

IBM Agreement for Service Acquired from an IBM Business Partner

Thank you for your business. We strive to provide you with high quality 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.

IBM ("we") has signed agreements with certain organizations (called "IBM Business Partners") to promote, market, and support certain Services. Some IBM Business Partners also fulfill these functions through other remarketers who are not IBM Business Partners. However, for purposes of brevity in this Agreement, when we use the term IBM Business Partner we mean IBM Business Partners and their remarketers. When the Customer ("you") orders our Services under this Agreement from an IBM Business Partner, we are responsible for providing the Services to you under the warranties and other terms of this Agreement. We are not responsible for 1) the actions of IBM Business Partners, 2) any additional obligations they have to you, or 3) any products or services that they supply to you under their agreements. IBM Business Partners establish the price and terms at which they market IBM Services. In the event that your IBM Business Partner is no longer able to offer our Services, for any reason, we will so notify you in writing. You may continue to receive our Services by instructing us to transfer administration of your Service to either (1) another IBM Business Partner of your choice (who may require you to first execute one of their agreements) who is approved to offer you our Services, or (2) us and signing a separate IBM agreement for services.

This IBM Agreement for Services Acquired from an IBM Business Partner (called the "Agreement") governs the Services you acquire from an IBM Business Partner and we perform.

Part 1 - General

1.1 - Definitions

Enterprise is any legal entity (such as a corporation) and the subsidiaries it owns by more than 50 percent. An Enterprise also includes the entities which are mutually agreed-to in writing

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) for which we may provide maintenance Services.

Materials are literary works or other works of authorship (such as programs, program listings, programming tools, documentation, reports, drawings, and similar works) that we may deliver to you as part of a Service. The term "Materials" does not include licensed program products available under their own license agreement

Service is performance of a task, provision of advice and counsel, assistance, or access to a resource (such as access to an information data base) we make available to you.

PAGES 2 THROUGH 4 ARE ALSO PART OF THIS AGREEMENT. This Agreement and its applicable Attachments and Transaction Documents are the complete agreement between us regarding these Services and replace any prior oral or written communications regarding these Services. No machines or licensed program products are acquired under this Agreement. Such items are available only under the terms of 1) the IBM Customer Agreement (or any equivalent agreement between us) or 2) the applicable third-party agreement. 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 Services you order under this Agreement are subject to it.

Agreed to:
CITY OF NAPLES

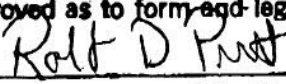
By _____



Authorized signature

Name (type or print): ROBERT E. LEE

Date: 4-28-05 Approved as to form and legality



Enterprise number: By _____ City Attorney

Enterprise address:

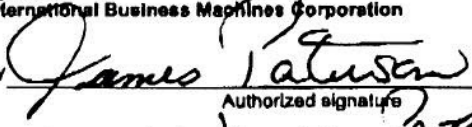
Attest:


Tara A. Norman, City Clerk

STEVE WEEKS
295 RIVERSIDE CIRCLE
NAPLES, FL 34102

Agreed to:
International Business Machines Corporation

By _____



Authorized signature

Name (type or print): JAMES PATERSON

Date: 7-29-05

Agreement number:

IBM Address:

IBM CORPORATION
7100 HIGHLAND PARKWAY
SMYRNA, GA 30082

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

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1.2 - Agreement Structure

Attachments

Some 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. Attachments will be signed by both of us if requested by either of us. Your IBM Business Partner makes the Attachments available to you for signature.

Transaction Documents

For each business transaction, your IBM Business Partner will provide you with the appropriate "Transaction Documents" that confirm the specific details of the transaction. Transaction Documents will be signed by both of us if requested by either of us. The following are examples of Transaction Documents, with examples of the information they may contain:

1. statements of work (scope of Services, responsibilities, deliverables, completion criteria and estimated schedule or contract period); and
2. supplements and order forms (Service type ordered, and contract period).

