

IBM Customer Agreement

Attachment for IBM @server zSeries 800 and 890 Software License Charges

These terms are in addition to those of the IBM Customer Agreement or any equivalent agreement in effect between us (the "Agreement"). You accept the terms of this Attachment by signing below or making any payment for IBM Programs utilizing the charging structures described below.

This Attachment provides additional terms for Programs running on an IBM @server zSeries 800, IBM @server zSeries 890, or equivalent machine (all of which may be referred to as a "z800" in this Attachment, unless otherwise specified), including terms for z/OS.e and Programs with zSeries Entry License Charges ("zELC"), Entry Workload License Charges ("EWLC") or Tiered Workload License Charges ("TWLC"). When running on a z800, z/TPF, z/OS or z/OS.e must be running in z/Architecture (64-bit) mode.

You agree that, during the term of this Attachment and for six months thereafter, IBM may verify your compliance with the terms of the Attachment. If it does so, IBM will provide you with prior notice and will conduct any review on your premises during normal business hours, in a manner that minimizes disruption to your business. IBM may require you to provide it with machine access, copies of system tools outputs, or other electronic or hard copy system information as appropriate.

NOTE: If the only charges for operating systems on a z800 are zELC or TWLC charges, then this Attachment need not be signed. Part 4 of Z125-3901 (IBM System/370, System/390 and zSeries Machines Exhibit) applies.

1. Definitions

Full Capacity	EWLC pricing of Programs based on the total MSUs of the Machine.
Full Logical Model Capacity	The total MSU capacity of the Logical Model.
MSUs	Millions of Service Units per hour. Units of Workload capacity of a z800.
Product LPAR Utilization Capacity	The highest number of MSUs utilized by the combined logical partitions ("LPARs") in which an EWLC IBM Program runs concurrently during a Reporting Period. The number of MSUs is based on a 4-hour rolling average utilization.
Reporting Period	The period which begins on the second day of a month and ends on the first day of the following month.
Sub-Capacity	EWLC pricing of Programs based on less than the total MSUs of the Machine.
Sub-Capacity Report	A report generated by the IBM-provided Sub-Capacity Reporting Tool. The tool analyzes SMF data and calculates the Product LPAR Utilization Capacity for most EWLC IBM Programs. The Sub-Capacity Report includes these calculations. You are required to submit the report to IBM only if Sub-Capacity pricing is in effect.
zSeries Software Pricing Website	http://www.ibm.com/zseries/library/swpriceinfo/

Both of us agree that the complete agreement between us concerning IBM @server zSeries 800 and 890 Software License Charges consists of this Attachment, applicable Transaction Documents and the IBM Customer Agreement (or any equivalent agreement in effect between us) and replaces any prior oral or written communications between us. Once signed, any reproduction of this Attachment made by reliable means (for example, photocopy or facsimile) is considered an original.

Agreed to:

Agreed to:

International Business Machines Corporation

By Trevor Rask
 Authorized Signature

By Ann M. Rice
 Authorized Signature

Name (type or print): Trevor Rask

Name (type or print): Ann M. Rice

Date: 7/11/2005

Date:

Enterprise number:

Agreement number:

Enterprise address:

IBM address:

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

2. LPAR Limitations

You may not use more than 15 LPARs on a zSeries 890 Model 110

3. Charges for Programs running on a z800

1. Logical Models:

For determining the basis for certain software license charges, a z800 may be divided into two Logical Models, one running z/OS.e and the other running some other operating system(s). If the z800 is running only z/OS.e, or is not running z/OS.e, then there is only one Logical Model and it is equal to the physical machine model. (Note: Integrated Facility for Linux ("IFL") engines are not part of Logical Models or the physical machine model.)

Logical Models may be calculated as follows

(a) If the only charges for Programs on a z800 are zELC, a table illustrating the various Logical Model combinations may be found in the *zSeries 800 and 890 Software License Charges Exhibit, Z125-6588* ("Exhibit").

(b) If a z800 is running a combination of z/OS.e with EWLC charges and some other operating system, the following steps are used to calculate the Logical Model:

i. You advise IBM of planned MSUs:

Within 30 days of the billing period start date for EWLC charges, you will advise IBM of the planned MSU usage for both the z/OS.e and the non-z/OS.e Logical Models. The total planned MSUs must equal the total MSU capacity of the z800. To determine the total MSU capacity of each z800 model, see the zSeries Software Pricing Website.

ii. IBM to calculate Logical Model sizes:

(1) IBM will calculate the Logical Model sizes for zELC Programs by selecting the Logical Model with an MSU rating that equals your planned z/OS.e MSU usage, or the next higher Logical Model if your planned z/OS.e MSU usage exceeds the MSU rating for a Logical Model. IBM will similarly calculate the non-z/OS.e Logical Model using non-z/OS.e MSUs.

(2) IBM will calculate the appropriate tier for TWLC programs based upon your planned z/OS.e MSU usage. IBM will similarly calculate the non-z/OS.e tier using the non-z/OS.e MSUs.

iii. Changing Logical Models sizes:

If a z800 is upgraded or downgraded, or if you change the MSUs used for z/OS.e, you will advise IBM of the new planned MSUs for both z/OS.e and non-z/OS.e. IBM will adjust the Logical Model sizes accordingly.

iv. If MSU use is greater than the total MSU capacity of the z800:

In the event actual MSUs reported on a Sub-Capacity Report for both the z/OS.e and non-z/OS.e Logical Models exceed the total MSU capacity of the z800, IBM will reduce the z/OS.e MSUs so that the total MSUs do not exceed the total MSU capacity of the z800. However, the z/OS.e MSUs may not be reduced below 3 MSUs. If necessary, the non-z/OS.e MSUs will also be reduced so the total MSU capacity of the z800 is not exceeded.

This calculation will not impact zELC charges, only EWLC charges.

v. Actual MSU use exceeds planned MSUs provided to IBM:

If the Sub-Capacity Report shows that actual non-z/OS.e MSU usage exceeded the planned MSU usage that you provided to IBM, IBM may adjust the size of the Logical Models accordingly. Both you and IBM agree that this will be considered to be an order placed by you without further action on your part. You authorize IBM or your IBM Business Partner to make any resulting billing increase and agree to pay such revised charges.

