Commonwealth of Virginia
Virginia Information Technologies Agency

IBM PC'S, NOTEBOOKS & SERVERS

Optional Use Contract

Date:	December 1, 2003
Contract #:	VA-030801-IBM
Authorized User:	State Agencies, Institutions, and other Public Bodies as defined in the VPPA
Contractor:	IBM CORPORATION 9201 Arboetum Parkway Richmond, VA 23236
FIN:	130871985
Contact Person:	See page 3
FOB:	Destination
Delivery:	21 Days ARO
Term:	August 7, 2003 – August 6, 2005
Payment:	Net 30 days

For Additional Information, Please Contact:

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NOTES: Individual Commonwealth of Virginia employees are not authorized to purchase equipment or services for their personal use from this Contract.

For updates, please visit our Website at http://www.asd.virginia.gov

VIRGINIA INFORMATION TECHNOLOGIES AGENCY (VITA): Prior review and approval by VITA for purchases in excess of $100,000.00 is required for State Agencies and Institutions only.

CONTRACT # VA-030801-IBM

CONTRACT CHANGE LOG

Change No.	Description of Change	Effective Date
1	To correct Vendor FIN	09/29/03
2	To update VITA contact information and IBM product list	12/01/03

VITA POINTS OF CONTACT

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All substitute equipment identified herein is provided as per specifications delineated on Contractor's attached "Standard Desktop Configurations".

1. **Reference: the Agreement, Attachment "A", Table 1, page Table 1-1:**
   Tower model WCOV12U (includes monitor) replaces M42 as "Cfg 1".
2. **Reference: the Agreement, Attachment "A", Table 1, page Table 1-2:**
   Tower model WCOVE1U (includes monitor) replaces M42 as "Cfg 2".
3. **Reference: the Agreement, Attachment "A", Table 1, page Table 1-3:**
   Tower model WCOVPUT (includes monitor) replaces M42 as "Cfg 3".
4. **Reference: the Agreement, Attachment "A", Table 2, page Table 2-1:**
   Custom model WCOVW1D (includes floppy) replaces ThinkPad R40 as "Cfg 1".
5. **Reference: the Agreement, Attachment "A", Table 2, page Table 2-2:**
   Custom model WCOVW1B (includes floppy) ThinkPad R40 as "Cfg 2".
6. **Reference: the Agreement, Attachment "A", Table 2, page Table 2-3:**
   Custom model WCOVW1C (includes floppy) ThinkPad R40 as "Cfg 3".
7. **Reference: the Agreement, Attachment "A", Table 2, page Table 2-4:**
   Custom model WCOVW1W (includes floppy) replaces ThinkPad R40 as "Cfg 4".
8. **Reference: the Agreement, Attachment "A", Table 4, page Table 4-3:**
   Custom model X255 replaces X255 as "Cfg 3".

Table 1
Attachment "A'
Contract VA-030801-IBM

IBM Desktops

Desktop Configuration #1	Requirement	IBM Response
Network Optimized	Business Network Grade	NetVista M Series - Yes
Processor:	Intel® Celeron® Processor	Celeron 2.0
Chassis	Tower	Tower
CPU Speed:	1.80GHz	2.0 GHz
Cache:	128K	128KB
Memory:	256MB DDR Non-ECC SDRAM, 1	256MB, 1 DIMM
Keyboard:	PS/2 Keyboard, No Hot Keys	IBM Preferred Pro Kybd
Monitors:	17 inch CRT color monitor (16.0 viewable)	17" FST CRT (16" viewable)
Video Board:	Integrated Video	Integrated Video
Boot Hard Drive:	20GB EIDE 7200RPM	40GB 7200RPM
Floppy Drive:	1.44MB 3.5 Inch Floppy Drive	1.44MB 3.5 Inch Floppy
Operating System:	Windows® XP Professional Version with CD	Windows XP Pro w/ CD Avail.
Mouse:	PS/2 2 button mouse	PS/2 2 button mouse
Network Adapters (NICs):	10/100 Ethernet	10/100 Ethernet
1st Removable Media:	CD-ROM	CD-ROM
1st Removable Speed	24x	48x
I/O Ports	Min of 4, with 2 in front on remainder in the back	6 Ports/2 in front/4 in back
PCI Slots	Min of 1 open	3 open Slots
Audio Solutions:	Embedded Sound Blaster	Yes
Speakers:	Internal or External Audio Speaker	Yes
Documentation:	Resource CD contains	Yes
Energy Star Label:	Energy Star Label	Yes
Warranty	3Yr Parts + Onsite Labor (Next	Yes