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 Request for Service

A Service becomes subject to this Agreement when we accept your request for Service from your IBM Business Partner by:

1. providing you a transaction document, or
2. 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 Service, or allowing others to do so; or
3. making any payment to your IBM Business Partner for the Service.

1.3 - Charges and Payment

Your IBM Business Partner sets the charges and terms governing charges. You will make payment directly to your IBM Business Partner. However, we may charge you directly for expenses incurred to perform your Service request, e.g., actual travel and living expenses, out-of-pocket expenses. We will not incur these expenses without your prior approval.

1.4 - Changes to the Agreement Terms

In order to maintain flexibility in our Services, 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 requests for Service and ongoing transactions. Part 3 of this Agreement contains additional provisions for changes to the terms of individual Service transactions. Otherwise, for a change to be valid, both of us must sign it. Additional or different terms in any written communication from you are void.

1.5 - Limitations 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 (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), we are liable for no more than

1. damages for bodily injury (including death) and damage to real property and tangible personal property; and
2. the amount of any other actual direct damages, up to the greater of U.S. \$100,000 (or equivalent in local currency), or the charges (if recurring, 12 months' charges apply) you paid to your IBM Business Partner for the Service that is the subject of this claim.

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

Items for Which We are Not Liable

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

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

1.6 - Mutual Responsibilities

Both of us agree that under this Agreement:

1. neither of us grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent;
2. all information exchanged is non confidential. 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 and rights specified. No other licenses or rights (including licenses or rights under patents) are granted;

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- 5. each may communicate with the other by electronic means and such communication is acceptable as a signed writing to the extent permissible under applicable law. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity;
- 6. each will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations;
- 7. neither of us will bring a legal action more than two years after the cause of action arose unless otherwise provided by local law without the possibility of contractual waiver or limitation, and
- 8. neither of us is responsible for failure to fulfill any obligations due to causes beyond its control.

1.7 - Your Other Responsibilities

You agree:

- 1. not to assign, or otherwise transfer, this Agreement or your rights under this Agreement, delegate your obligations, or resell any Service, without our prior written consent. Any attempt to do so is void;
- 2. that you are responsible for the results obtained from use of the Services; and
- 3. to provide us with sufficient, free, and safe access to your facilities for us to fulfill our obligations.

1.8 - Agreement Termination

You may terminate this Agreement on written notice to your IBM Business Partner and to us following the expiration of your obligations.

Either of us may terminate this Agreement on written notice to the other and to your IBM Business Partner, if the other does not comply with any of its terms.

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

1.9 - Geographic Scope

All your rights and all our obligations are valid only in the United States and Puerto Rico, except that all licenses to Materials are valid as specifically granted.

1.10 - Governing Law

The laws of the State of New York govern this Agreement. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

Part 2 - Warranty Terms

2.1 - Warranty for IBM Services

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

- 1. using reasonable care and skill, and
- 2. according to its current description (including any completion criteria) contained in this Agreement, an Attachment, or a Transaction Document.

2.2 - Extent of Warranty

THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

2.3 - Items Not Covered by Warranty

We do not warrant uninterrupted or error-free operation of any deliverable or Service.

Unless we specify otherwise, we provide Materials and non-IBM Services **WITHOUT WARRANTIES OF ANY KIND.**

Part 3 - Services

3.1 - IBM Services

Services may be either standard offerings or customized to your specific requirements. Each Service transaction may include one or more Services that:

- 1. expire at task completion or an agreed upon date;
- 2. automatically renew as another transaction with a specified contract period. Renewals will continue until either of us terminates the Service; or
- 3. do not expire and are available for your use until either of us terminates the Service.

3.2 - Personnel

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Each of us will be responsible for the supervision, direction, and control of our respective personnel.

We reserve the right to determine the assignment of our personnel.

We may subcontract a Service, or any part of it, to subcontractors selected by us.

