



IBM United Kingdom Limited
Registered in London: 741598
Registered Office: PO Box 41,
North Harbour, Portsmouth,
PO6 3AU (hereinafter "IBM ")

1. Definitions

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

Order is the quote signed by IBM and the CUSTOMER which details the specific Services to be provided to the CUSTOMER, incorporating these terms and conditions.

Service Description is the language describing the Services to be performed as referenced in the Order.

2. Term and Termination

The Term of this Order shall be for the period of the dates to be mutually agreed upon. If either party materially breaches any provision of this Order without cure after thirty (30) days written notice thereof, then the other party may terminate this Order. CUSTOMER will be liable for payment for Services rendered up to the effective termination date, all expenses incurred through Service termination and any charges IBM incurs in terminating the Services.

3. Site Readiness

If Services are to be performed on-site at CUSTOMER's location, CUSTOMER will provide IBM with workspace, local telephone, and access to CUSTOMER's computer system, software, related equipment, and facilities as necessary to perform the Services. IBM will abide by CUSTOMER's reasonable identification and security policies as notified.

CUSTOMER is responsible for promptly obtaining and providing to IBM all Required Consents necessary for IBM to provide the Services described in this Order. "Required Consents" means any consents or approvals required to give IBM and its subcontractors the right or license to access, use and/or modify (including creating derivative works) the hardware, software, firmware and other products in CUSTOMER's use, without infringing the ownership or license rights (including patent and copyright) of the providers or owners of such products. CUSTOMER will indemnify, defend and hold IBM, IBM subcontractors and majority-owned subsidiaries, harmless from and against any and all claims, losses, liabilities and damages (including reasonable attorneys' fees and costs) arising from or in connection with any claims (including patent and copyright infringement) made against IBM, alleged to have occurred as a result of CUSTOMER's failure to provide any Required Consents to IBM. IBM will be relieved of the performance of any obligations that may be affected by CUSTOMER's failure to promptly provide any Required Consents to IBM.

4. Warranty

5. IBM warrants that the Services provided hereunder will be performed using reasonable care and skill. Except for the express warranties set forth herein, all services and deliverables are performed and delivered "AS IS". IBM disclaims all other warranties, express or implied, including without limitation the implied warranties of satisfactory quality, merchantability and fitness for a particular purpose and non-infringement.

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

Circumstances may arise where, because of a Default, you are entitled to recover damages from IBM.

Save in respect of the payments referred to in sections 2, 5 and 6, this section sets out the extent of IBM's liability and your sole remedy.

1. IBM will accept unlimited liability for:
 - a. death or personal injury caused by the negligence of IBM; and
 - b. any breach of its obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the supply of Goods and Services Act 1982, or any statutory modification or re-enactment of either such Section.
2. IBM will accept unlimited liability, subject always to the **Items for Which IBM is Not Liable** below, for physical damage to your tangible property resulting from the negligence of IBM.
3. IBM's entire liability for actual damages for any one Default will not in any event, except as provided in items 1 and 2 above, exceed the total purchase price payable for the Service directly relating to the Default, if the charges are recurring then 12 months charges apply.

These limits also apply to IBM's subcontractors and program developers. They state the maximum for which IBM and such subcontractors and program developers are collectively responsible.

Items for Which IBM is Not Liable

Save with respect to any liability referred to in item 1 above, under no circumstances is IBM or any of its subcontractors or Program developers liable for any of the following, even if IBM or they were informed of the possibility of such losses:

1. loss of, or damage to, data;
2. special, indirect, or consequential loss; or
3. loss of profits, business, revenue, goodwill, wasted management time or anticipated savings.

6. Intellectual Property

All materials provided or delivered under the Order are Type II Materials ("Type II Materials"). Type II Materials are those materials in which IBM owns all right, title and interest (including ownership of copyright) exclusively. IBM hereby grants Customer a nonexclusive, paid up, internal-use-only license to use, execute, reproduce, perform and display the Type II Materials. Nothing contained in the Order will restrict IBM in the use of the general techniques and skills of computer operation, system design and programming acquired in the performance of Services hereunder.

7. Confidential Information

"Confidential Information" includes, but is not limited to, trade secrets, discoveries, concepts, , software, methodologies, techniques, designs, specifications, drawings, data, computer programs, business activities and processes, customer lists, reports and other technical and business information marked or designated to be "confidential". Neither party shall use or disclose any Confidential Information of the other party except as expressly permitted herein. A party receiving Confidential Information from the other shall use processes at least as stringent as those in place to protect its own confidential information to protect that Confidential Information from any unauthorised disclosure, including ensuring that its employees, agents and contractors have agreed in writing not to disclose Confidential Information. Upon receipt of a request from the disclosing party the receiving party shall promptly return to the disclosing party all materials containing any Confidential Information of the disclosing party. The provisions of this Section shall not apply to information that: (i) is rightfully known prior to receipt; or (ii) becomes public knowledge by acts other than those of the receiving party; (iii) is independently developed by the receiving party without a breach of obligations herein; or (iv) is rightfully received by the receiving party from a third party without restriction and without breach of this Order. Notwithstanding the foregoing, nothing herein shall prevent a receiving party from disclosing all or part of the Confidential Information as required by a governmental agency or by order of a court, or when disclosure is otherwise required by law; provided, however, that prior to any such disclosure, the receiving party shall, if feasible: (a) promptly notify the disclosing party in writing of such requirement to disclose; and (b) cooperate fully with the disclosing party, at the expense of the disclosing party, in protecting against any such disclosure and/or obtaining a protective order.

8. Payment Terms

The Services will be conducted on a fixed price basis. The fixed price for performing the Services defined in this Order will be as stated in the Order. This fixed price is inclusive of any travel and living expenses, other reasonable expenses incurred in connection with the Services, plus any applicable taxes. All invoices are due upon receipt and payable within 30 days. Payments will be in GB Pounds. If payment is not received within 30 days from the date of invoice you may be subject to late payment charges. Such charges will be calculated at a monthly rate of 2% of the invoice amount, or as permitted by applicable law.

9. General

This Order is governed by the laws of England and shall be subject to the exclusive jurisdiction of the English courts.

This Order plus the Service Description is the complete and exclusive statement of the parties in relation to the subject matter hereof; sets forth all obligations of the parties in relation to the subject matter hereof; supersedes all prior or simultaneous written or oral proposals and understandings relating thereto (save that neither party disclaims liability for fraudulent misrepresentation), all of which are expressly excluded; takes precedence over any conflicting terms of any purchase order issued by CUSTOMER and can only be modified by a written amendment signed by both parties. Any purchase order issued shall be for administrative purposes only and any additional terms or terms conflicting with the terms of this Order are void.

This Order may be executed in one or more counterparts (including by facsimile), all of which shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been signed by each of the parties and delivered to the other parties.