OEM	IBM
Model	M42
Reference	Website
Discount	36.4%

Table 1-1

Table 1 (Cont.)
Attachment "A"
Contract VA-030801-IBM

IBM Desktops

Desktop Configuration #2	Requirement	IBM Response
Network Optimized	Business Network Grade	NetVista M Series -
Processor:	Pentium® 4 Processor	Pentium 4
Chassis	Tower	Tower
CPU Speed:	2.20GHz, 533FSB	2.4 GHz
Cache:	256K	512KB
Memory:	256MB DDR Non-ECC	256MB, 1 DIMM
Keyboard:	PS/2 Keyboard, No Hot Keys	IBM Preferred Pro Kybd
Monitors:	17 inch CRT color monitor (16.0 viewable)	17" FST CRT (16" viewable)
Video Board:	Integrated Video	Integrated Video
Boot Hard Drive:	40GB EIDE 7200RPM	40GB 7200RPM
Floppy Drive:	1.44MB 3.5 Inch Floppy Drive	1.44MB 3.5 Inch Floppy
Operating System:	Windows® XP Professional Version with CD	Windows XP Pro w/ CD Avail.
Mouse:	PS/2 2-Button Mouse	PS/2 2 button mouse
Network Adapters (NICs):	10/100 Ethernet	10/100 Ethernet
1st Removable Media:	CD-ROM	CD-ROM
1st Removable Speed	24x	48x
I/O Ports	Min of 4, with 2 in front on remainder in the back	6 Ports/2 in front/4 in back
PCI Slots	Min of 1 open	3 open Slots
Audio Solutions:	Embedded Sound Blaster	Yes
Speakers:	Internal or External Audio	Yes
Documentation:	Resources CD contains	Yes
Energy Star Label:	Energy Star Label	Yes
Warranty	3Yr Parts + Onsite Labor	Yes

OEM	IBM
Model	M42
Reference	Website
Discount	31.6%

Table 1 (Cont.)
Attachment "A"
Contract VA-030801-IBM

IBM Desktops

Desktop Configuration #3	Requirement	IBM Response
Network Optimized	Business Network Grade	etVista M Series
Processor:	Pentium® 4 Processor	Pentium 4
Chassis	Tower	Tower
CPU Speed:	2.53GHz, 533FSB	2.53 GHz
Cache:	512K Cache	512KB
Memory:	512MB DDR Non-ECC SDRAM, 1 DIMMs	512MB, 1 DIMM
Keyboard:	PS/2 Keyboard, No Hot Keys	IBM Preferred Pro Kybd
Monitors:	17 inch CRT color monitor (16.0 viewable)	17" FST CRT (16" viewable)
Video Board:	Integrated Video	Integrated Video
Boot Hard Drive:	80GB EIDE 7200RPM	80GB 7200RPM
Floppy Drive:	1.44MB 3.5 Inch Floppy Drive	1.44MB 3.5 Inch Floppy
Operating System:	Windows® XP Professional Version with CD	Windows XP Pro w/ CD Avail.
Mouse:	PS/2 2-Button Mouse	PS/2 2 button mouse
Network Adapters (NICs):	10/100 Ethernet	10/100 Ethernet
1st Removable Media:	CD-RW	CD-RW
1st Removable Speed	24x	48x
I/O Ports	Min of 4, with 2 in front on remainder in the back	6 Ports/2 in front/4 in back
PCI Slots	Min of 1 open	3 open Slots
Audio Solutions:	Embedded Sound Blaster	Yes
Speakers:	Internal or External Audio	Yes
Documentation:	Resources CD contains	Yes
Energy Star Label:	Energy Star Label	Yes
Warranty	3Yr Parts + Onsite Labor	Yes