(c) If the charges on a z800 are either aggregated Variable Workload License Charge ("VWLC") or aggregated Parallel Sysplex License Charges ("PSLC"), and a Program is running on only one of the Logical Models, the Full Logical Model Capacity for each Logical Model is defined as follows:

(i) For a Program running in the Logical Model with z/OS.e:

(1) divide the total number of MSUs in the machine by the number of engines in that machine;

(2) multiply that result by the number of engines in the Logical Model;

(3) if the result is not a whole number, any fraction equal to or greater than one-half is rounded up to the next whole number. Otherwise, fractions are dropped.

(ii) For a Program running in the Logical Model without z/OS.e, subtract the MSUs calculated above from the total MSUs in the machine.

2. z/OS.e Charges:

z/OS.e charges are based on the number of engines in the Logical Model in which z/OS.e runs or on EWLC charges.

3. Aggregated Charges:

(a) Aggregated PSLC may apply if the machine is coupled in a Parallel Sysplex that has aggregated PSLC charges. Usage Pricing Charges may apply.

(b) Aggregated Workload License Charges ("WLC") may apply if the machine is coupled in a Parallel Sysplex that has aggregated WLC charges.

(c) Prerequisite Attachments, Supplements and Exhibits for Aggregated Charges (as applicable)

(i) For PSLC:

(1) Attachment for Parallel Sysplex License Charges (Z125-5205); and

- (2) Exhibit - Parallel Sysplex License Charges (Z125-5206).
 - (ii) For WLC:
 - (1) Attachment for zSeries Workload License Charges (Z125-6516); and
 - (2) zSeries Workload License Charges Exhibit (Z125-6324).
4. **zELC Charges:**
- (a) zELC charges are based on the category of the Logical Model.
 - (b) zELC charges are available for selected Programs used on machines that are identified in the "Group" column by "zELC," followed by the zELC category, on the zSeries Software Pricing Website.
 - (c) When zELC charges are not available for certain Programs, a default charge applies. It is specified on the zSeries Software Pricing Website for each applicable machine in the column called "Other."
 - (d) If you select zELC charges for any Program on a z800, then all Programs for which zELC charges are available must have zELC charges, unless EWLC charges are available for selected Programs. In this case those Programs may have EWLC charges.
 - (e) Increases in any zELC or default charges for Programs, due to changes in the category or model placement for any machine to which the Programs are licensed, will be in effect for a minimum period of one month.
5. **TWLC Charges**
- (a) TWLC charges are a tiered EWLC price structure and based on Full Logical Model Capacity. Sub-Capacity pricing is not available.
 - (b) TWLC charges are available for selected Programs used on non-aggregated machines identified in the "Group" column by "TWLC" followed by the TWLC tier on the zSeries Software Pricing Website.
 - (c) When TWLC charges are not available for certain programs, a default charge applies. It is specified on the zSeries Software Pricing Website for each applicable machine in the column called "Other."
 - (d) If you select TWLC charges for any Program on a machine, then all Programs for which TWLC charges are available must have TWLC charges, unless EWLC charges are available for selected Programs. In this case those Programs must have EWLC charges.
 - (e) Increases in any TWLC or default charges for Programs, due to changes in the tier placement for any machine to which the Programs are licensed, will be in effect for a minimum period of one month.
6. **EWLC Charges:**
- (a) EWLC charges are based on Full Capacity or Sub-Capacity pricing.
 - (b) EWLC charges are available only for selected Programs used on non-aggregated machines that are identified in the "Group" column by "EWLC" on the zSeries Software Pricing Website.
 - (c) If you select EWLC charges for a Program on a z800, then all Programs for which EWLC charges are available must have EWLC charges. All other Programs on that machine must have zELC charges, if zELC charges are available, or TWLC charges, if TWLC charges are available.
 - (d) Full Capacity Pricing Terms:
Increases in EWLC charges for Programs, due to changes in the model placement for any machine to which the Programs are licensed, will be in effect for a minimum period of one month.
 - (e) Sub-Capacity Pricing Terms:
 - (i) Sub-Capacity Charges:
 - (1) New licenses are charged on a Full Capacity pricing basis until you submit the initial Sub-Capacity Report.
 - (2) Monthly charges are based on the number of MSUs defined in the Program's Sub-Capacity Report for the specified z800 during the Reporting Period that begins on the second day of the prior month. This value corresponds to the Product LPAR Utilization Capacity or must equal Full Capacity. If Sub-Capacity pricing is not in effect, monthly charges are based on Full Capacity.
 - (3) EWLC features have the same MSUs as the Program.
 - (4) For native z/TPF, z/OS or z/OS.e LPARs, the number of MSUs associated with an LPAR is equivalent to the highest observed rolling 4-hour average utilization in a Reporting Period. You may manage native z/OS or z/OS.e LPAR utilization by explicitly specifying the defined capacity of the LPAR(s) on the Hardware Management Console ("HMC"). However, this is not required to obtain Sub-Capacity pricing benefits.
If you choose to specify the capacity of the LPAR(s), the Sub-Capacity Reporting Tool will use the lower of the specified capacity or the 4-hour rolling average utilization in order to determine the Product LPAR Utilization Capacity for each Program.
For non-native z/TPF, z/OS or z/OS.e LPARs (i.e., z/OS guests of VM), the number of MSUs associated with an LPAR is equivalent to the maximum potential MSU capacity of that LPAR.
 - (5) If an OS/390 or MVS operating system is licensed to the same z800, then charges are based on Full Capacity.
 - (6) The capping function in z/OS or z/OS.e is used to ensure the workload does not exceed the LPAR defined capacity you have specified on a rolling four hour average. To achieve this, the capping function may automatically reduce and limit computer resources to workloads running in that LPAR. By defining the LPAR capacity, you authorize the capping function to cap the computer's resources as defined.

