by the First Amendment, shall be deleted in its entirety and replaced with the following paragraph:

Our liability to you for any cause whatsoever shall be limited to the amount of any actual loss or damage, up to the greater of \$100,000 or the purchase price paid to us for the Products and Services that are the subject of your claim. The foregoing limitation does not apply to (a) Section 1.9 of this Agreement or (b) damages resulting from bodily injury (including death) and damage to real property and tangible personal property. In no event shall we be liable for any indirect, special, punitive, or consequential damages arising out of this Agreement or the use of the Products or Services purchased by you hereunder, loss of, or damage to data, lost profits, business, revenue, goodwill, or anticipated savings even if we have been advised of the possibility of such damages. Both parties agree that this Agreement does not create any right or cause of action for any third party against the other except for third party claims that fit within Section 1.9 of this Agreement.

Except as amended herein, all other terms and conditions of the Agreement, as amended, shall remain in full force and effect.

All capitalized terms used but not otherwise defined herein are defined in the Agreement.

The parties acknowledge that they have read this Second Amendment, understand it, and agree to be bound by its terms and conditions. Further, they agree that this Second Amendment and the Agreement are the complete and exclusive statement of the agreement between the parties, superseding all proposals or other prior agreements, oral or written, and all other communications between the parties relating to this subject.

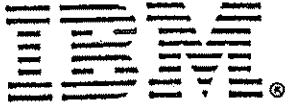
Agreed to:
State of West Virginia
By [Signature]
Authorized Signature
Name (type or print):
Date:
Identification number:
Address:

Agreed to:
International Business Machines Corporation
By Mark Nicolay
Authorized Signature
Name (type or print): Mark Nicolay, IBM Client Unit Executive, Kentucky
Date: 5/9/08
Agreement number:
IBM address: 1500 Aristides Blvd
Coldstream Research Campus
Lexington, KY 40511-1319 USA
Building: CS | Floor: NA | Office: MO

APPROVED AS TO FORM THIS 9th
DAY OF July, 2008
DARRELL V. MCGRAW, JR.
ATTORNEY GENERAL

After signing, please return a copy of this Amendment to the "IBM address" shown above.

By: Dawn E. Wayfield
DEPUTY ATTORNEY GENERAL



International Business Machines Corporation
IBM United States, 1133 Westchester Avenue, White Plains, New York 10604

Notice to IBM Customers

January 22, 1991

Introduction of IBM Customer Agreement

We are announcing today the restructuring of most of our standard contracts into a single IBM Customer Agreement. This announcement is in response to your suggestions that we shorten and simplify our contracts and be easier to do business with. The new Agreement allows us to include only once the common terms that were previously stated multiple times. Many of the current agreements and amendments have been completely eliminated. The result is a single, easy-to-understand contract that covers the majority of your transactions with us.

Previously separate contracts for machines, programs and services (such as Project Support Services) are now fully integrated into the IBM Customer Agreement. It also includes several Options (such as Volume Discounts) and accommodates electronic communications between us.

The IBM Customer Agreement provides an attractive, comprehensive warranty for our products and services that describes how we do business today. Included is your right to a full refund if we do not meet our obligations.

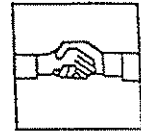
The substance of the IBM Customer Agreement and its Attachments, with minor exceptions, is unchanged from our current contracts. The words, however, have been rewritten to be concise and easy to read.

Effective Dates of New and Revised Documents

The IBM Customer Agreement and Attachments will automatically become effective on May 1, 1991. If you have any questions about the Agreement or its Attachments, please contact your IBM marketing representative. We will address any concerns you may have. Until they are resolved to your satisfaction, we will continue to transact business under your existing IBM contracts.

The IBM Customer Agreement follows along with a description of its Attachments. Your IBM marketing representative will promptly provide any Attachments you request.

IBM Customer Agreement



Thank you for doing business with us. We are committed to providing you with the highest quality Products and Services. If, at any time, you have any questions or problems, or are not completely satisfied, please let us know. Our goal is to do our best for you.

This IBM Customer Agreement (called the "Agreement") covers the major business transactions we may do with you, including:

- (a) sale of Machines;
- (b) license of Programs; and
- (c) provision of Services.

We also make several Options available to you concerning the Products and Services we provide under this Agreement, such as volume discounts.

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.

By signing below for our respective Enterprises, each of us agrees to the terms of this Agreement. 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 you order under this Agreement are subject to it.

Agreed to:
Enterprise name:

Agreed to:
International Business Machines Corporation
Armonk, New York 10504

By Chuck Polan
Authorized signature

By Steven J Casper
Authorized signature

Name (type or print): Chuck Polan

Name (type or print): STEVEN J CAS

Date: May 28, 1993

Date: MAY 27, 1993

Enterprise number: 9642000

Agreement number: JM71665

Enterprise address: 1900 Kanawha Blvd., E.

IBM Office number: JM7

Room E-119
Charleston, WV
25305

IBM Office address: 500 LEE ST E

CHARLESTON, W

253

IBM Customer Agreement

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IBM Customer Agreement

Part 1 - General

1.1 Definitions

Customer-set-up Machine is an IBM Machine that you set up according to our instructions.

Date of Installation is the following:

1. for a Machine —
 - a. the business day after the day we install it or, if you defer installation, make it available to you for installation;
 - b. the second business day after the end of a Customer-set-up Machine's standard transit allowance period. We will allocate a reasonable transit allowance period; or
 - c. the second business day after the arrival of a non-IBM Machine.
2. for a Program, the latest of —
 - a. the day after its testing period ends (this does not apply to Program Packages);
 - b. 10 days after we ship it; or
 - c. the day, specified in a Transaction Document, on which we authorize you to make an Additional License Copy or a copy of a Distributed Feature

Designated Machine is the Machine, that you identify to us by type/model and serial (or plant order) number, on which you intend to use a Program for processing. When we specify that you do not have to provide this identification to us, the term Designated Machine means the single Machine on which you may use the Program at any one time

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 or Puerto Rico.

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 we may provide to you

Product is a Machine or a Program

Program is the following, including features and any whole or partial copies:

1. machine-readable instructions;
2. a collection of machine-readable data such as a data base; and
3. related materials, including documentation and listings, in any form.

The term "Program" includes an IBM Program and any non-IBM Program that we may provide to you. The term does not include Licensed Internal Code or Materials.

Service is assistance or use of a resource (such as a network) we make available to you

Specifications is a document that provides information specific to a Product. For a Machine we call the document "Official Published Specifications." For a Program, we call it "Licensee Program Specifications" or "License Information."

Specified Operating Environment is the Machines and Programs with which a Program is designed to operate, as described in the Program's Specifications.

1.2 Agreement Structure

Attachments

Some Products and Services have terms in addition to those we specify in this Agreement. We provide the additional terms in documents called "Attachments" which are also part of this Agreement. For example, we describe the additional terms for IBM Information Network Services in an Attachment. We make the Attachments available to you for signature

Transaction Documents

For each order you place, we will provide to you the appropriate "Transaction Documents" that confirm the specific details of your order. The following are examples of Transaction Documents, with examples of the information they may contain:

1. supplements (Machine quantity and type ordered price, estimated shipment date and warranty period);
2. exhibits (eligible Products by category, discount schedules, and available contract periods);
3. addenda (selected contract-period duration, start date, and total quantity or revenue committed);
4. statements of work (project schedule, responsibilities, and charges); and
5. invoices (item, quantity, price, amount due, and other typical invoice information).

Conflicting Terms

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.

Our Acceptance of Your Order

A Product or Service becomes subject to this Agreement when we accept your order. We accept your order by doing any of the following:

1. sending you a Transaction Document;
2. shipping the Product; or
3. providing the Service.

Your Acceptance of Additional Terms

You accept the additional terms in an Attachment or Transaction Document by doing any of the following:

1. signing the Attachment or Transaction Document;
2. using the Product or Service, or allowing others to do so; or
3. making any payment for the Product or Service.

1.3 Delivery

We will use our best efforts to meet your delivery requirements for Products and Services you order, and will inform you of their status. We pay normal transportation charges for Products we ship to you.

1.4 Electronic Communications

Each of us may communicate with the other by electronic means. Both of us agree to the following for all electronic communications:

1. an identification code (called a "USERID") contained in an electronic document is legally sufficient to verify the sender's identity and the document's authenticity;
2. an electronic document that contains a USERID is a signed writing; and
3. an electronic document, or any computer printout of it, is an original when maintained in the normal course of business.

Electronic Data Interchange

We may provide Electronic Data Interchange (called "EDI") Options to you. Electronic invoicing and electronic payment are examples of these Options. When using EDI Options each of us agrees:

1. when a bank is involved, to pay our respective bank charges and to promptly notify the other of any changes to the bank payment process; and
2. to promptly notify the other of any changes to the technology, process, or information upon which the EDI transactions are based.

We will specify respective responsibilities for the EDI Option you choose

1.5 Prices and Price Changes

The following are the bases on which we may require the amount payable for a Product or Service to be paid, with an example of each:

1. one-time (the price of a Machine);
2. recurring (a monthly charge for Maintenance Services); or
3. a combination of both (an initial charge and a monthly license charge for a Program)

We will specify the amount and basis for the particular Product or Service.

Price Increases

We may increase recurring charges by giving you three months' written notice. An increase applies on the first day of the applicable invoice period on or after the effective date we specify in the notice.

We may increase one-time charges and hourly rates without notice. However, an increase to one-time charges does not apply to you if 1) we receive your order before the announcement date of the increase and 2) one of the following occurs within three months after the announcement:

1. we ship you the Product;
2. with our authorization, you make an Additional License Copy of a Program or a copy of a Distributed Feature; or
3. a Program's group-upgrade charge becomes due.