OEM	IBM
Model	M42
Reference	Website
Discount	24.4%

Table 1 (Cont.)
Attachment "A"
Contract VA-030801-IBM

Desktop options

Discount	**15%**
Discount for Monitors	**12%**

Upgrade to Pentium Processor *(Specify Below)*
Specify Here
Upgrade 1 Processor Speed *(Specify Below)*
Specify Here
Change to Small Form Factor
Change to Desktop
No Monitor Option
Upgrade to 19" CRT Monitor
Upgrade to 21" CRT Monitor
Upgrade to 15" LCD Monitor
Upgrade to 17" LCD Monitor
Additional 128MB RAM
Additional 256MB RAM
Additional 512MB RAM (1 DIMMS)
Additional 512MB RAM (2 DIMMS)
Add 56K Modem
Replace mouse with MS Intellimouse
Upgrade to 30GB Hard Drive
Upgrade to 40GB Hard Drive
Upgrade to 80GB Hard Drive
Change from Windows XP to Windows 2000
Upgrade to CDRW Drive
Upgrade to DVD Drive
Upgrade to DVD/CDRW Drive
Add separate 32MB Graphics Accelerator Card
Add separate 64MB Graphics Accelerator Card
Upgrade to 10/100/1000 Card
Upgrade to External Speakers
Add UPS
Specify Here
Reduce warranty to 1 year
Reduce warranty to 2 years
Extend warranty to 4 years
Extend warranty to 5 years

Table 2
Attachment "A"
Contract VA-030801-IBM

IBM Notebooks

Notebook cfg 1	Requirement	Response
Laptop Type	Business Grade, Network Optimized	Yes
Processor	Mobile Celeron™ Processor	Yes
CPU Speed	1.60GHz	1.6 GHz
Cache	256K	256K
Memory:	256MB SDRAM, 1 DIMMS	256MB, 1 DIMM
Hard Drive:	20GB Hard Drive, 5400 RPM	40GB, 5400 RPM
Dedicated Video Memory	None	16MB DDR-SDRAM
Operating System:	Windows® XP Professional Version	Yes
Modem:	Internal 56K Modem	56K V.90
Network Card	10/100 Ethernet Connector	10/100
Wireless Communications	None	Wireless Ready w/antenna
Floppy Disk Drive (Yes/No, fixed/modular etc.)	Yes, Modular or Fixed	Yes/Modular (if not desired would reduce cost $65)
Fixed Optical Device	CD-ROM Drive	CD-ROM
Fixed Optical Device Speed	24X	24X
Display:	14.1in XGA Display	14.1" XGA
Battery Type	Lithium-Ion	Lithium-Ion 8 Cell
Minimum Battery Life	3hrs	3.8-4.0 hours
Warranty	3Yr Parts + Onsite Labor (Next	Yes
Carrying Case	No Carrying Case	Agreed
Weight in lbs		Approx. 6 lbs
Other		TrackPoint, ThinkVantage Tools (See Attachment A)