(ii) IBM's Responsibilities:

IBM will:

- (1) specify in the Exhibit the date and the e-mail address for transmitting Sub-Capacity Reports to IBM;
- (2) provide the Sub-Capacity Reporting Tool;
- (3) adjust EWLC in response to the changes you indicate on the Sub-Capacity Reports that you submit; and
- (4) register z800s when you submit the initial Sub-Capacity Reports.

(iii) Your Responsibilities under Sub-Capacity Pricing:

You agree to:

- (1) promptly install any enabling code for Programs or IBM @server zSeries Licensed Internal Code ("LIC") required for Sub-Capacity pricing;
- (2) collect, and retain for a period of not less than six months, the SMF data records for all LPARs, by machine, required by the Sub-Capacity Reporting Tool for each Reporting Period;
- (3) run the most current version of the Sub-Capacity Reporting Tool against the collected SMF data to produce a Sub-Capacity Report. Update the Sub-Capacity Report with the Product LPAR Utilization Capacity MSUs for any Program for which the required SMF data cannot be collected. If there have been special circumstances during the Reporting Period, you may also provide alternate values, as defined in the *SCRT Users Guide* (SG24-6522), for each Program, with an explanation for the variance;
- (4) send to IBM within the time specified in the Exhibit:
 - (i) the initial Sub-Capacity Report that is based on the data for the entire initial Reporting Period for each z800 that you wish IBM to register for Sub-Capacity pricing; and
 - (ii) subsequent Sub-Capacity Reports that are based on the data for each entire Reporting Period thereafter, for each registered z800.

Sub-Capacity Reports may not be used to order or discontinue licenses, move licenses between machines, report machine model upgrades, and enable or disable Program features.

Both IBM and you agree that Sub-Capacity Reports that reflect a changed Product LPAR Utilization Capacity will be considered to be orders placed by you without further action on your part. You authorize IBM or your IBM Business Partner to make any resulting billing increase or decrease, and agree to pay such revised charges. Sub-Capacity Reports not submitted by the "not later than" date specified in the Exhibit will result in Programs being charged on a Full Capacity basis for the Reporting Period;

- (5) configure your machine to send Transmit System Availability Data ("TSAD") weekly to IBM via the Remote Support Facility ("RSF"). This enables IBM to verify that the Product LPAR Utilization Capacity MSUs in the Sub-Capacity Reports you submit to IBM are consistent with your actual machine configuration. An alternate means for you to collect and transmit this data is provided in the "z/OS Planning for WLC" publication. Failure to submit TSAD may result in Programs being charged on a Full Capacity basis;
- (6) assign a person in your organization with authority to discuss and promptly resolve any questions on Sub-Capacity Reports or inconsistencies between Sub-Capacity Report contents or current license entitlement, and configuration data reported via the RSF; and
- (7) notify IBM if you elect to convert from Sub-Capacity pricing to EWLC at Full Capacity.

7. **GOTC Charges (Graduated One-Time Charges)**

- (a) Programs for which you have paid GOTC may be moved to a z800.
- (b) Upgrade charges will apply if the z800 "Default Model Group" specified in the Exhibit or the zSeries Software Pricing Website is higher than the current GOTC entitlement. Refunds do not apply if the z800 Default Model Group is lower.
- (c) Contact IBM for special pricing if the GOTC license is being moved to a z800 whose applicable default charge is based on MSUs rather than a specific Default Model Group.

4. **Additional License Terms for z/OS.e**

1. You may run z/OS.e only on z800s.
2. You must run z/OS.e in a Logical Partition ("LPAR") that has "ZOSE" as the first four characters of the LPAR name.
3. You must execute z/OS.e in z/Architecture (64-bit) mode.
4. You must order and license z/OS.e for the number of engines in the Logical Model in which you will run z/OS.e, or alternatively, z/OS.e may be ordered with EWLC charges.
5. You may use only the levels of Language Environment (LE), JES2 and JES3 that are delivered with z/OS.e.
6. You may not run any of the following z/OS.e base elements, optional features, or functions:
 - (a) BookManager READ
 - (b) BookManager BUILD feature
 - (c) GDDM
 - (d) GDDM-PGF feature
 - (e) GDDM-REXX feature

- (f) DCE Application Support
 - (g) LANRES
 - (h) Bulk Data Transfer (BDT) File-to-File feature
 - (i) Language Environment's use of Run-time Library Services (RTLS)
 - (j) Language Environment Routine Retention (LRR)
 - (k) Language Environment Compatibility Preinitialization for C and PL/I
 - (l) Encina Toolkit Executive
 - (m) MICR/OCR
 - (n) Communications Server Network Print Facility (NPF) feature
7. You may not run any of the following under z/OS.e:
- (a) CICS, IMS, FORTRAN, or COBOL applications. However, you may run precompiled COBOL DB2 stored procedures and other precompiled COBOL applications using the Language Environment preinitialization interface (CEEPIPI). You may also use DB2, CICS and IMS Connectors to access existing z/OS or OS/390 systems or an application server on Linux for zSeries. Hipersockets may be used as long as they access LPARs or IFLs on the same z800.
 - (b) COBOL, FORTRAN, PL/I, or VisualAge PL/I compilers. However, you may execute precompiled PL/I and VisualAge PL/I applications.
 - (c) DB2 QMF Host feature, DB2 QMF HPO feature.
 - (d) You may not have more than eight concurrent TSO users under z/OS.e.
 - (e) You may not run any operating system other than z/OS.e, z/VM V4 and LINUX in the z/OS.e Logical Model. Such operating systems include, for example, z/OS, OS/390, MVS, VM (prior to z/VM V4), VSE, TPF, etc.
 - (f) You agree to configure your z800 to send Transmit System Availability Data ("TSAD") to IBM weekly via the Remote Support Facility ("RSF"). This enables IBM to verify that your z/OS.e license matches your actual z800 configuration. An alternate means for you to collect and transmit this data is provided in the "Hardware Management Console Operations Guide" publication.
- 5. Programs that run on an IFL**
- 1. Programs that run on an IFL engine may be licensed under the terms of the agreement provided with them.
 - 2. Charges for Programs that IBM has announced as eligible to run on IFL engines are based on the total number of IFL engines installed on the z800.
 - 3. If a Program runs on the IFL engine(s) and on the engine(s) of one or both of the Logical Models, the charges are based on the total of the IFL engines and the engines in the Logical Models where the Program runs.
- 6. Additional WLC Transition Program Terms for z800s**
- 1. Parallel Sysplex Transition Program:
A z800 is eligible for an existing WLC Transition Program - Parallel Sysplex only when the Transition Program includes an IBM@server zSeries 900 Machine with WLC charges.
 - 2. Prerequisite Attachments, Supplements and Exhibits for WLC Transition Program - Parallel Sysplex:
 - (a) Attachment for Workload License Charges Transition Program - Parallel Sysplex (Z125-6371); and
 - (b) Supplement for Workload License Charges Transition Program - Parallel Sysplex (Z125-6372).