Price Decreases

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

1.6 Invoicing, Payment, and Taxes

We invoice:

- 1 recurring charges (other than usage charges) for a Program and for Maintenance Services in advance for the applicable invoice period;
- 2 usage charges following the period in which you incur them; and
3. all other charges when or after you incur them

For a Product with a one-time charge, payment is due on its Date of Installation. Recurring charges for a Product begin on its Date of Installation.

You agree to pay as we specify in the invoice. You also agree to pay amounts equal to any applicable taxes resulting from any transaction under this Agreement. This does not include taxes based on our net income. You are responsible for personal property taxes for each Product from the date we ship it to you.

1.7 Additional Charges

Depending on the particular Product, Service, or circumstances, additional charges may apply. For example, if we are required to use other than private automobile or scheduled public transportation to provide Maintenance Services to you, we charge an additional amount. We will notify you in advance if these charges apply.

1.8 Types of Service for Machines

We provide certain types of service for a Machine to keep it in, or restore it to, good working order during its warranty period or while it is under Maintenance Services. The following terms apply to both warranty service and Maintenance Services.

Depending on the Machine, the service may be 1) a "Repair" service at your location (called "On-site") or at one of our service locations (called "Carry-in") or 2) an "Exchange" service, either On-site or Carry-in. We will inform you of the available types of service for a Machine.

Under Maintenance Services, you may select the type of service from those available for the Machine. We require that a Machine and its features have the same type of service.

We offer On-site types of service 24 hours a day, seven days a week. Carry-in types of service are available during the normal business hours of our service locations.

When a type of service involves the exchange of a Machine or part, the item we replace becomes our property and the replacement becomes yours. The replacement may not be new, but will be in good working order.

Under Carry-in service, instead of delivering the failing Machine to us, if you prefer, you may ship it (prepaid and suitably packaged) to a location we designate. After we have repaired or exchanged the Machine, we will return it to you at our expense.

Under On-site Exchange service, depending on the nature of the failure, we may repair the failing Machine at your site instead of exchanging it.

We are responsible for loss of, or damage to, your Machine while it is 1) in our possession or 2) in transit in those cases where we are responsible for the transportation charges.

You agree to:

1. obtain authorization from the owner to have us service a Machine that you do not own;
2. where applicable, before we provide service —
 - a. follow the problem determination, problem analysis, and service request procedures that we provide,
 - b. secure all programs, data, and funds contained in a Machine,
 - c. inform us of changes in a Machine's location, and
 - d. for a Machine with Exchange service, remove all features, parts, options, alterations, and attachments not under our service. You also agree to ensure that the Machine is free of any legal obligations or restrictions that prevent its exchange;
3. be responsible for loss of or damage to, a Machine in transit in those cases where you are responsible for the transportation charges; and
4. on completion of Carry-in Repair service, connect a repaired Machine and verify its operation.

1.9 Patents and Copyrights

If a third party claims that a Product we provide infringes a patent or copyright, we will defend you against that claim at our expense and pay all costs, damages, and attorney's fees that a court finally awards, provided that you:

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

If such a claim is made or appears likely to be made, you agree to permit us to enable you to continue to use the Product, or to modify or replace it. If we determine that none of these alternatives is reasonably available, you agree to return the Product to us on our written request. We will then give you a credit equal to your net book value for the Product, provided you have followed generally-accepted accounting principles.

This is our entire obligation to you regarding any claim of infringement.

Claims for Which We are Not Responsible

We have no obligation regarding any claim based on any of the following:

1. your modification of a Product, or a Program's use in other than its Specified Operating Environment;
2. the combination, operation, or use of a Product with any product, data, or apparatus that we did not provide; or
3. infringement by a non-IBM Product alone, as opposed to its combination, operation, or use as part of a system of Products that we provide to you.

1.10 Limitation of Liability

Circumstances may arise where, because of a default on our part or other liability, you are entitled to recover damages from us. In each such instance, regardless of the basis on which you are entitled to claim damages from us, we are liable only for:

1. payments referred to in our patent and copyright terms described above;
2. bodily injury (including death), and damage to real property and tangible personal property; and

3. the amount of any other actual loss or damage, up to the greater of \$100,000 or the charges (if recurring, 12 months' charges apply) for the Product or Service that is the subject of the claim

This limit also applies to any of our subcontractors and Program developers. It is the maximum for which we are collectively responsible.

Items for Which We are Not Liable

Under no circumstances are we liable for any of the following:

1. third-party claims against you for losses or damages (other than those under the first two items listed above);
2. loss of, or damage to, your records or data; or
3. economic consequential damages (including lost profits or savings) or incidental damages, even if we are informed of their possibility

1.11 Mutual Responsibilities

Both of us agree that under this Agreement:

1. neither of us will use the other's trademark, trade name, or other designation 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 is free to enter into similar agreements with others;
4. each grants the other only the licenses specified. No other licenses (including licenses under patents) are granted;
5. each will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations; and
6. neither of us will bring a legal action more than two years after the cause of action arose.

1.12 Your Other Responsibilities

You agree:

1. not to assign this Agreement or your rights under it, delegate your obligations, or resell any Service without prior written consent. Any attempt to do so is void;
2. 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 our authorized remarketers;
3. to allow us to install mandatory engineering changes (such as those required for safety) on a Machine. Any parts we remove become our property;
4. that you are responsible for the results obtained from the Products and Services;
5. to comply with all applicable government export laws and regulations; and
6. to provide us with full, free, and safe access to your facilities for us to fulfill our obligations. If you become aware of any unsafe conditions or hazardous materials to which our personnel would be exposed at any of your facilities, you agree to promptly notify us.

1.13 Your Additional Rights

You may have additional rights under certain laws (such as consumer laws) which do not allow the exclusion of implied warranties, or the exclusion or limitation of certain damages. If these laws apply, our exclusions or limitations may not apply to you.

1.14 IBM Business Partners

We have signed agreements with certain organizations (called "IBM Business Partners") to promote, market, and support some of our Products and Services. We have chosen these organizations because of their skills and experience in a particular field.

When you order our Products or Services (marketed to you by these organizations) under this Agreement, we confirm that we are responsible for providing them to you under the warranties and other terms of this Agreement. We are not responsible for 1) the actions of these organizations, 2) any additional obligations they may have to you, or 3) any products or services that they (and not us) may supply to you

1.15 Changes to the Agreement Terms

In order to maintain flexibility in our Products, Services, and Options, we may change the terms of this Agreement by giving you three months' written notice. However, these changes are not retroactive. They apply, as of the effective date we specify in the notice, only to new orders (those we receive on or after the date of the notice) and to on-going transactions, such as licenses and Services.

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

1.16 Agreement Termination

You may terminate this Agreement on written notice to us following the expiration or termination of all your 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 its termination remain in effect until fulfilled, and apply to respective successors and assignees.

1.17 Geographic Scope

All your rights, all our obligations, and all licenses (except for Licensed Internal Code and as specifically granted) are valid only in the United States and Puerto Rico.

1.18 Governing Law

The laws of the State of New York govern this Agreement.

Customer Agreement

Part 2 - Warranties

2.1 The IBM Warranties

Warranty for IBM Machines

For each IBM Machine, we warrant that it:

1. is free from defects in materials and workmanship; and
2. conforms to its Specifications.

The warranty period for a Machine is a specified, fixed period. We calculate its expiration from the Machine's Date of Installation.

During the warranty period, we provide warranty service under the type of service we designate for the Machine or under the alternative service you select under Maintenance Services.

For us to provide warranty service for a feature, conversion, or upgrade, we require that the Machine on which it is installed be 1) the designated, serial-numbered Machine and 2) at an engineering-change level compatible with the feature, conversion, or upgrade.

During the warranty period, we manage and install engineering changes that apply to the Machine.

If a Machine does not function as warranted during the warranty period, we will repair or replace it without charge. If we are unable to do so, you may return it to us and we will refund your money.

Warranty for IBM Programs

For each warranted IBM Program, we warrant that:

1. we have the right to license it; and
2. it conforms to its Specifications.

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

During the warranty period, we provide warranty service, without charge, for a Program through Program Services. Program Services are available for a warranted Program for at least one year following its general availability. Therefore, the duration of warranty service depends on when you obtain your license. If, during the first year after you obtain your license, we are unable to make the Program function as warranted, you may return it to us and we will refund your money.

Warranty for IBM Services

For each IBM Service, we warrant that we perform it:

1. in a workmanlike manner; and
2. according to its current description contained in this Agreement, an Attachment, or a Transaction Document.

Warranty for Systems

Where we provide Products to you as a system, we warrant that they are compatible and can operate with one another.

Warranty for Integrated Systems

For each integrated system we deliver to you under a Statement of Work for Systems Integration Services, we warrant that it meets its Completion Criteria as specified in the Statement of Work.

The warranty period for an integrated system is a fixed period as specified in the Statement of Work. It begins on the date we deliver the system to you.

If an integrated system does not function as warranted during the warranty period, we will correct the deficiency without charge. If we are unable to do so, you may return the system to us and we will refund your money.

2.2 Extent of Warranty

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

Misuse, 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 we are not responsible may void the warranties.

THESE WARRANTIES REPLACE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

2.3 Items Not Covered by Warranty

We do not warrant uninterrupted or error-free operation of a Product or Service.

We will identify IBM Products and Services that we do not warrant.

We provide non-IBM Products and Services on an "AS IS" basis. However, non-IBM manufacturers, suppliers, or publishers may provide their own warranties to you.