OEM	IBM
Model	ThinkPad R40
Reference	Website
Discount	48.2%

Table 2 (Cont.)
Attachment "A"
Contract VA-030801-IBM

IBM Notebooks

Notebook cfg 2	Requirement	IBM Response
Laptop Type	Business Grade, Network Optimized	Yes
Processor	Mobile Pentium® 4 Processor M	Pentium 4M
CPU Speed	2.0GHz-M	2.0 GHz
Cache	256K	512mb
Memory:	256MB DDR SDRAM, 1 DIMMS	256MB, 1 DIMM
Hard Drive:	20GB Hard Drive, 5400 RPM	40GB, 5400 RPM
Dedicated Video Memory	None	16MB DDR-SDRAM
Operating System:	Windows® XP Professional Version with	Yes
Modem:	Internal 56K Modem	56K V.90
Network Card	10/100 Ethernet Connector	10/100
Wireless Communications	None	Wireless Ready w/antenna
Floppy Disk Drive (Yes/No, fixed/modular etc.)	Yes, Modular or Fixed	Yes/Modular (if not desired would reduce cost $65)
Fixed Optical Device Options :	CD-ROM Drive	CD-ROM
Fixed Optical Device Speed	24X	24X
Display:	14.1in XGA Display	14.1" XGA
Battery Type	Lithium-Ion	Lithium-Ion 8 Cell
Minimum Battery Life	3hrs	4 hours
Warranty	3Yr Parts + Onsite Labor (Next Business	Yes
Carrying Case	No Carrying Case	Agreed
Weight in lbs		Approx. 6 lbs.
Other		Point, ThinkVantage Tools (See Attachment A)

OEM	IBM
Model	ThinkPad R40
Reference	Website
Discount	34.4%

Table 2-2

Table 2 (Cont.)
Attachment "A"
Contract VA-030801-IBM

IBM Notebooks

Notebook cfg 3	Requirement	IBM Response
Laptop Type	Business Grade, Network Optimized	Yes
Processor	Mobile Pentium® 4 Processor M	Pentium 4M
CPU Speed	2.2GHz-M	2.2GHz
Cache	512K	512mb
Memory:	512MB, SDRAM, 1 DIMMS	512MB, SDRAM, 1 DIMM
Hard Drive:	30GB Hard Drive, 5400 RPM	40GB, 5400 RPM
Dedicated Video Memory	None	16MB DDR-SDRAM
Operating System:	Windows® XP Professional Version with	Yes
Modem:	Internal 56K Modem	56K V.90
Network Card	10/100 Ethernet Connector	10/100
Wireless Communications	None	Wireless Ready w/antenna
Floppy Disk Drive (Yes/No, fixed/modular etc.)	Yes, Modular or Fixed	Yes/Modular (if not desired would reduce cost $65)
Fixed Optical Device Options :	CD-RW Drive	DVD/CD-RW Combo
Fixed Optical Device Speed	24X	24x/10x/24x/8x
Display:	15.0in XGA Display	15.0" XGA Display
Battery Type	Lithium-Ion	Lithium-Ion 8 Cell
Minimum Battery Life	3hrs	3.6 hours
Warranty	3Yr Parts + Onsite Labor (Next Business	Yes
Carrying Case	No Carrying Case	Agreed
Weight in lbs		Approx 6.7 lbs.
Other		Point, ThinkVantage Tools (See Attachment A)

OEM	IBM
Model	ThinkPad R40
Reference	Website
Discount	38.9%

Table 2 (Cont.)
Attachment "A"
Contract VA-030801-IBM

IBM Notebooks

Notebook cfg 4	Requirement	Reference
Laptop Type	Business Grade, Network Optimized	Yes
Processor	Intel Pentium M	Intel Pentium M Centrino
CPU Speed	1.4 GHz	1.4 GHz
Cache	1MB	1MB
Memory:	512MB, SDRAM, 1 DIMMS	512MB, SDRAM, 1 DIMM
Hard Drive:	30GB Hard Drive, 5400 RPM	40GB, 5400 RPM
Dedicated Video Memory	None	16MB DDR-SDRAM
Operating System:	Windows® XP Professional Version with	Yes
Modem:	Internal 56K Modem	56K V.90
Network Card	10/100 Ethernet Connector	10/100
Wireless	Integrated 802.11b Wireless	Intel 802.11b Wi-Fi
Floppy Disk Drive (Yes/No, fixed/modular etc.)	Yes, Modular or Fixed	Yes/Modular (if not desired would reduce cost $65)
Fixed Optical Device Options :	CD-RW Drive	DVD/CD-RW Combo
Fixed Optical Device Speed	24X	24x/10x/24x/8x
Display:	14.0in XGA Display	14.1" XGA Display
Battery Type	Lithium-Ion	Lithium-Ion 8 Cell
Minimum Battery Life	3hrs	5.7-6.2 hours
Warranty	3Yr Parts + Onsite Labor (Next Business	Yes
Carrying Case	No Carrying Case	Agreed
Weight in lbs		Approx. 6.1-6.7
Other		94, TouchPad&TrackPoint, ThinkVantage Tools (See Attachment A)