IBM Customer Agreement

This IBM Customer Agreement, with an effective date of July 3, 2002, (called the "Agreement") covers business transactions you may do with International Business Machines Corporation ("IBM") to purchase Machines, license Programs, and acquire Services.

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, both of us agree to the terms of this Agreement without modification. 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)
PacifiCorp Holdings Inc. ("PHI")

By Richard Walje
Authorized Signature

Name (type or print):

Date:

Enterprise Number:

Enterprise Address:

Agreed to:
International Business Machines Corporation

By Tom Robinson
Authorized Signature

Name (type or print):

Date:

Agreement Number:

IBM address: 15450 SW Koll Parkway
Beaverton, OR 97006-6063

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

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IBM Customer Agreement

Part 1 - General

1.1 Definitions

PHI-set-up Machine is an IBM Machine that you install according to IBM's instructions.

Date of Installation is the following:

1. for an IBM Machine that IBM is responsible for installing, the business day after the day IBM installs it or, if you defer installation, makes it available to you for subsequent installation by IBM;
2. for a PHI-set-up Machine and a non-IBM Machine, the second business day after the Machine's standard transit allowance period; and
3. for a Program --
 - (a) basic license, the later of the following:
 - (i) the day after its testing period ends; or
 - (ii) the second business day after the Program's standard transit allowance period,
 - (b) copy, the date (specified in a Transaction Document) on which IBM authorizes you to make a copy of the Program, and
 - (c) chargeable component, the date you distribute a copy of the chargeable component in support of your authorized use of the Program.

Designated Machine is either 1) the machine on which you will use a Program for processing and which IBM requires you to identify to it by type/model and serial number, or 2) any machine on which you use the Program if IBM does not require you to provide this identification to IBM.

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.

Licensed Internal Code is Machine Code used by certain Machines IBM specifies (called "Specific Machines").

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 IBM may provide to you.

Machine Code is microcode, basic input/output system code (called "BIOS"), utility programs, device drivers, and diagnostics delivered with an IBM Machine.

Materials are literary works or other works of authorship (such as programs, program listings, programming tools, documentation, reports, drawings and similar works) that IBM may deliver to you as part of a Service. The term "Materials" does not include Programs, Machine Code, or Licensed Internal Code.

Order is a valid purchase document including, but not limited to customer's purchase order or an order submitted by customer via Cisco Connection Online process, provided the appropriate Statement of Work is executed between customer and IBM for such Cisco procurement services.

Product is a Machine or a Program.

Program is the following, including the original and all whole or partial copies:

1. machine-readable instructions and data;
2. components;
3. audio-visual content (such as images, text, recordings, or pictures); and

4. related licensed materials.

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

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

Specifications is a document that provides information specific to a Product. For an IBM Machine, IBM calls the document "Official Published Specifications." For an IBM Program licensed under this Agreement, IBM calls it "Licensed Program Specifications."

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

Statement Of Work ("SOW") is a document signed by both of us describing the work activities and deliverables to be provided by IBM hereunder.

1.2 Agreement Structure

Attachments

Some Products and Services have terms in addition to those IBM specifies in this Agreement. IBM provides the additional terms in documents called "Attachments," which are also part of this Agreement. Attachments will be signed by both of us.

Transaction Documents

For each business transaction the parties will agree to the appropriate "Transaction Documents" to be issued by IBM, that confirm the specific details of the transaction. Transaction Documents are also part of this Agreement. Transaction Documents will be signed by both of us if requested by either of us. The following are examples of Transaction Documents that must be signed by both of us, with examples of the information they may contain:

1. addenda (contract period duration, start date and total quantity);
2. change authorizations (description of agreed changes to an existing Service SOW;
3. SOW (scope of Services, responsibilities, deliverables, completion criteria, estimated schedule or contract period, and charges); and
4. supplements, excluding Orders or like procurement documents (Machine quantity and type ordered, price, estimated shipment date, and warranty period).

The following are examples of administrative, unsigned Transaction Documents that confirm the details of a transaction, with examples of the information they may contain:

1. exhibits (eligible Products by category);
2. invoices (item, quantity, and amount due); and
3. Orders or like procurement documents.

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.

IBM's Acceptance of Your Order

A Product or Service becomes subject to this Agreement when IBM accepts your Order by doing any of the following:

1. sending you a Transaction Document;
2. shipping the Machine or making the Program available to you; or
3. providing the Service.

Your Acceptance of Additional Terms

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

1. by having an authorized representative defined as an officer, Sourcing Manager, or Contract Administrator of PHI signing the Attachment or Transaction Document.

1.3 Delivery

IBM will try to meet your delivery requirements for Products and Services you order, and will inform you of their status. Estimated transportation charges, if applicable, will be specified in a Transaction Document.

1.4 Charges and Payment

The amount payable for a Product or Service will be based on one or more of the following types of charges:

1. one-time (for example, the price of a Machine);
2. recurring (for example, a periodic charge for Programs or measured use of Services);
3. time and materials (for example, charges for hourly Services); or
4. fixed price (for example, a specific amount agreed to between us for a custom Service).

Depending on the particular Product, Service, or circumstance, additional charges may apply (such as special handling or travel related expenses). IBM will contact you in advance whenever additional charges may apply. Additional charges shall have the prior approval of the customer.

