IBM

Terms

1. Definitions

Services - 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 Customer.

Order - the quote delivered by IBM to Customer which details the specific Services to be provided to Customer, incorporating these terms and conditions.

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

Type II Materials - those materials in which IBM owns all right, title and interest (including ownership of copyright) exclusively.

2. Term and Termination

The estimated start date for Services delivery will be the date that the customer Purchase Order (PO) or signed Order is received, whichever is received last. It is agreed the estimated end date will be no more than six months (180 calendar days) past the estimated start date. These estimated dates may be changed by mutual agreement in writing. Either of us may request an end-date extension by sending a letter or e-mail to the other party, referencing the Order number. Once accepted by the receiving party via a letter or e-mail, the end date extension is valid. If either party materially breaches any provision of this Order without cure after 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.

4. Warranty

IBM warrants that the Services provided hereunder will be performed using reasonable care and skill and according to its current description. 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 merchantability and fitness for a particular purpose and noninfringement.

5. Limitation of Liability

EXCEPT FOR A VIOLATION OF SECTION 6, IBM'S AND CUSTOMER'S TOTAL LIABILITY FOR ANY CLAIMS OF ANY KIND RELATED TO THIS AGREEMENT, SHALL BE LIMITED TO DIRECT MONETARY DAMAGES ONLY AND SHALL NOT EXCEED THE TOTAL FEES PAID TO IBM BY CUSTOMER FOR THE PRODUCT OR SERVICE TO WHICH SUCH CLAIM RELATES. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY PUNITIVE, SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL LOSSES OR DAMAGES.

6. Intellectual Property

6.1 Type II Materials

All materials provided or delivered under the Order are Type II Materials. 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.

6.2 Required Consents

Prior to making Customer's facilities, software, hardware, networks or other similar resources available to IBM, Customer will promptly obtain any licenses or approvals necessary for IBM or its subcontractors to use, access and modify such resources to the extent necessary for IBM to perform the Services, including

the development of any Materials. IBM will be relieved of its obligations to the extent Customer's failure to promptly obtain such licenses or approvals adversely affect IBM's ability to perform its obligations. If a third party asserts a claim against IBM as a result of Customer's failure to promptly obtain these licenses or approvals, Customer agrees to reimburse IBM for any costs and damages that IBM may reasonably incur in connection with such claim.

7. Confidential Information

Except if IBM and Customer have entered into a separate signed confidentiality agreement, the following terms will govern the exchange of confidential information.

"Confidential Information" includes, but is not limited to, trade secrets, discoveries, concepts, know-how, 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 will use or disclose any Confidential Information of the other party except as expressly permitted herein. A party receiving Confidential Information from the other will use processes at least as stringent as those in place to protect its own confidential information to protect that Confidential Information from any unauthorized 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 will promptly return to the disclosing party all materials containing any Confidential Information of the disclosing party. The provisions of this section will 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 will 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 will, 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. Information disclosed under these Terms will be subject to these Terms for two years following the initial date of disclosure.

8. Payment Terms

The Services will be conducted on a fixed-price basis. The fixed price for performing the Services will be as stated in the Order. This fixed price excludes any travel and living expenses, other reasonable expenses incurred in connection with the Services, plus any applicable taxes. These costs, if any, will be billed separately. All invoices are due upon receipt. Payments will be in United States dollars. Any overdue amount will bear interest at the maximum rate allowed by law.

9. General

This Order is governed by the laws of New York, without giving effect to its conflict-of-law provisions.

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, 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 will 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 will be considered one and the same agreement, and will become effective when one or more such counterparts have been signed by each of the parties and delivered to the other parties.

Each of us agrees that we may communicate with the other by electronic means and facsimile transmission and such communications are acceptable as a signed writing. 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.