3.3 - Materials Ownership and License We will specify Materials to be delivered to you. We or third parties have all right, title, and interest (including ownership of copyright) in Materials created during the Service performance period or otherwise (such as those that preexist the Service). We will deliver one copy of the specified Materials to you. We grant you an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute, within your Enterprise only, copies of these Materials.

You agree to reproduce the copyright notice and any other legend of ownership on any copies made under the license granted in this Section.

Any idea, concept, know-how, or technique which relates to the subject matter of a Service and is developed or provided by either of us, or jointly by both of us, in the performance of a Service may (subject to applicable patents and copyrights) be freely used by either of us.

3.4 - Changes to Service Terms

We may change the terms of Services that are renewable or non-expiring by giving you three months' written notice. However, these changes are not retroactive. They apply immediately to renewal transactions and as of the effective date we specify in the notice to all existing transactions. If we make a change to the terms of a renewable Service that 1) affects your current contract period and 2) you consider unfavorable, at the request of your IBM Business Partner, we will defer it until the end of that contract period.

When both of us agree to change any Services statement of work other than as described above, we will prepare a written description of the agreed change* (called a "Change Authorization"), which both of us must sign. The terms of a Change Authorization prevail over those of the statement of work and any of its previous Change Authorizations.

3.5 - Renewal

Renewable Services renew automatically for a same length contract period unless either of us provides written notification (at least one month prior to the end of the current contract period) to the other and to your IBM Business Partner of their intent not to renew.

3.6 - Termination and Withdrawal

Either of us may terminate a Service if the other does not meet its obligations concerning the Service.

You may terminate a Service transaction on one month's written notice to us and to your IBM Business Partner.*

We may withdraw a renewable or non-expiring Service or support for an eligible product on three months' written notice to you. If we withdraw a Service for which you have prepaid and we have not yet fully provided it to you, your IBM Business Partner will give you a prorated refund.

Any terms which by their nature extend beyond termination or withdrawal remain in effect until fulfilled and apply to respective successors and assignees.

3.7 - Service for Machines

We provide certain types of repair and exchange Service either at your location or at a service center to keep Machines in, or restore them to, conformance with their official published specifications. We may repair the failing Machine or exchange it at our discretion.

When the type of Service requires that you deliver the failing Machine to us, you agree to ship it suitably packaged (prepaid unless we specify otherwise) to a location we designate. After we have repaired or exchanged the Machine, we will return it to you at our expense unless we specify otherwise. 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; and
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, and
 - (c) inform your IBM Business Partner of changes in a Machine's location.

When Service involves the exchange of a Machine or part, the item we replace becomes our property and the replacement becomes yours. You represent that all removed items are genuine and unaltered. The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty of Service status of the replaced item. Before we exchange a Machine or part, you agree to remove all features, parts, options, alterations, and attachments not under our service. You also agree to ensure that the item is free of any legal obligations or restrictions that prevent its exchange.

Any feature, conversion, or upgrade we service must be installed on a Machine which is 1) for certain Machines, the designated, serial-numbered Machine and 2) at an engineering-change level compatible with the feature, conversion, or upgrade.

* Check with your IBM Business Partner to determine if you will incur an additional charge for this.

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Repair and exchange Services do not cover:

1. accessories, supply items, and certain parts, such as batteries, frames, and covers;
2. Machines damaged by misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by you;
3. Machines with removed or altered Machine or parts identification labels;
4. failures caused by a product for which we are not responsible; or
5. service of Machine alterations.

We manage and install engineering changes that apply to IBM Machines and may also perform preventive maintenance.

We provide maintenance Services for selected non-IBM Machines.

When you request maintenance Services under this Agreement, your IBM Business Partner will inform you of the date on which maintenance Services will 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 have us restore it. *Alternatively, you may withdraw your request for maintenance Services. *

* Check with your IBM Business Partner to determine if you will incur an additional charge for this.