Recurring charges for a Product begin on its Date of Installation. Charges for Services are billed as IBM specifies which may be in advance, periodically during the performance of the Service, or after the Service is completed.

You agree to pay undisputed amounts due for Products and Services specified in a correct invoice. Our practice is to accept payment from you thirty (30) days after you receive a correct invoice from IBM. This practice does not constitute a course of dealing on a "Net 30" payment term. However, you will not be in default unless there is evidence of repeated late payments of more than 30 days and only after we give you written notice of such late payments.

If any authority imposes a duty, tax, levy, or fee, excluding those based on IBM's net income, upon any transaction under this Agreement, then you agree to pay that amount as specified in an invoice or supply exemption documentation. You are responsible for personal property taxes for each Product from the date IBM ships it to you.

One-time and recurring charges may be based on measurements of actual or authorized use (for example, number of users or processor size for Programs, meter readings for maintenance Services, or connect time for network Services). You agree to provide actual usage data if IBM specifies. If you make changes to your environment that impact use charges (for example, change processor size or configuration for Programs), you agree to promptly notify IBM and pay any applicable charges. Recurring charges will be adjusted accordingly. Unless IBM agrees otherwise, IBM does not give credits or refunds for charges already due or paid.

IBM may increase recurring charges for Products and Services, as well as labor rates and minimums for Services provided under this Agreement, by giving you three months' written notice. An increase applies on the first day of the invoice or charging period on or after the effective date IBM specifies in the notice. You may terminate this Agreement or the applicable Attachment or Transaction Document if you disagree with our price change terms or any price increase unless otherwise indicated in the Attachment, Transaction Document or other contract document.

IBM may increase one-time charges without notice as long as such one-time charges are not contracted for or otherwise specified in an applicable Statement of Work. However, an increase to one-time charges does not apply to you if 1) IBM receives your order before the announcement date of the increase and 2) one of the following occurs within three months after IBM's receipt of your order:

1. IBM ships you the Machine or makes the Program available to you;
2. you make an authorized copy of a Program or distribute a chargeable component of a Program to another Machine; or
3. a Program's increased use charge becomes due.

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

Services for which you prepay must be used within the applicable contract period. Unless IBM specifies otherwise, IBM does not give credits or refunds for unused prepaid Services.

1.5 Changes to the Agreement Terms

For a change to the terms of this Agreement (Parts 1 through 5) to be valid, both of us must sign it. In order to maintain flexibility in our business relationship however, IBM may change the terms of its Product and Service offerings by giving you three months' written notice. These changes are not retroactive. They apply, as of the effective date IBM specifies in the notice, only to new orders, renewals, and on-going transactions that do not expire. For on-going transactions with a defined renewable contract period, you may request that IBM defer the change effective date until the end of the current contract period if 1) the change affects your current contract period and 2) you consider the change unfavorable. Changes to charges for Products and Services will be implemented as described in the Charges and Payment section above.

Additional or different terms in any written communication from you (such as an order) are void.

1.6 IBM Business Partners

IBM has signed agreements with certain organizations (called "IBM Business Partners") to promote, market, and support certain Products and Services. When you order IBM Products or Services (marketed to you by IBM Business Partners) under this Agreement, IBM confirms that it is responsible for providing the Products or Services to you under the warranties and other terms of this Agreement. IBM is 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.

1.7 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 nonconfidential. If either of us requires the exchange of confidential information, such confidential information shall be subject to the terms and conditions of the Agreement of Exchange of Confidential Information dated September 1, 2000 between PacifiCorp and IBM;

3. each of us is free to enter into similar agreements with others;
4. each of us grants the other only the licenses and rights specified. No other licenses or rights (including licenses or rights under patents) are granted;
5. each of us may communicate with the other by electronic means and such communication is acceptable as a signed writing. An identification code, such as the sender's email address, (called a "user ID") contained in an electronic document is legally sufficient to verify the sender's identity and the document's authenticity;
6. each of us 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;
8. neither of us is responsible for failure to fulfill any obligations due to causes beyond its control. Such causes may include, by way of example only, but are not limited to, strikes, fire, flood, earthquake, and other acts of God. If any force majeure conditions occurs, the party delayed or unable to perform shall give immediate notice to the other party, stating the nature of the force majeure conditions and any action being taken to avoid or minimize the effect. In such event, the nonperforming party shall be excused from performance for as long as such circumstances prevail and continues to use commercially reasonable efforts to recommence performance to the extent possible; and
9. Neither this Agreement nor any right or obligation hereunder may be assigned or otherwise transferred by either party without the prior written consent of the other, and such consent will not be unreasonably withheld. Any attempt to make such an Assignment without proper consent is void. PHI's rights or obligations hereunder may be assigned or otherwise transferred by PHI to any affiliate in which PHI owns at least 30% of the voting interest who agree in writing with IBM to abide by the terms and conditions of this Agreement or to any entity as to which PHI has a right to control operations who agree in writing with IBM to abide by the terms and conditions of this Agreement. IBM's rights or obligations hereunder may be assigned or otherwise transferred by IBM to any affiliate in which IBM owns at least 30% of the voting interest who agree in writing with PHI to abide by the terms and conditions of this Agreement or to any entity as to which IBM has a right to control operations who agree in writing with PHI to abide by the terms and conditions of this Agreement. This Agreement shall be binding upon each party's permitted successors and assigns. Notwithstanding the foregoing, PHI may assign or otherwise transfer Type 1 or Type Z Materials to a parent, subsidiary, affiliated entity or third party or as part of the sale of any portion of its business, or pursuant to any merger, consolidation or reorganization of any of the foregoing, whether in whole or in part, provided the parent, subsidiary, affiliated entity or third party or as part of the sale of any portion of its business, or pursuant to any merger, consolidation or reorganization of any of the foregoing, whether in whole or in part, agree in writing to abide by the terms and conditions of this Agreement. IBM may assign its rights to payments under this Agreement without obtaining PHI's consent. It is not considered an assignment for IBM to divest a portion of its business in a manner that similarly affects all of its customers.