Customer Agreement

Part 3 - Machines

3.1 Title

When we accept your order, we agree to sell you the Machine described in a Transaction Document. We transfer title to you or, if you choose, your lessor when we ship the Machine. However, we reserve a purchase money security interest in the Machine until we receive the amounts due. For a feature, conversion or upgrade involving the removal of parts which become our property, we reserve the security interest until we receive the amounts due and the removed parts. You agree to sign an appropriate document to permit us to perfect our purchase money security interest.

3.2 Risk of Loss

We bear the risk of loss for the Machine through its Date of Installation. Thereafter, you assume the risk.

3.3 Production Status

Each Machine is manufactured from new parts, or new and serviceable used parts (which perform like new parts). In some cases, the Machine may not be new and may have been previously installed. Regardless of the Machine's production status, our warranty terms apply.

3.4 Installation

For the Machine to function properly, it must be installed in a suitable physical environment. You agree to provide an environment meeting our specified requirements for the Machine.

We design our standard installation procedures to ensure that each Machine we install is in good working order and meets its Specifications. We will successfully complete these procedures before we consider the Machine installed.

You are responsible for setting up a Customer-set-up Machine (we provide instructions to enable you to do so) and for the installation of a non-IBM Machine.

Machine Features, Conversions, and Upgrades

We sell features, conversions, and upgrades for installation only on designated, serial-numbered Machines. You represent that you have the permission of the owner (if you are not the owner of the Machine) and any lien holders to 1) install features, conversions, and upgrades and 2) transfer removed parts to us.

Some of these transactions (called "Net-Priced" transactions) include associated replacement parts. We provide these parts on an exchange basis. All removed parts in a Net-Priced transaction become our property. For a Net-Priced transaction, you agree to allow us to install it within 30 days of its delivery and to recover the removed parts. Otherwise, we may terminate the transaction and you must return the feature, conversion, or upgrade to us at your expense.

3.5 Licensed Internal Code

Certain Machines we specify (called ' Specific Machines ') use Licensed Internal Code (called "Code"). We own copyrights in Code. We own all copies of Code including all copies made from them.

We will identify each Specific Machine in a Transaction Document. If you are the rightful possessor of a Specific Machine, we grant you a license to use the Code (or any replacement we provide) on, or in conjunction with, only the Specific Machine, designated by serial number, for which the Code is provided. We license the Code to only one rightful possessor at a time.

Under each license, we authorize you to do only the following:

1. execute the Code to enable the Specific Machine to function according to its Specifications;
2. make a backup or archival copy of the Code (unless we make one available for your use) provided you reproduce the copyright notice and any other legend of ownership on the copy. You may use the copy only to replace the original, when necessary; and
3. execute and display the Code as necessary to maintain the Specific Machine.

You agree to acquire any replacement for, or additional copy of, Code directly from us in accordance with our standard policies and practices. You also agree to use that Code under these terms.

You may transfer possession of the Code to another party only with the transfer of the Specific Machine. If you do so, you must 1) either give the other party all your copies of the Code or destroy them, and 2) give the other party a copy of this page with the Specific Machine's identification information filled in below. We license the other party when it accepts these terms by initial use of the Code. These terms apply to all Code you acquire from any source.

Your license terminates when you no longer rightfully possess the Specific Machine.

Actions You May Not Take

You agree to use the Code only as authorized above. You may not do, for example, any of the following:

1. otherwise copy, display, transfer, adapt, modify, or distribute the Code (electronically or otherwise), except as we may authorize in the Specific Machine's Specifications or in writing to you;
2. reverse assemble, reverse compile, or otherwise translate the Code;
3. sublicense or assign the license for the Code; or
4. lease the Code or any copy of it.

INFORMATION FOR SUBSEQUENT LICENSEE OF LICENSED INTERNAL CODE

This page is copied from the IBM Customer Agreement and is provided to the subsequent licensee when Code is transferred.

The Specific Machine being transferred is identified as:

Type/Model _____ Serial Number _____

The following definitions are provided for the subsequent licensee of the Code:

1. "We" means International Business Machines Corporation (IBM);
2. "Transaction Document" does not apply to you. The above Type/Model and Serial Number identify the Specific Machine to you;
3. "You" means the subsequent licensee of the Code; and
4. "Specifications" means IBM's Official Published Specifications.

IBM Customer Agreement

Part 4 - Programs

4.1 Grant of License

When we accept your order, we grant you a license for the Program. Programs are copyrighted and licensed (not sold). We do not transfer title to Programs to you

4.2 License Details

Under each license, we authorize you to:

- 1 use the Program's machine-readable portion on only the Designated Machine, unless —
 - a the Designated Machine is inoperable. You may then use the Program on a backup Machine,
 - b the Designated Machine cannot assemble or compile the Program. You may then assemble or compile it on another Machine,
 - c we grant an "Installation License." You may then use the Program on any other Machine in the same or adjoining rooms as the Designated Machine, or
 - d we grant a "Location License." You may then use the Program on any other Machine in the same building with the same mailing address as the Designated Machine.

If you change the Designated Machine, you agree to notify us of the change and its date;

- 2 store the Program's machine-readable portion in, transmit it through, and display it on, Machines associated with the Designated Machine;
- 3 do the following to support your authorized use as described above —
 - a modify the Program's machine-readable instructions or data, or merge them into another Program, and
 - b make copies of the Program, provided you reproduce the copyright notice and any other legend of ownership on each copy or partial copy; and
- 4 use any portion of the Program we mark restricted (for example, "Restricted Materials of IBM") only to —
 - a resolve problems related to the use of the Program, and
 - b modify the Program so that it will work together with other products.

You agree to comply with any additional terms (for example, a usage restriction) that a Program's Specifications may contain. We provide the Specifications to you with the Program. For an "AS IS" Program, any additional terms are contained in a document called "Notice of Availability."

Actions You May Not Take

You agree not to do any of the following:

- 1 sublicense, assign, or transfer the license for any Program;
- 2 distribute any Program to any third party; or
- 3 reverse assemble, reverse compile, or otherwise translate any Program

4.3 Distributed Features

Some Programs have features (called "Distributed Features") that are designed to work with those Programs (called "Associated Programs") After we accept your order for a Distributed Feature, we authorize you to:

- 1 make a copy of the Distributed Feature and its documentation; and
2. distribute the copy to, and use it on, a Machine other than the Designated Machine of the Associated Program You may use the copy on only one Machine at a time Persons using a Machine outside of your Enterprise may use the copy only to access the Associated Program.

4.4 Additional License Copies

You may order additional licenses for Programs. If you prefer, for each license we grant rather than shipping you another copy of the Program, we will authorize you to make an additional copy (called an "Additional License Copy").

For some Programs, you may make a copy under a Distributed System License Option (called a "DSLO" license). We charge less for a DSLO license than we do 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 Program;
2. provide problem documentation and receive Program Services (if any) only through the location of the Basic license; and
- 3 distribute to, and install on, the DSLO's Designated Machine, any release correction or bypass that we provide for the Basic license.

4.5 Program Testing

We provide a testing period for certain Programs to help you evaluate if they meet your needs. The testing period for a Program starts 1) 10 days after we ship it or 2) on the day we authorize you to make an Additional License Copy. We will inform you of the duration of the Program's testing period.

For the first order for each Distributed Feature, the testing period is the same as for the Associated Program.

We do not provide a testing period for a Program under a DSLO license.

4.6 Program Packages

We provide certain Programs together with their own license agreements. These Programs (called "Program Packages") are licensed under the terms of the agreements provided with them. This Agreement's patent and copyright terms apply to IBM Program Packages.

For a Program Package, we may specify that:

- 1 Additional License Copies apply. If so, these copies are subject to the terms of the Program Package's agreement, except that you may not transfer them; and
- 2 a testing period applies. If so, and you return the Program Package to us before the end of the testing period, we will refund your money.

If a Program Package has Distributed Features, this Agreement's terms regarding Distributed Features apply.

4.7 Program Protection

For each Program, you agree to:

1. if it is a data base, allow access to it only to your employees;
2. ensure that anyone who uses it (accessed either locally or remotely) does so only for your authorized use and complies with our terms regarding Programs; and
3. maintain records of all copies.

4.8 Program Services

We provide Program Services for warranted Programs and for selected other Programs. If we can reproduce your reported problem in the Specified Operating Environment, we will issue defect correction information, a restriction, or a bypass. We provide Program Services for only the unmodified portion of a current release of a Program.

We provide Program Services 1) on an on-going basis (with at least six months' written notice before we terminate services for a Program), 2) until the date we specify, or 3) for a period we specify.

4.9 Variable-Charge Programs

We may place a Machine in a Machine group. The charges for some Program licenses depend on the group of the Designated Machine. We call these Programs "Variable-Charge" Programs. Variable charges include graduated charges and processor-based charges. We will specify the group for a Machine and will inform you of any changes.

For these licenses, the following apply:

1. if you change (including upgrade or downgrade) a Designated Machine to a Machine in another group, you may incur a group-upgrade charge or a changed recurring charge. You agree to promptly notify us of the date of such a change;
2. if we reassign a Designated Machine to a Machine group with different charges, Program licenses with one-time charges due or paid before the reassignment are not affected. Otherwise, our price change terms apply; and
3. if a change or reassignment results in a lower charge, we do not give credits or refunds for one-time charges already due or paid.

4.10 License Termination

You may terminate the license for a Program on one month's written notice or at any time during the Program's testing period. For some Programs, if you terminate the license and replace that Program with another we specify, we only require you to pay an upgrade charge.