OEM IBM

Table 2-4

Table 2 (Cont.)
Attachment "A"
Contract VA-030801-IBM

Model	ThinkPad R40
Reference	Website
Discount	35.1%

Table 2 (Cont.)
Attachment "A"
Contract VA-030801-IBM

IBM Notebooks

Discount	**15%**
Discount for Monitors	**12%**

Upgrade to Pentium Processor *(Specify Below)*
See Notes for Part # by Configuration
Upgrade 1 Processor Speed *(Specify Below)*
See Notes for Part # by Configuration
Additional 128MB RAM
Additional 256MB RAM
Additional 512MB RAM
Add 17" CRT Monitor
Add 19" CRT Monitor
Add 21" CRT Monitor
Upgrade to 30GB Harddrive
Upgrade to 40GB Harddrive
Upgrade to 60GB Harddrive
Upgrade to 802.11b Wireless LAN Card
Upgrade to 802.11b Integrated Wireless
Upgrade to CD-RW Drive
Upgrade to DVD Drive
Upgrade to DVD/CDRW Drive
Add Port Replicator
Add Docking Station
Upgrade to SXGA Display
Additional Battery (same specs as the one in base config)
Change from Windows XP to Windows 2000
Add Nylon Carrying Case
3-yr Asset Tracking
Reduce warranty to 1 year
Reduce warranty to 2 years
Extend warranty to 4 years
Extend standard warranty to 5 years
Upgrade Warranty 4hr Response Time, M-F 8am-6pm

TAble 3
Attachment "A"
Contract VA-030801-IBM

IBM Notebooks

OEM	Product Category	Index Used	Discount off Index	Comments
IBM	ktop, NetVista/ThinkCe	Std Web price	16.0%	Please refer to our **Attachment** tab of our proposal: IBM NetVista A30&A30p desktops Aug2002, IBM NetVista Family of desktops Oct2002, IBM NetVista M42 desktops Nov2002, IBM NetVista S42 desktops Jan2003
IBM	Notebook, ThinkPad	Std Web price	16.0%	Please refer to our **Attachment** tab of our proposal: IBM ThinkPad
IBM	Displays, ThinkVision	Std Web price	12.0%	Please refer to our **Attachment** tab of our proposal: IBM Monitor Brochures
IBM	Options	Std Web price	15.0%	Please refer to our **Attachment** tab of our proposal: IBM Options Brochures
IBM	Intellistations	Std Web price	15.0%	our proposal: IBM Intellistation Brochures
IBM	Server	Std Web price	14.0%	

TAble 4
Attachment "A"
Contract VA-030801-IBM

IBM Servers

Server cfg 1	Requirement	IBM Response
Number of U's	1	1
Chassis	Rack	Rack
Max # of Processors	2	2
Included # of Processors	1	1
Processor Speed	Intel Pentium III 1.13GHz	2.67 Xeon
L2 Cache size	512K	512K
Max Memory	4GB	8GB
Included Memory	512MB	512MB
# Drive Bays	2	6
# Drives Included	2	2
Hard Disk Capacity per Drive (SCSI)	18GB	36GB
Hard Drive Speed	10K RPM	10K
Max Internal Capacity	438 GB	438GB
# Externally Accessible Bays	1	2
Primary Controller	RAID 0, Dual Channel	Raid 0 dual
Network card	Dual on board NICs, at least	yes
Fixed Optical Device	CD-ROM Drive	CD-ROM Drive
Optical Device Speed	24X	24X
Number of PCI Slots	2 Total	2
Remote Management Card	Yes, included	no
Operating System	None	none
Deployment Rails	Included	included
Warranty	3 YR Parts & Labor, NBD	3yr Parts &Labor,NBD