1.8 Your Other Responsibilities

You agree:

1. not to resell any Service without IBM's prior written consent. Any attempt to do so is void;
2. that this Agreement will not create any right or cause of action for any third party, nor will IBM be responsible for any third party claims against you except as described in the Patents and Copyrights section below or as permitted by the Limitation of Liability section below for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable;
3. 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 IBM's authorized remarketers;
4. to allow IBM to install mandatory engineering changes (such as those required for safety) on a Machine to the extent that such change does not materially degrade the functionality of such Machine. Any parts IBM removes become IBM's property. You represent that you have the permission from the owner and any lien holders to transfer ownership and possession of removed parts to IBM;
5. that you are responsible for the results obtained from the use of the Products and Services;
6. to provide IBM with sufficient, free, and safe access to your facilities and systems for IBM to fulfill its obligations; and
7. to comply with all applicable export and import laws and regulations.

1.9 Patents and Copyrights

For purposes of this section, the term "Product" includes Materials, Machine Code and Licensed Internal Code.

If a third party claims that a Product IBM provides to you infringes that party's patent or copyright, IBM will defend you against that claim at its expense and pay all costs, damages, and attorney's fees that a court finally awards or that are included in a settlement approved by IBM, provided that you:

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

If such a claim is made or appears likely to be made, you agree to permit IBM to enable you to continue to use the Product, or to modify it, or replace it with one that is at least functionally equivalent. If IBM determines that none of these alternatives is reasonably available, you agree to return the Product to IBM on its written request. IBM will then give you a credit equal to:

1. for a Machine, your net book value provided you have followed generally-accepted accounting principles;
2. for a Program, the amount paid by you or 12 months' charges (whichever is less); and
3. for Materials, the amount you paid IBM for the creation of the Materials.

This is IBM's entire obligation to you regarding any claim of infringement.

Claims for Which IBM is Not Responsible

IBM has no obligation regarding any claim based on any of the following:

1. anything you provide which is incorporated into a Product or IBM's compliance with any designs, specifications, or instructions provided by you or by a third party on your behalf;
2. your modification of a Product, or a Program's use in other than its Specified Operating Environment;
3. the combination, operation, or use of a Product with other Products not provided by IBM as a system, or the combination, operation, or use of a Product with any product, data, apparatus, or business method that IBM did not provide, or the distribution, operation or use of a Product for the benefit of a third party outside your Enterprise; or
4. infringement by a non-IBM Product alone.

1.10 Limitation of Liability

Circumstances may arise where, because of a default on IBM's part or other liability, you are entitled to recover damages from IBM. In each such instance, regardless of the basis on which you are entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM is liable for no more than:

1. payments referred to in the Patents and Copyrights section above;
2. damages for bodily injury (including death) and damage to real property and tangible personal property; and
3. the amount of any other actual direct damages shall be limited to the charges for the Product or Services (if recurring, 12 months charges apply) that is subject of the claim or \$100,000, whichever is greater. For purposes of this item, the term "Product" includes Materials, Machine Code, and Licensed Internal Code.

This limit also applies to any of IBM's subcontractors and Program developers. It is the maximum for which IBM and its subcontractors and Program developers are collectively responsible.

Items for Which IBM is Not Liable

Under no circumstances is IBM, its subcontractors, or Program developers liable for any of the following even if informed of their possibility:

1. loss of, or damage to, data;
2. special, incidental, or indirect damages or for any economic consequential damages; or
3. lost profits, business, revenue, goodwill, or anticipated savings.

1.11 Agreement Termination

Either party may terminate this Agreement upon thirty (30) days prior written notice and upon the expiration or termination of the terminating party's 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 the Agreement termination remain in effect until fulfilled, and apply to both of our respective successors and assignees.

1.12 Geographic Scope

The rights, duties, and obligations of each of us and all licenses (except for Machine Code, Licensed Internal Code, and as specifically granted) are valid only in the United States.

1.13 Governing Law

Both you and IBM consent to the application of the laws of the State of New York to govern, interpret, and enforce all of your and IBM's rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

IBM Customer Agreement

Part 2 - Warranties

2.1 The IBM Warranties

Warranty for IBM Machines

For each IBM Machine, IBM warrants 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 commencing on its Date of Installation. During the warranty period, IBM provides repair and exchange Service for the Machine, without charge, under the type of Service IBM designates for the Machine.

If a Machine does not function as warranted during the warranty period and IBM is unable to either 1) make it do so, or 2) replace it with one that is at least functionally equivalent, you may return it to IBM and your money will be refunded.

Additional terms regarding Service for Machines during and after the warranty period are contained in Part 5.

Warranty for IBM Programs

For each warranted IBM Program, IBM warrants that when it is used in the Specified Operating Environment, it will conform to its Specifications.

The warranty period for a Program expires when its Program Services are no longer available. During the warranty period, IBM provides defect-related Program Services without charge. Program Services are available for a warranted Program for at least one year following its general availability.

If a Program does not function as warranted during the first year after you obtain your license and IBM is unable to make it do so, you may return the Program and your money will be refunded. To be eligible, you must have obtained your license while Program Services (regardless of the remaining duration) were available for it. Additional terms regarding Program Services are contained in Part 4.

Warranty for IBM Services

For each IBM Service, IBM warrants that IBM performs 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.

Warranty for Systems

Where IBM provides Products to you as a system, IBM warrants that they are compatible and will operate with one another. This warranty is in addition to IBM's other applicable warranties.

2.2 Extent of Warranty

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

The warranties stated above will not apply to the extent there has been 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 IBM is not re-

sponsible. With respect to Machines, the warranty is voided by removal or alteration of Machine or parts identification labels.

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

IBM does not warrant uninterrupted or error-free operation of a Product or Service or that IBM will correct all defects.

IBM will identify IBM Products that it does not warrant.

Unless IBM specifies otherwise, it provides Materials, non-IBM Products, and non-IBM Services **WITHOUT WARRANTIES OF ANY KIND**. However, non-IBM manufacturers, suppliers, or publishers may provide their own warranties to you.