We may terminate any license we grant in this Part if you do not meet your obligations regarding Programs.

You agree to destroy all copies of the Program within three months after license termination. However, you may keep a copy in your archives.

IBM Customer Agreement

Part 5 - Services

5.1 Maintenance Services

You may select the type of service from those available for the Machine. When we accept your order, we agree to service the Machine described in a Transaction Document. Based on the type of service, we will restore the Machine to good working order or exchange it. We may also perform preventive maintenance, including lubrication, adjustments and replacement of parts. We manage and install engineering changes that apply to the Machine.

We will inform you of the date on which Maintenance Services begin. We may inspect the Machine within one month following that date. If the Machine is not in an acceptable condition for service, you may 1) have us restore it for a charge or 2) withdraw your request for Maintenance Services and we will refund any amounts you have paid to us for its service.

For a Machine under a usage plan, you agree to provide us with the meter reading as of the last working day of the period that the minimum maintenance charge covers.

We provide Maintenance Services for selected non-IBM Machines only when they are connected to certain IBM Machines. When a type of service involves the exchange of a non-IBM Machine, the replacement may not be identical.

Maintenance Services do not cover accessories and certain parts such as frames and covers. In addition, Maintenance Services do not cover service of a Machine damaged by misuse, accident, modification, unsuitable physical or operating environment, improper maintenance by you, or failure caused by a product for which we are not responsible.

Alternative Service During Warranty

For certain Machines, at any time during the warranty period, you may select a different type of service from that which we designate for the Machine. For example, if you prefer On-site service to Carry-in, it may be available. We will inform you of the available types of service for the Machine and the available alternative service periods. We provide the alternative type of service for an additional charge. When the alternative service ends we will continue Maintenance Services for the Machine under the same type of service you selected.

Maintenance Services Termination

You may terminate Maintenance Services for a Machine on one month's written notice to us under any of the following circumstances:

1. after it has been under Maintenance Services for at least six months;
2. if you remove it from productive use within your Enterprise;
3. as of the effective date of an increase in Maintenance Services charges; or
4. if you terminate coverage for a Maintenance Service Option under our terms for 1) removal of a Machine type from eligibility or 2) increased total adjusted charges for Maintenance Services.

We may terminate Maintenance Services for a Machine on three months' written notice provided it has been under Maintenance Services for at least one year.

Either of us may terminate service for any Machine if the other does not meet its obligations concerning Maintenance Services. On termination of service for a Machine, we will give you any applicable credit.

5.2 Continuing Support Services

We provide Continuing Support Services on a contract-period basis to assist you in such areas as improving the availability of your systems and improving your productivity. We provide the terms specific to a Service in an Attachment. If we make a change to the terms of an Attachment that 1) affects your current contract period and 2) you consider unfavorable on your request, we will defer it until the end of that contract period.

We will specify the eligible Products, applicable prerequisites and minimum commitments, exit-option percents, and available contract periods for a Service. We will also inform you periodically of any changes. These changes apply only to orders that we confirm on or after the effective date of the change.

When we accept your order, we will confirm the specific details of the Service in a Transaction Document. You may select a start date for the Service that is within three months following the effective date we specify in the Transaction Document.

During a contract period, we may increase charges. An increase becomes effective on the next anniversary of the start of a contract period following the effective date we specify in the notice. When an increase results in a change to your total monthly charge for a Service of more than the exit-option percent we specify, you may terminate that Service on the effective date of the increase. Adjustment or termination charges do not apply in this case.

You may request a change to the Services you have selected on one month's notice. If we agree, we will confirm the change to you with applicable adjustments in charges.

Each of us agrees to notify the other (before your current contract period expires) if they do not intend to renew.

Continuing Support Services Termination

You may terminate a Continuing Support Service by providing us one month's written notice upon fulfillment of any minimum commitments.

The termination of Services with contract periods longer than one year results in adjustment charges. In this case, you agree to pay the lesser of:

1. the difference between the total charges you paid through the termination date and those you would have paid for the shorter contract period;
2. the monthly charge multiplied by the applicable adjustment charge factor; or
3. the total charges remaining to complete the contract period.

5.3 Project Support Services

The Project Support Services we make available to you include providing general assistance on a technical task (such as writing programs), providing consulting services, acting as a prime contractor to deliver an information handling function, and providing Systems Integration Services to you.

When we accept your order, we agree to provide the Services described in the Statement of Work. We require a separate Statement of Work, signed by both of us, for each project.

We manage the project unless the Statement of Work specifies that you manage it. If you are responsible, then we only provide Services to assist you.

The Statement of Work includes:

1. our respective responsibilities;
2. an estimated schedule which we provide for planning purposes;
3. the specific conditions, if any, (called the "Completion Criteria") that we are required to meet to fulfill our obligations; and
4. applicable charges and any other terms

Each of us agrees to make reasonable efforts to carry out our respective responsibilities according to the estimated schedule. However, if Completion Criteria are applicable, then the project is complete when we meet those criteria

Changes to the Statement of Work

When both of us agree to change a Statement of Work, we will prepare a written description of the change (called a "Change Authorization"). The Change Authorization becomes effective when we provide it to you. It need not be signed, unless either of us requests signature.

Any change in the Statement of Work may affect the charges, estimated schedule, or other terms. Depending on the scope of the requested change, we may charge you for our effort to analyze it. We will then give you a written estimate of the charges for the analysis. We will perform the analysis only on your written authorization.

Personnel

Each of us will authorize a person to represent us during the project. Each will 1) address all notices to the other's representative and 2) promptly notify the other in writing if this person is replaced. Each of us is responsible for supervising and controlling only our own personnel

We will try to honor your requests regarding the assignment of our personnel to your project. However, we reserve the right to determine the assignment of our personnel

Ownership and License

During a project we may deliver to you work product (called "Materials"), such as programs, program listings, programming tools, documentation, reports, and drawings.

The Statement of Work will specify if Materials are applicable to the project. It will identify them as being "Type I Materials," "Type II Materials," or otherwise as we both agree.

Type I Materials are those, created during the project, in which you will have all right, title and interest (including ownership of copyright). We will retain one copy of the Materials. You grant us 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 in which we or third parties have all right, title, and interest (including ownership of copyright). We will deliver one copy of the Materials to you. We grant you an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute (internally only) copies of Type II Materials.

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

Project Support Services Termination

You may terminate a project on written notice to us. We may terminate a project if you do not meet your obligations concerning it. Upon termination, we will stop our work in an orderly manner as soon as practical.

You agree to pay us for all Services we provide and any Materials we deliver through the project's termination. Payment includes any charges we incur in terminating subcontracts.

Additional Terms for Systems Integration Services

When the Statement of Work specifies Systems Integration Services, we provide you with an integrated system that may consist of a combination of Products, Services, Materials, and other items. We design, develop, deliver, install, and support the system as described in the Statement of Work.

The Statement of Work contains the Completion Criteria. We will inform you when we meet each of them. You then have 10 days to inform us if you believe that we have not met the Completion Criteria.

5.4 IBM Information Network and Other Services

IBM Information Network Services

The IBM Information Network (called "IBM IN") Services we make available to you include access to, and use of, IBM IN machines, programs, networking facilities, and associated communications and support services. We provide the terms specific to IBM IN Services in an Attachment.

On-line Services

We make on-line Services available to you, including access to certain of our information data bases. We provide these Services to you through a connection to IBM IN. We provide the terms specific to an on-line Service in an Attachment. We may specify that you accept the terms of IBM IN Services as a prerequisite to an on-line Service.

Other Services

We make other Services available to you that are not associated with the Services described in this Part. For these Services, we provide all the additional terms in Attachments.

Customer Agreement

Part 6 - Options

6.1 Volume Discounts

We provide discounts for certain Products based on the volume of business you agree to do with us (called your "Commitment") during a contract period. You may make a Commitment based on either Product quantity or revenue. Revenue for a Product is its single-unit charge, less any discounts or allowances.

We will specify the eligible Products, their categories, available discount percents and contract periods, upper-limit percents, and adjustment charge factors. We will inform you periodically of any changes. An unfavorable change (and all changes related to it) applies to an existing Commitment only if you accept it in writing. Related changes become effective at the same time. We will also inform you if we withdraw eligible Products from marketing. We then accept orders you place for these Products subject to their availability.

Unless we specify otherwise, we do not discount Program upgrades, Program features ordered separately from Programs, accessories, or field-installed Machine features, conversions, or upgrades.

End User Certification

You agree to acquire the Products for use only within your Enterprise and not for remarketing. We call this representation "End User Certification." We provide the discounts to you based on End User Certification.

How You May Obtain the Discounts

If you wish to obtain the discounts, you agree to sign an Addendum specifying your Commitment, and selected contract-period start date and duration.

During the contract period, you may increase your Commitment or extend the contract period (subject to our approval) by signing a revised Addendum. If you extend, you agree to increase your Commitment so that the new discount percent is at least equal to your current discount percent. Any increased discount percent applies to all eligible Products for which Date of Installation is on or after the date we receive your signed Addendum.

How We Apply the Discounts

We apply the discount to the single-unit charges of eligible Products that you acquire from us during the contract period. The charges are the lesser of 1) those generally available at the time of acquisition or 2) the announced charges in effect on the date we receive the initial Addendum, subject to our price change terms described below.

We count specified Products that you acquire from our authorized remarketers when we receive the required certification. Adjustment charges do not apply to these Products.

We may place some Products in a dependent category with an associated controlling category. To determine the discount percent applicable to either category, we count quantities or revenue for only those Products in the controlling category.