IBM Customer Agreement

Part 3 - Machines

3.1 Title and Risk of Loss

When IBM accepts your order, IBM agrees to sell you the Machine described in a Transaction Document. IBM transfers title to you or, if you choose, your lessor when IBM ships the Machine. However, IBM reserves a purchase money security interest in the Machine until IBM receives the amounts due. For a feature, conversion, or upgrade involving the removal of parts which become IBM's property, IBM reserves the security interest until IBM receives payment of all the amounts due and the removed parts. You agree to sign an appropriate document to permit IBM to perfect its purchase money security interest.

IBM bears the risk of loss for the Machine up to the time it is delivered to the carrier for shipment. Thereafter, you assume the risk and you are responsible for taking whatever steps you feel are appropriate to protect against risk of loss.

3.2 Production Status

Each IBM Machine is manufactured from parts that may be new or used. In some cases, a Machine may not be new and may have been previously installed. Regardless, IBM's appropriate warranty terms apply.

3.3 Installation

You agree to provide an environment meeting the specified requirements for the Machine.

IBM has standard installation procedures. IBM will successfully complete these procedures before it considers an IBM Machine (other than a Machine for which you defer installation or a PHI-set-up Machine) installed.

You are responsible for installing a PHI-set-up Machine and, unless IBM agrees otherwise, a non-IBM Machine.

Machine Features, Conversions, and Upgrades

IBM sells features, conversions, and upgrades for installation on Machines, and, in certain instances, only for installation on a designated, serial-numbered Machine. Many of these transactions involve the removal of parts and their return to IBM. As applicable, you represent that you have the permission from the owner and any lien holders to 1) install features, conversions, and upgrades and 2) transfer ownership and possession of removed parts (which become IBM's property) to IBM. You further represent that all removed parts are genuine, unaltered, and in good working order, normal wear-and-tear excepted. A part that replaces a removed part will assume the warranty or maintenance Service status of the replaced part. You agree to allow IBM to install the feature, conversion, or upgrade within 30 days of its delivery. Otherwise, IBM may terminate the transaction and you must return the feature, conversion, or upgrade to IBM at your expense.

3.4 Machine Code and Licensed Internal Code

Machine Code is licensed under the terms of the agreement provided with it and this Agreement.

Certain Machines IBM specifies (called "Specific Machines") use Licensed Internal Code (called "LIC"). IBM, one of its subsidiaries, or a third party owns LIC including all copyrights in LIC and all copies of LIC (this includes the original LIC, copies of the original LIC, and copies made from copies). LIC is copyrighted and licensed (not sold).

IBM will identify each Specific Machine in a Transaction Document. If you are the rightful possessor of a Specific Machine, IBM grants you a license to use the LIC (or any replacement IBM

provides) on, or in conjunction with, only the Specific Machine, designated by serial number, for which the LIC is provided. IBM licenses the LIC to only one rightful possessor at a time.

Under each license, IBM authorizes you to do only the following:

1. execute the LIC to enable the Specific Machine to function according to its Specifications;
2. make a backup or archival copy of the LIC (unless IBM makes 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 LIC as necessary to maintain the Specific Machine.

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

You may transfer possession of the LIC to another party only with the transfer of the Specific Machine. If you do so, you must 1) destroy all your copies of the LIC that were not provided by IBM, 2) either give the other party all your IBM-provided copies of the LIC or destroy them, and 3) notify the other party of these terms. IBM licenses the other party when that party accepts these terms by initial use of the LIC. These terms apply to all LIC 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 LIC only as authorized above. You may not do, for example, any of the following:

1. otherwise copy, display, transfer, adapt, modify, or distribute the LIC (electronically or otherwise), except as IBM may authorize in the Specific Machine's Specifications or in writing to you;
2. reverse assemble, reverse compile, or otherwise translate the LIC unless expressly permitted by applicable law without the possibility of contractual waiver;
3. sublicense or assign the license for the LIC; or
4. lease the LIC or any copy of it.

IBM Customer Agreement

Part 4 - Programs

4.1 License

When IBM accepts your order, IBM grants you a nonexclusive, nontransferable license to use the Program. Programs are owned by IBM, one of its subsidiaries, or a third party and are copyrighted and licensed (not sold).

4.2 License Details

Under each license, IBM authorizes you to:

1. use the Program's machine-readable portion on only the Designated Machine. If the Designated Machine is inoperable, you may use another machine temporarily. If the Designated Machine cannot assemble or compile the Program, you may assemble or compile the Program on another machine.
If you change a Designated Machine previously identified to IBM, you agree to notify IBM of the change and its effective date;
2. use the Program within your Enterprise to the extent of authorizations you have acquired;
3. make and install copies of the Program, to support the level of use authorized, provided you reproduce the copyright notices and any other legends of ownership on each copy or partial copy; and
4. use any portion of the Program IBM 1) provides in source form, or 2) marks 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 IBM may place on a Program to the extent set forth in a Transaction Document and the applicable Program Specifications.

Actions You May Not Take

You agree not to:

1. reverse assemble, reverse compile, or otherwise translate the Program; or
2. sublicense, assign, rent or lease the Program.

4.3 Program Components Not Used on the Designated Machine

Some Programs have components that are designed for use on machines other than the Designated Machine on which the Program is used. You may make copies of a component and its documentation in support of your authorized use of the Program. For chargeable components, you agree to notify IBM of the component's actual date of distribution which is its Date of Installation.

4.4 Distributed System License Option

For some Programs, you may make a copy under a Distributed System License Option (called a "DSLO" copy). IBM charges less for a DSLO copy than 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 IBM provides for the Basic license.

4.5 Program Testing

IBM provides a testing period for certain Programs to help you evaluate if they meet your needs. If IBM offers a testing period, it will start 1) the second business day after the Program's standard transit allowance period, or 2) on another date specified in a Transaction Document. IBM will inform you of the duration of the Program's testing period.

IBM does not provide testing periods for DSLO copies.

4.6 Program Protection

For each Program, you agree to:

1. ensure that anyone who uses it (accessed either locally or remotely) does so only for your authorized use and complies with IBM's terms regarding Programs; and
2. maintain a record of all copies and provide it to IBM at its request.

4.7 Program Services

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

IBM provides Program Services 1) on an on-going basis (with at least six months' written notice before IBM terminates Program Services), 2) until the date IBM specifies, or 3) for a period IBM specifies.

4.8 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.

Licenses for certain replacement Programs may be acquired for an upgrade charge. When you acquire these replacement Programs, you agree to terminate the license of the replaced Programs when charges become due, unless IBM specifies otherwise.

IBM may terminate your license if you fail to comply with the license terms. If IBM does so, your authorization to use the Program is also terminated.

4.9 Programs Licensed under Other Agreements

IBM provides many Programs which are licensed under the terms of the agreements provided with them.

IBM Customer Agreement

Part 5 - Services

5.1 IBM Services

Services may be either standard offerings or customized to specific requirements.

5.2 Personnel

Each of us is responsible for the supervision, direction, control, and compensation of our respective personnel.

IBM reserves the right to determine the assignment of its personnel.

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

5.3 Materials Ownership and License

The parties will specify Materials to be delivered to you in the applicable Statement of Work as being "Type I Materials," "Type II Materials," "Type Z Materials", or otherwise as we both agree. No SOW pursuant to which Materials are to be provided shall be effective unless and until the Materials Type has been agreed upon and specified in writing in such SOW. In addition, it is the mutual understanding of both parties that under this Agreement, neither party would gain any rights to the other party's pre-existing or independently developed intellectual property. Notwithstanding the foregoing, you grant IBM a license to use, reproduce, perform and prepare derivative works to the extent that such intellectual property is required to perform a Service during the Service performance period as outlined in an applicable SOW executed by the parties.

Type I Materials are those, created during the Service performance period, in which you will have all right, title, and interest (including ownership of copyright). IBM will retain one copy of the Materials. You grant IBM 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, created during the Service performance period or otherwise (such as those that preexist the Service), in which IBM or third parties have all right, title, and interest (including ownership of copyright). IBM will deliver one copy of the specified Materials to you. IBM grants you an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute, within your Enterprise only, copies of Type II Materials.

Type Z Materials are those, created during the Service performance period, in which you will have all right, title and interest (including ownership of copyright). No license is granted to IBM with respect to Type Z Materials except to the extent necessary to provide service under an applicable Statement of Work. Both parties are free to enter into similar agreements with others and to develop and provide Materials or Services which are similar to those provided under this Agreement.

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

Subject to the qualifications on ownership of intellectual property for each material type, both parties are, unless otherwise agreed in a Statement of Work, free to use any ideas, concepts, know-how or techniques which are developed jointly during a project and are not the intellectual property of the other or third parties.

5.4 Automatic Service Renewal

Renewable Services renew automatically for a same length contract period unless either of us provides written notification (at least one month prior to the end of the current contract period) to the other of its decision not to renew.

5.5 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 on notice to IBM provided you have met all minimum requirements and paid any adjustment charges specified in the applicable Attachments and Transaction Documents. For a maintenance Service, you may terminate without adjustment charge provided any of the following circumstances occur:

1. you permanently remove the eligible Product, for which the Service is provided, from productive use within your Enterprise;
2. the eligible location, for which Service is provided, is no longer controlled by you (for example, because of sale or closing of the facility); or
3. the Machine has been under maintenance Service for at least six months and you give IBM one month's written notice prior to terminating the maintenance Service.

You agree to pay IBM for 1) all Services IBM provides and any Products and Materials IBM delivers through Service termination, 2) all expenses IBM incurs through Service termination, and 3) any charges IBM incurs in terminating the Service.

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

5.6 Service for Machines (during and after warranty)

IBM provides certain types of Service to keep Machines in, or restore them to, conformance with their Specifications. IBM will inform you of the available types of Service for a Machine. At its discretion, IBM will 1) either repair or exchange the failing Machine and 2) provide the Service either at your location or a service center.

When the type of Service requires that you deliver the failing Machine to IBM, you agree to ship it suitably packaged (prepaid unless IBM specifies otherwise) to a location IBM designates. After IBM has repaired or exchanged the Machine, IBM will return it to you at its expense unless IBM specifies otherwise. IBM is responsible for loss of, or damage to, your Machine while it is 1) in IBM's possession or 2) in transit in those cases where IBM is responsible for the transportation charges.

You agree to:

1. obtain authorization from the owner to have IBM service a Machine that you do not own; and
2. where applicable, before IBM provides Service --
 - (a) follow the problem determination, problem analysis, and service request procedures that IBM provides,
 - (b) secure all programs, data, and funds contained in a Machine, and
 - (c) inform IBM of changes in a Machine's location.

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

Some parts of IBM Machines are designated as PHI Replaceable Units (called "CRUs"), e.g., keyboards, memory, or hard disk drives. IBM provides CRUs to you for replacement by you. You must return all defective CRUs to IBM within 30 days of your receipt of the replacement CRU. You are responsible for downloading designated Machine Code and Licensed Internal Code updates from an IBM Internet Web site or from other electronic media, and following the instructions that IBM provides.

Any feature, conversion, or upgrade IBM services 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.

Repair and exchange Service does 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 IBM is not responsible; or
5. service of Machine alterations.

IBM manages and installs selected engineering changes that apply to IBM Machines and may also perform preventative maintenance.

IBM provides maintenance Service for selected non-IBM Machines.

Warranty Service Upgrade

For certain Machines, you may select a Service upgrade from the standard type of warranty Service for the Machine. IBM charges for the Service upgrade during the warranty period.

You may not terminate the Service upgrade or transfer it to another Machine during the warranty period. When the warranty period ends, the Machine will convert to maintenance Service at the same type of Service you selected for warranty Service upgrade.

5.7 Maintenance Coverage

When you order Machine maintenance Service under this Agreement, IBM will inform you of the date on which maintenance Service will begin. IBM may inspect the Machine within one month following that date. If the Machine is not in an acceptable condition for service, you may have IBM restore it for a charge. Alternatively, you may withdraw your request for maintenance Service. However, you will be charged for any maintenance Service which IBM has performed at your request.