Price Changes

During a contract period, we may increase or decrease charges. We apply your discount to the new charges as follows:

1. we establish a maximum charge (called an "Upper Limit") for each Product in a committed category for each year of a contract period. We determine the Upper Limit by increasing the announced charge in effect, as of the date we receive the initial Addendum.

by a certain amount. We calculate this amount by multiplying that charge by the upper-limit percent we specify at the time of your Commitment;

2. for an increase, we apply the discount to either the increased charge or the Upper Limit, whichever is less; and
3. for a decrease, we apply the discount to the decreased charge, provided you accept any related changes in terms we may have made after your Commitment. Otherwise, you may select 1) the decreased charge without discount or 2) the discounted charge available to you before the decrease.

Adjustment Charges

If you have not met your Commitment by the end of the contract period, you agree to pay adjustment charges. The adjustment charge for each Product is either:

1. the difference between the discounted amount we charged you and the discounted amount which you were entitled to receive; or
2. the result of multiplying the adjustment charge factor by the number of discount percentage points between what we gave you and what you were entitled to receive.

We will inform you which method we use for a particular Product.

For a revenue-based Commitment, the total of the adjustment charges will not be more than the difference between your Commitment and the actual revenue you attained.

International Discounts

For our international customers, we provide volume discounts based on worldwide Commitments. To allow you to participate in such a Commitment, this Agreement may be modified by a signed international agreement. You, your international enterprise coordinator, and we will sign the relevant Transaction Document, unless the coordinator exempts you from signing. That Transaction Document becomes part of this Agreement.

6.2 Maintenance Service Options

We provide Maintenance Service Options for certain Machines. If you wish to obtain the benefit of lower charges available under an Option, you agree to assume additional, specified responsibilities. We provide the terms specific to an Option in an Attachment.

We will specify the eligible Machine types, eligible types of service, available discount percents and contract periods, exit-option percents, and notice requirements for termination of each contract period, as applicable to each Option. We will also inform you periodically of any changes. We will defer an unfavorable change (and all changes related to it) until the end of your contract period, if you request it in writing before the effective date of the change. Related changes become effective at the same time.

6.3 Payment Options

Extended Maintenance Option

You may select the Extended Maintenance Option (called the "EMO") for certain Machines. Under this Option, we adjust your Maintenance Services charges based on your prepayment of those charges during an available contract period.

We will specify the eligible Machine types and available contract periods. We will also inform you periodically of any changes. A change applies only to Machines you add under this Option on or after the effective date of the change.

The Transaction Document will list the Machines covered and the dates of coverage for the contract period you have selected for each Machine.

You may select EMO in addition to other Maintenance Service Options. We then adjust the Machine's EMO charge based on the applicable discounts which you are entitled to receive under those Options. While under this Option, you agree to maintain coverage under all the Services and other Options on which we base the Machine's EMO charge.

For a Machine not yet installed or set up, coverage starts on its Date of Installation. For an installed Machine, coverage starts on a mutually-agreed-to date. If applicable, the contract period includes the Machine's warranty period.

We calculate the EMO charge for a Machine using the announced Maintenance Services charges and any applicable discounts in effect for the Machine when coverage begins. EMO charges are not refundable after coverage has started for the Machine.

Both of us agree that if a feature conversion, or upgrade is installed on a Machine while it is under this Option, 1) an additional charge may apply and 2) the feature, conversion, or upgrade is subject to the remaining portion of the contract period.

If we increase the EMO charge, the increase does not apply to a Machine not yet installed or set up, unless we give you at least three months' notice before its scheduled date of shipment. If we decrease the EMO charge before coverage has begun for a Machine, you receive the benefit of the decrease.

We will give you at least three months' notice of a Machine's eligibility for renewal. At the end of your contract period, we will continue Maintenance Services for the Machine (if available), unless you request us not to do so.

If you transfer coverage for a Machine to a third party, you agree to inform that party 1) of the applicable terms of this Agreement and 2) that it must notify us in writing of the transfer, the location of the Machine, and acceptance of coverage. If that party does not wish to maintain coverage under all the Services and other Options on which we base the Machine's EMO charge, you agree to pay the transfer charge that we specify.

Invoicing Options

We make Invoicing Options available to you for certain Products and Services to provide flexibility in payment terms. We provide the terms specific to an Option in an Attachment.

We will specify the eligible Products, Services, and charges, and the available contract periods, Invoicing schedules, and environments which may be covered by an Option. We will also inform you periodically of any changes.

Together, we will estimate your requirements for the applicable Products and Services. We use this estimate to determine the total charges that we will invoice, distributed according to the schedule you select. These invoiced amounts replace the applicable charges otherwise due. Depending on the Option, the total charges may be subject to adjustments.

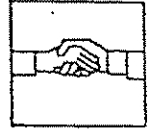
The Transaction Document, signed by both of us, will list the date from which we provide the selected Option to you and its other details.

6.4 Special Options

In order to meet your specific requirements, we may provide Special Options to you. Under these Options, we are willing to provide special terms and tailor our processes for you. We will describe our mutual commitments under a Special Option in a Transaction Document.

IBM Customer Agreement

Signature Page for Attachments



The following Attachments to the IBM Customer Agreement contain additional terms. Copies of the Attachments which you select (by marking the appropriate space below) are included with this page.

Products

- ES/Express Preload (Z125-4146-02)
- IBM Entry End User/370 License (Z125-4379-02)
- Licensed Program Support (Z125-3920-03)
- Trial or Loan of Products (Z125-4135-02)
- MVS/ESA Migration Offering (Z125-3905-09)
- Rental of IBM Machines (Z125-8301-01)
- Trade-Ins (Z125-4134-01)

Continuing Support Services

- Business Recovery Services (Z125-8306-03)
- End User Support Services (Z125-4301-01)
- Network Traffic Analysis Services (Z125-4290-01)
- Problem Management Productivity Services (Z125-4304-01)
- SystemXtra Services (Z125-4294-03)
- SoftwareXcel Services (Z125-4298-02)

IBM Information Network and Other Services

- FASTService Services (Z125-8287-01)
- IBM Information Network Services (Z120-3242-04)
- IBMLink Services (Z125-4555-01)
- Multiple Vendor Services (Z125-4150-02)

Options

- Central Facility Maintenance Service Option (Z125-3333-05)
- CSO and MRSO Options (Z125-3927-04)
- Estimated Billing Option (Z125-4116-01)
- Volume Maintenance Option (Z125-3777-02)

Miscellaneous

- Early Support Programs (Z125-3990-01)
- Educational Allowance (Z125-3083-03)
- IDNX* Licensed Internal Code (Z125-4041-01)
- State & Local Government (Z125-4205-02)
- Tempest Machines (Z125-9081-01)

* IDNX is a registered trademark of Network Equipment Technologies, Inc

By signing below for our respective Enterprises, each of us agrees to the terms of the IBM Customer Agreement and the included Attachments. Once signed, any reproduction of this page or an Attachment made by reliable means (for example, photocopy or facsimile) is considered an original

Agreed to:
Enterprise name:

Agreed to:
International Business Machines Corporation
Armonk, New York 10504

By

Chuck Polan
Authorized signature

By

Steven J. Casper
Authorized signature

Name (type or print): Chuck Polan

Name (type or print): STEVEN J. CASPER

Date: May 28, 1993

Date: MAY 27, 1993

Enterprise number: 9642000

IBM Customer Agreement number: JM71665

Enterprise address: 1900 Kanawha Blvd., E.

IBM Office number: JM7

Room E-119
Charleston, WV
25305

IBM Office address: 500 LEE ST. EAST
CHARLESTON, WV
25301

IBM Customer Agreement

Attachment for Licensed Program Support

These terms are in addition to those of the IBM Customer Agreement. You accept these terms by signing the Signature Page for Attachments or by using, or making any payment for, either of the offerings described below.

We provide licensed program support (called "Support") for current releases of eligible Programs, specified in an Exhibit. Two offerings (called "Support Offerings") are provided under these terms:

1. Support Offering 1, for Programs for which we provide Support at no charge for a period of time and for a charge thereafter; and
2. Support Offering 2, for Programs for which Program Services at no additional charge have been terminated and Support for a charge has been announced.

Support may include:

1. Program Services;
2. technical assistance (response to telephone inquiries concerning the installation, use, operation or function of Programs);
3. Program updates (Program enhancements, preventive service or new releases); or
4. regulatory changes (information on, or changes required by, the United States Government).

1. General Terms

The following apply only to Support Offering 1:

1. we provide Support for a Program at no charge during the Program's testing period if any, and for an Initial Period (as specified in an Exhibit) beginning on the Program's Date of Installation and
2. if you terminate your license for a Program and later obtain another license for that Program with a Designated Machine in the same installation (or, for a location license, in the same location), there will not be an Initial Period for Support for the later license.

The following apply to Support Offerings 1 and 2:

1. we provide Support for a charge for an Extension Period (as specified in an Exhibit);
2. we will notify you of the date when the first Extension Period begins. Subsequent Extension Periods will begin automatically on the day following the end of the preceding Period, unless you request otherwise;
3. you may request that an Extension Period begin later than specified under these terms. In such event, we will also charge you a reinstatement charge;
4. we will, upon your request, adjust the length of an Extension Period so that the Extension Periods for all your Programs end on the same date;

5. we will apply an unfavorable modification in terms only to the Initial and Extension Periods which begin on or after the modification's effective date;
6. we may, if applicable, charge you a process charge for the distribution of machine-readable Program materials during the Initial and Extension Periods. You may make additional copies of such materials (rather than paying additional process charges) if you require them;
7. price changes whose effective date occurs within an Extension Period will not apply during that Extension Period;
8. if we discontinue Support, we will either adjust your Extension Period or prorate and refund any applicable charges. If you terminate Support for a Program during an Extension Period, we will refund a prorated portion of the applicable charges less any applicable termination charges (as specified in an Exhibit); and
9. we may provide Support through a telecommunications link.

2: Our Responsibilities

We will notify you:

1. if, upon the availability of a subsequent Program release, we discontinue Support for the prior releases; and
2. (as specified in an Exhibit) if we discontinue Support.

3. Your Responsibilities

You agree to:

1. obtain Support for all copies of a Program installed within a location during an Extension Period. In addition, for Support Offering 2, you agree to obtain Support for all DSLO licenses you acquire through a Basic license at the location;
2. have specified equipment or Programs installed at your location if Support is provided through a telecommunications link; and
3. provide us with written notice if you wish to terminate Support upon your receipt of our renewal notification. At any other time, you may terminate these Services by giving us one month's written notice.

IBM Customer Agreement

Attachment for State and Local Government

These terms are in addition to those in the IBM Customer Agreement and any other Attachments, and are available to you as a qualified State and Local Government customer. You accept these terms by signing the Signature Page for Attachments or by using, or making any payment for, the Product or Service.

1. Price Changes

We apply an increase in recurring charges on the first day of the applicable invoice period:

1. on or after the effective date specified in the notice; or
2. in your fiscal year immediately following the fiscal year in which the notice is given;

whichever is later.

We do not apply an increase in one-time charges to an order we receive from you before the announcement date of the increase if:

1. we ship the Product no later than its estimated shipment date in effect at the time of the announcement; or
2. for an Additional License Copy of a Program or a copy of a Distributed Feature, the date you make the copy is on or before the date you were authorized to make it.

2. Volume Discounts

The discount percents we specify are based on the volume of business you reasonably expect to do with us (called an "Estimate") during the applicable contract period. The Estimate replaces the Commitment. Adjustment charges will not apply.

3. Services and Options

You may terminate Services or Options, or withdraw Machines from Maintenance Service immediately prior to the start of any fiscal year for which funds have not been appropriated. You agree to request such funds from the applicable legislative body. Termination and adjustment charges will not apply.

Charges for Qualified Location reviews, payable under the Corporate Service Option, do not apply.

Upon your request, we will defer an unfavorable change to Service or Option terms until the end of your current fiscal year. You agree to make this request in writing before the effective date of the change.

4. Governing Law

The laws of your State govern this Agreement.

IBM Customer Agreement

Attachment for the Educational Allowance

These terms are in addition to those of the IBM Customer Agreement. You accept these terms by signing the Signature Page for Attachments, by using the Products as described below (or allowing others to do so), or by making any payment for the Products.

As a qualifying educational institution (called "Institution"), you are eligible for National Education Prices (called "NEP"), National Education License Fees (called "NELF") or an Educational Allowance (called "EA"), for specified Products.

1. Qualification

We will notify you if you are approved as an Institution. Such approval is granted on an individual customer basis and not by Enterprise. You agree to notify us if your eligibility status changes (e.g. you lose your accreditation or non-profit status). In this event, you may no longer be an Institution.

To qualify for the NEP, NELF or EA you agree to use the Products for "Internal Use." This means use by your faculty, staff, students, or employees for instruction, academic research, and internal administrative work. Any other use is considered to be "External Use."

2. Eligible Charges

Selected Machines are eligible for NEP instead of the standard purchase price. Selected Program are eligible for NELF instead of the standard one-time charge. Other selected Products are eligible for the EA. The NEP, NELF or EA cannot be combined with any other discount or allowance.

The EA applies to the purchase, rental or lease prices of eligible Machines. It also applies to the recurring, one-time, initial, or upgrade charges of eligible Programs. We derive the EA by multiplying the EA percent (specified in the applicable Transaction Document) by the charge for the Product.

Not all charges qualify for the EA. For example, the following charges do not qualify:

1. monthly usage charges and Maintenance Services charges for Machines;
2. process charges and charges for related Program materials; and
3. charges for Services.

3. Price Changes

We will give you prompt notice if we change NEP or NELF. If we change or eliminate the EA, we will give you three months' notice. Otherwise, the price change terms of the Agreement apply.

4. Services

Upon your request, we may provide an Education Specialist (called "ES") to perform certain services for you in connection with your purchase of eligible Machines. The ES is an IBM Business Partner who acts as an independent contractor in performing these services and provides such services at no additional charge to you. Provision of these services depends upon the availability of an ES in the geographic area in which you are located. We will provide the details of these services to you upon request.

5. Adjustment Charges

For a Product acquired under this Attachment, you agree to promptly notify us if any of the following occurs during a two-year period beginning on the Product's Date of Installation:

1. you use the Products for External Use;
2. the Machine is removed from your Institution;
3. the Program or Program Package is transferred to a party outside your Institution; or
4. any copy of a Program Package is distributed in a manner that does not comply with the terms of this Attachment.

In such event, you may be required to pay an adjustment charge. That charge will be an amount equal to, or less than, the discount or allowance we granted under this Attachment. We will inform you if you are required to pay an adjustment charge.

Regardless of any financial arrangement you may make with a third party, you are responsible to pay for any applicable adjustment charges.

6. Program Packages

You agree to reproduce and include, in addition to the copyright notice, the following label (called "EA Label") on all copies of Program Packages we authorize you to make:

Licensed Material - Property of IBM

IBM retains title to this copy and to any copy made from it. This copy may be distributed only to staff, students or employees of (insert the name of your Institution). You may not transfer possession of this copy to any other party.

You may distribute your copies of the Program Package to your faculty, staff, students, or employees, provided that:

1. the copies are used only for Internal Use, extended to include incidental use of such Programs for personal and non-commercial purposes;
2. you remain the licensee of each Program Package; and
3. you include a copy of the license agreement pertaining to the Program Package with each copy that you distribute.

ADDENDUM
TO THE
IBM CUSTOMER AGREEMENT DOCUMENTS
BETWEEN
IBM
AND
THE STATE OF WEST VIRGINIA

5/27/93 The IBM Customer Agreement, Z125-4575-00 1/91, dated hereinafter referred to as "IBM", and the State of West Virginia, hereinafter referred to as "State", is hereby amended as follows:

Page 1 of 23:

Amend by inserting the following after paragraph three:

"This Agreement is considered a Master Agreement for use by State of West Virginia spending units ("Spending Units") utilizing the Purchasing Division ("Purchasing Division") of the Department of Administration.

References to this Agreement and any Attachments or Transaction Documents mean this Agreement and any Attachments or Transaction Documents as amended by this Addendum.

This Agreement, including any Attachments and Transaction Documents issued pursuant to this Agreement, may be modified only by a written document signed by an authorized representative of each party, and, if required, authorized by the Purchasing Division and approved as to form by the office of the Attorney General of the State of West Virginia ("Attorney General").

Spending Units not utilizing the Purchasing Division may use this Agreement if agreeable to IBM and the appropriate authority for such Spending Units. Each Spending Unit is responsible for determining which Products or Services it requires and paying its own bills, subject to certain Purchasing Division and Division of Information Services and Communications of the Department of Administration (ISC) restrictions.

Services or Products provided under this Agreement may be continued for the term specified in the relevant Attachment or Transaction Document, contingent upon funds being appropriated by the Legislature or otherwise being available on a spending unit by spending unit basis. In the event funds are not appropriated or otherwise available for continuation of the Services or Products for a particular Spending Unit, that Attachment or Transaction Document shall terminate without penalty on June 30 as to that Spending Unit. After that date, the Attachment or Transaction Document becomes of no effect and is null and void as to that Spending Unit. The Spending Unit agrees to use its best efforts to have the amounts contemplated under this Agreement that pertain to that Spending Unit included in its budget. Non-appropriation or non-funding shall not be considered an event of default."

Page 3 of 23:

1. Amend paragraph 1.1 by inserting after the paragraph entitled Customer-set-up Machine, "Date of Acceptance is the date upon which you have accepted a Product or Service, which shall be not less than ten (10) calendar days following your actual receipt of the Product or Service. Your actual receipt of a Product is the following:

1. for a Machine --
 - a. the business day on which we install it or, if you defer installation, make it available to you for installation; or
 - b. the day on which a Customer-set-up Machine is actually received by you.
2. for a Program, the latest of --
 - a. the day that its testing period ends;
 - b. the day on which the Program is actually received by you; or
 - c. the day specified in a signed Transaction Document on which we authorize you to make an Additional License Copy or a copy of a Distributed Feature.

In the event more than one Product and/or Service is included in a signed Transaction Document, your receipt of each Product or Service for such Transaction Document shall be the date on which the last Product or Service is actually received by you.

Prior to the expiration of ten (10) calendar days from your actual receipt of a Product or Service, you may reject the Product or Service if it does not conform to the terms of the signed Transaction Document and this Agreement. If we have not received your written rejection of a Product or Service within such period, you will be deemed to have accepted the Product or Service.

In the event more than one Product or Service is included in a signed Transaction Document and you rightfully reject all or any part of such Products or Services or we fail to deliver all or part of such Products or Services, you will not be responsible for payment for any accepted Products or Services included in such Transaction Document until (1) an amended Transaction Document to reflect the Products and/or Services accepted by you is executed by us and has received any required approvals, or (2) you have accepted Products and/or Services delivered in place of the rejected Products and/or Services. If we are unable to replace the rejected Products and/or Services within a reasonable period of time, such reasonable period of time to be determined by you, you agree to either return the previously accepted Products or Products received as a result of Services performed to us or make payment for the accepted Products or Services in accordance with the terms of this Agreement."

2. Amend paragraph entitled "Date of Installation" by inserting at the end thereof, "Notwithstanding the foregoing or anything to the contrary, you shall not be responsible for any payment related to a Product or Service, nor shall any responsibility for payment accrue, until such Product or Service has been received by you.

3. Amend paragraph entitled "Specifications" by inserting at the end thereof, "In the event we have expressly agreed in a signed Transaction Document that a Product to be delivered by us will conform to bid specifications issued by you, the term "Specifications" shall also include such bid specifications for that Product."

Page 4 of 23:

1. Amend paragraph 1.2 "Attachments" by deleting the last sentence and inserting in lieu thereof, "The Attachments must be signed by both parties and if, required, authorized by the Purchasing Division and approved as to form by the Attorney General."

2. Amend paragraph 1.2 "Transaction Documents" by inserting at the end thereof, "The Transaction Documents must be signed by both parties and, if required, authorized by the Purchasing Division and approved as to form by the Attorney

General."

3. Amend paragraph 1.2 "Conflicting Terms" by deleting the language in its entirety and inserting in lieu thereof, "In the event of conflict among the terms of the various documents, the following order of precedence shall control: 1. a Transaction Document setting forth the agreed terms and conditions specific to a procurement; 2. this Addendum; 3. an Attachment; and then 4. this Agreement. Furthermore, all documents must have been signed by both parties, been issued in accordance with all Purchasing and ISC requirements, and, if required, approved as to form by the Attorney General before being considered effective."

4. Delete language in paragraph 1.2 "Our Acceptance of Your Order" in its entirety, and insert in lieu thereof, "A Product or Service becomes subject to this Agreement when a Transaction Document has been signed by both parties and, where required, authorized by the Purchasing Division and approved as to form by the Attorney General. We are not required to accept your order if we have not made you an offer."

5. Delete paragraph 1.2 "Your Acceptance of Additional Terms" in its entirety.

6. Amend paragraph 1.3 by inserting at the end thereof, "If we have agreed in a Transaction Document executed by both of us to deliver Products and/or Services on or before a specified date and fail to deliver those Products and/or Services on or before the specified date, we will pay to the Spending Unit liquidated damages, if such damages are certain in amount and were specified in the executed Transaction Document, unless the failure to deliver was caused by an event of force majeure. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God; strikes; lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the State of West Virginia or any of their departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; or explosions."

Page 5 of 23:

1. Amend paragraph 1.4 by deleting "Electronic Communications" in its entirety.

2. Amend paragraph 1.5 "Price Increases" by deleting the second sentence of the second paragraph in its entirety and inserting in lieu thereof, "However, no increase shall apply to Transaction Documents executed by both parties and, if required, authorized by the Purchasing Division and approved as to form by the Attorney General; and to orders in process which have a

specified period of acceptance and are signed by both of us and, if required, authorized by the Purchasing Division and approved as to form by the Attorney General prior to the end of the period of acceptance. Further, charges specified in a Transaction Document shall remain in effect for the term of the Transaction Document."

Page 6 of 23:

1. Amend paragraph 1.6 by deleting the language in its entirety and inserting in lieu thereof, "We invoice: 1. recurring and monthly charges (other than usage charges) for a Program and for Maintenance Services in arrears for the applicable invoice period; 2. usage charges in arrears following the period in which you incur them; and 3. all other charges in arrears when or after you incur them. For a Product with a one-time charge, payment is due upon acceptance and is considered delinquent if not paid within the latter of sixty (60) days of (a) the Date of Acceptance or (b) the date of receipt if a legitimate, uncontested invoice. In the event the terms and conditions on our invoice conflict with the terms and conditions to which we have agreed in writing, signed by both parties and, if required, approved as to form by the Attorney General, the conflicting terms and conditions on the invoice shall be void and of no effect. You represent that you, as a state entity, are exempt from Federal, State and local taxation, and are not responsible for the payment of any taxes. We agree that you will not file any tax returns or reports on our behalf."

2, Amend paragraph 1.7 by deleting the last sentence and inserting in lieu thereof, "These additional charges will be specified to you in the appropriate bid documents or Transaction Documents. To be reimbursed travel expenses, we agree to abide by the "State of West Virginia Travel Regulations Governing Travel On and After 1 April 1993", unless otherwise directed by the Purchasing Division."

3. Amend paragraph 1.8, paragraph five, by inserting at the end, "In the event we provide an item that is not new, we certify that it is eligible for maintenance."

4. Amend paragraph 1.8, paragraph six, by inserting at the end of the first sentence, "such location to be in the continental United States.", and by inserting at the end of the paragraph, "We agree that during the warranty or maintenance service period of a Machine for which Carry-in Service is available, we will maintain a designated location to which you may ship the Machine. In the event we change a designated location during such period, we agree that the new designated location will be reasonably equivalent to the prior location."

Page 7 of 23:

1. Amend paragraph 1.9, paragraph two, by deleting the last sentence in its entirety and inserting in lieu thereof, "We will then reimburse you the amount you paid to IBM for the Product, unless the Date of Acceptance for the Product was more than two (2) years prior to the date of our written request to return it. If the Date of Acceptance for the Product was more than two (2) years prior to the date of our written request to return it, we will then reimburse you a pro rata portion of the amount you paid, based upon twenty percent (20%) depreciation per year (pro rated on a monthly basis) from the Date of Acceptance."

2. Amend paragraph 1.10, 2., by deleting the word "tangible."

Page 8 of 23:

1. Amend paragraph 1.10, 3., by deleting the language in its entirety, including the second paragraph of 3, and inserting in lieu thereof, "the amount of any other actual loss or damage; provided, that with respect to a claim the subject of which is a Program that is generally available from IBM to its customers and that is not modified by us for you, such amount shall be limited to the greater of \$100,000 or the charges (if recurring, 12 months' charges apply) for the Program that is the subject of the claim."

2. Amend paragraph 1.10, "Items for Which We are Not Liable" by deleting "2. loss of, or damage to, your records or data;".

3. Amend paragraph 1.11, 6., by deleting "two years after the cause of action arose" and inserting in lieu thereof, "the period specified by West Virginia law".

4. Amend paragraph 1.12, 1., by inserting after the first sentence, "However, you may assign, delegate or resell directly to another State of West Virginia Spending Unit upon written notice to us."

5. Amend paragraph 1.12, 2., by inserting "c. you are reselling, leasing or transferring directly to another Spending Unit."

Page 9 of 23:

1. Amend paragraph 1.15, paragraph one, by deleting the last sentence and paragraph two in their entirety and inserting in lieu thereof, "By changing the terms of this Agreement, we

have effectively terminated this Agreement. The new terms apply, as of the effective date we specify in the notice, only to new orders (those we receive on or after the effective date of the notice). The terms and conditions for on-going Transaction Documents, such as licenses and Services, will remain in effect for the term of the transaction, as well as for any extensions or renewals. For a change to be valid, both of us must sign it, the Purchasing Division must authorize it and the Attorney General must approve it as to form. Additional or different terms in any order or written communication from one party are void."

2. Amend paragraph 1.16 by deleting the first paragraph and inserting in lieu thereof, "Either party may terminate this Agreement on thirty (30) days written notice to the other party."

3. Amend paragraph 1.18 by deleting the words "New York" and inserting in lieu thereof, "West Virginia".

4. Amend by inserting, "1.19 Severability Any provision of this Agreement found to be prohibited by law, invalid or unenforceable shall be ineffective to the extent of and for the duration of such prohibition, invalidity or unenforceability without invalidating the remainder the Agreement."

Page 11 of 23:

Amend paragraph 2.1 "Warranty for Integrated Systems", paragraph two by deleting the sentence, "It begins on the date we deliver the system to you" and inserting in lieu thereof, "It begins on the Date of Acceptance of the system"

Page 13 of 23:

Amend paragraph 3.5, paragraph 6, by inserting at the end thereof, ", unless you have assigned, transferred or sold the Specific Machine directly to another Spending Unit, in which case we agree to license the Code to that Spending Unit."

Page 14 of 23:

Amend paragraph 4.2, "Actions You May Not Take", 1., by deleting the language in its entirety and inserting in lieu thereof, "You agree not to do any of the following:

1. sublicense the license for any Program;
2. assign or transfer the license for any Program, except directly to another Spending Unit;

3. distribute any Program to any third Party; or
4. reverse assemble, reverse compile, or otherwise translate any Program."

Page 15 of 23:

Amend paragraph 4.5, paragraph one, by inserting at the end thereof, ", provided that a testing period will not be less than ten (10) working days after you receive the Program".

Page 16 of 23:

Amend paragraph 4.9, paragraph one, by inserting after the fourth sentence, "However, any changes in charges will be effective only on new Transaction Documents being amended, or on renewals or extensions of on-going Transaction Documents."

Page 17 of 23:

1. Amend paragraph 5.1, paragraph two, by deleting the words "inform you of" in the first sentence, and inserting in lieu thereof, "mutually agree upon in writing".

2. Amend paragraph 5.1, paragraph four, by inserting at the end thereof, "unless otherwise mutually agreed upon in writing".

3. Amend paragraph 5.1, "Alternative Service During Warranty", line five, by deleting the words "an additional charge" in the fourth sentence and inserting in lieu thereof, "the amount specified in our published rates or, in the event there is no published rate applicable to the alternative service, at the charge mutually agreed upon in writing".

Page 18 of 23:

1. Amend paragraph 5.2, paragraph two, line three, by deleting the words "orders that we confirm" and inserting in lieu thereof, "Transaction Documents signed by an authorized representative of both parties and, if required, authorized by the Purchasing Division and approved as to form by the Attorney General"

2. Amend paragraph 5.2, paragraph three, line three, by deleting the word "specify" and inserting in lieu thereof, "mutually agree upon in writing".

3. Amend paragraph 5.2, paragraph four, by deleting the language in its entirety.

4. Amend paragraph 5.2, "Continuing Support Services Termination", by deleting the language in its entirety and inserting in lieu thereof, "You may terminate a Continuing Support Service by providing us one month's written notice. In the event you terminate without cause, you agree to pay us for our reasonable costs to the date of termination."

Page 19 of 23:

Amend paragraph 5.3, "Changes to the Statement of Work" by deleting the second and third sentences and inserting in lieu thereof, "The Change Authorization becomes effective when executed by both parties and approved as to form by the Attorney General."

Page 20 of 23:

Amend paragraph entitled, "Project Support Services Termination", by deleting the language in its entirety and inserting in lieu thereof, "You may terminate a project on written notice to us. Such written notice of termination will specify the date of termination, which date will be the last date of any expenses incurred by you. We may terminate a project if you do not meet your obligations concerning it by sending you written notice of the termination and specifying the date of termination. Upon termination, we will stop our work in an orderly manner as soon as practical. You agree to pay us the reasonable cost for all Services we provide and any Materials we deliver through the project's termination and all costs that are reasonably necessary to stop our work in an orderly manner as soon as practical. We agree to use our best efforts to mitigate any expenses you may incur as a result of a termination. Payment includes any charges we reasonably incur in terminating subcontracts.

Page 21 of 23:

1. Amend paragraph 6.1, paragraph 1, by deleting the language in its entirety and inserting in lieu thereof, "We provide discounts for certain Products based on the volume of business you reasonably expect to do with us (called your "Estimate") during a contract period. In no way is the Estimate a guarantee or commitment on your part. The term "Estimate" replaces the term "Commitment" throughout this Section 6.1."

2. Amend paragraph 6.1, "How We Apply the Discounts", paragraph one, line four, by deleting ", subject to our price

change terms described below."

3. Amend paragraph 6.1 by deleting the paragraphs entitled "Price Changes" (on pages 21 and 22), "Adjustment Charges" (on page 22), and "International Discounts" (on page 22) in their entirety.

Page 22 of 23:

Amend paragraph 6.2, paragraph two, line five, by deleting ", if you request it in writing before the effective date of the change."

Page 23 of 23:

1. Amend paragraph 6.3, paragraph seven, line three, by deleting "unless you request us not to do so" and inserting in lieu thereof, "if agreed in writing by both parties".

2. Amend paragraph 6.3, paragraph eight, line five, by deleting the word "specify", and inserting in lieu thereof, "mutually agree upon in writing".

3. Amend paragraph 6.3, "Invoicing Options", paragraph two, by deleting the last sentence in its entirety.

4. Amend paragraph 6.3, "Invoicing Options", paragraph three, by deleting the last two sentences in their entirety.

The IBM Customer Agreement, Signature Page for Attachments, Z125-4571-00 1/91, dated 5/27/93 between International Business Machines Corporation, hereinafter referred to as "IBM", and the State of West Virginia, hereinafter referred to as "State", is hereby accepted without amendment.

The IBM Customer Agreement, Attachment for Licensed Program Support, Z125-3920-04 4/92, dated 5/27/93 between International Business Machines Corporation, hereinafter referred to as "IBM", and the State of West Virginia, hereinafter referred to as "State", is hereby amended as follows:

Page 1 of 2:

1. Amend paragraph one by deleting "or by using, or making any payment for, the offering described below".

2. Amend paragraph 1. General Terms, paragraph two, 2., lines two and three, by deleting "automatically on the day following the end of the preceding Period, unless you request otherwise" and inserting in lieu thereof, "on the day mutually agreed to by us".

Page 2 of 2:

1. Amend paragraph 1., 5., by deleting the language in its entirety.

2. Amend paragraph 1., 8., lines three and four, by deleting "(as specified in an Exhibit)" and inserting at the end thereof, ", such termination charges to be actual costs or losses sustained during the current fiscal year".

3. Amend paragraph 3., 3., by deleting "provide us with written notice if you wish to terminate Support upon your receipt of our renewal notification. At any other time, you may".

The IBM Customer Agreement, Attachment for State and Local Government, Z125-4205-02 1/91, dated 5/27/93 between International Business Machines Corporation, hereinafter referred to as "IBM", and the State of West Virginia, hereinafter referred to as "State", is hereby amended as follows:

The parties agree that those provisions of the Attachment for State and Local Government, Z125-4205-02 1/91, the parties have agreed upon have been incorporated into the Agreement by this Addendum and that such Attachment for State and Local Government shall not apply to transactions between the parties.

The IBM Customer Agreement, Attachment for Educational Allowance, Z125-3083-03 1/91, dated 5/27/93 between International Business Machines Corporation, hereinafter referred to as "IBM", and the State of West Virginia, hereinafter referred to as "State", is hereby amended as follows:

Page 1 of 2:

Amend paragraph one, lines three and four, by deleting "or by using the Products as described below (or allowing others to do so), or by making any payment for the Products".

AGREED TO:

STATE OF WEST VIRGINIA

INTERNATIONAL BUSINESS
MACHINES CORPORATION

Chuck Polan
By

Steven J. Casper
By

Chuck Polan
Name (type or print)

STEVEN J. CASPER
Name (type or print)

Depl. of Administration, Secretary
Title

BRANCH MANAGER
Title

May 28, 1993
Date

May 27, 1993
Date

APPROVED AS TO FORM this 29th
day of June, 1993

DARRELL V. MCGRAW, JR., ATTORNEY GENERAL

By: Dawn E. Wayfield
Deputy Attorney General

05/24/93
DS:WP-KS:IBM'CUST

AGREEMENT ADDENDUM

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **DISPUTES** - Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** - Any clause requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** - Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
5. **PAYMENT** - Any references to prepayment are deleted. Payment will be in arrears.
6. **INTEREST** - Should the agreement include a provision for interest on late payments, the Agency agrees to pay the maximum legal rate under West Virginia law. All other references to interest or late charges are deleted.
7. **RECOUPMENT** - Any language in the agreement waiving the Agency's right to set-off, counterclaim, recoupment, or other defense is hereby deleted.
8. **FISCAL YEAR FUNDING** - Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATION** - Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** - Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **ATTORNEY FEES** - The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** - Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the agreement.
13. **LIMITATION OF LIABILITY** - The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor's liability for direct damages to a certain dollar amount or to the amount of the agreement is hereby deleted. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.
14. **RIGHT TO TERMINATE** - Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Agency agrees to pay Vendor for services rendered or goods received prior to the effective date of termination.
15. **TERMINATION CHARGES** - Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
16. **RENEWAL** - Any reference to automatic renewal is hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** - Any provision requiring the Agency to insure equipment or property of any kind and name the Vendor as beneficiary or as an additional insured is hereby deleted.
18. **RIGHT TO NOTICE** - Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
19. **ACCELERATION** - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **CONFIDENTIALITY** - Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act.
21. **AMENDMENTS** - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.

ACCEPTED BY:
STATE OF WEST VIRGINIA

Spending Unit: _____
 Signed: _____
 Title: _____
 Date: _____

VENDOR

Company Name: IBM
 Signed: [Signature]
 Title: Client Rep
 Date: 07-07-08



State of West Virginia
 Department of Administration
 Purchasing Division
 2019 Washington Street East
 Post Office Box 50130
 Charleston, WV 25305-0130

Purchase Order

PURCHASE ORDER NO.
 MA05SW19

PAGE

BLANKET RELEASE
 00

CORRECT PURCHASE ORDER NUMBER
 MUST APPEAR ON ALL PACKAGES,
 INVOICES, AND SHIPPING PAPERS.
 QUESTIONS CONCERNING THIS PUR-
 CHASE ORDER SHOULD BE DIRECTED
 TO THE BUYER AS NOTED BELOW.

CHANGE ORDER

SEE REVERSE SIDE FOR
 TERMS AND CONDITIONS

INVOICE TO

ALL STATE AGENCIES
 AND POLITICAL SUBDIVISIONS
 VARIOUS LOCALES AS INDICATED
 BY ORDER

VENDOR

*709002529 304-347-7300
 IBM CORPORATION
 145 SUMMERS STREET SUITE 200
 CHARLESTON WV 25301

SHIP TO

ALL STATE AGENCIES
 AND POLITICAL SUBDIVISIONS
 VARIOUS LOCALES AS INDICATED
 BY ORDER

DATE PRINTED 07/02/2008	TERMS OF SALE NET 30	FEIN/SSN 130871985	FUND
SHIP VIA BEST WAY	FOB DESTINATION	FREIGHT TERMS PREPAID	ACCOUNT NUMBER MUL-MUL

LINE	QUANTITY	UOP	VENDOR ITEM NO.	UNIT PRICE	AMOUNT
	DELIVERY DATE	CAT. NO.	ITEM NUMBER		
			RECEIPT TICKET FOR PURCHASE ORDER: MA05SW19		
0001		920-49	SYSTEMS/EXECUTIVE SOFTWARE FOR LARG		
			SIGNATURE _____		DATE _____

IF APPROVAL AS TO FORM IS REQUIRED BY ATTORNEY GENERAL, CHECK HERE

TOTAL

APPROVED AS TO FORM BY
 ASSISTANT ATTORNEY GENERAL

BY _____
 PURCHASING DIVISION AUTHORIZED SIGNATURE