OEM	IBM
Model	xServer x345
Refeence	Web-site
Discount	30.1%

TAble 4 (Cont.)
Attachment "A"
Contract VA-030801-IBM

IBM Servers

Server cfg 2	Requirement	IBM Response
Number of U's	2	2
Chassis	Rack	Rack
Max # of Processors	2	2
Included # of	1	1
Processor Speed	Intel Xeon, 1.8GHz	2.67 Xeon
L2 Cache size	512K	512K
Max Memory	6GB	8GB
Included Memory	1GB	512K
# Drive Bays	3	6
# Drives Included	3	3
Hard Disk Capacity per Drive (SCSI)	36GB	36GB
Hard Drive Speed	10K RPM	10K
Max Internal Capacity	438 GB	438GB
# Externally Accessible Bays	2	2
Primary Controller	RAID 5, Dual Channel	RAID 5, Dual Channel
Network card	Dual on board NICs, at least	yes
Fixed Optical Device	CD-ROM Drive	CD-ROM Drive
Optical Device Speed	24X	24X
Number of PCI Slots	3-4 Total	5
Remote Management Card	Yes, included	no
Operating System	None	none
Deployment Rails	Included	Included
Warranty	3 YR Parts & Labor, NBD	3yr parts & labor,NBD

OEM	IBM
Model	xServer x345
Reference	Web-site
Discount	31.0%

Table 4-2

Table 4 (Cont.)
Attachment "A"
Contract VA-030801-IBM

IBM Servers

Server cfg 3	Requirement	IBM Response
Number of U's	4	7
Chassis	Rack	Rack
Max # of Processors	4	4
Included # of Processors	1	1
Processor Speed	Intel Xeon, 1.8GHz	Intel Xeon [illegible]
L2 Cache size	1MB	2MB
Max Memory	10GB	12GB
Included Memory	2GB	2GB
# Drive Bays	4	12
# Drives Included	4	4
Hard Disk Capacity per Drive (SCSI)	36GB	36GB
Hard Drive Speed	10K RPM	10K RPM
Max Internal Capacity	584 GB	1752 GB
# Externally Accessible Bays	2	16
Primary Controller	RAID 5, Dual Channel	RAID 5, Dual Channel
Network card	Dual on board NICs, at least one with support for load balancing and failover	Dual NIC's one on Board and one PCI adapter with Failover
Fixed Optical Device	CD-ROM Drive	CD-ROM Drive
Optical Device Speed	24X	24X
Number of PCI Slots	6 Total	7
Remote Management Card	Yes, included	Yes,included
Operating System	None	None
Deployment Rails	Included	Included
Warranty	3 YR Parts & Labor, NBD	3yr parts & labor,NBD

OEM	IBM
Model	xServer x255
Reference	Web-site
Discount	27.0%

Table 4-4
Attachment "A"
Contract VA-030801-IBM

IBM Server Options

Discount **15.70%**

Change from rack to tower chassis
2nd Processor Option Kit - Same Speed
Additional 128MB RAM
Additional 256MB RAM
Additional 512MB RAM
Additional 1GB RAM
Increase each disk capacity to 36GB, 10K RPM, SCSCI Hot Plug (quote pricing for ALL disks)
Increase each disk capacity to 73GB, 10K RPM, SCSCI Hot Plug (quote pricing for ALL disks)
Increase each disk capacity to 146GB, 10K RPM, SCSCI Hot Plug (quote pricing for ALL disks)
Increase each drive speed to 15K RPM (quote pricing for ALL disks)
Increase each disk capacity to 36GB, 15K RPM, SCSCI Hot Plug (quote pricing for ALL disks)
Increase each disk capacity to 73GB, 15K RPM, SCSCI Hot Plug (quote pricing for ALL disks)
Remove Deployment Rails
Internal SDLT Tape Drive (110 GB/220 GB)
External DLT Tape Drive (40 GB/80 GB)
Add CDRW Drive
Add DVD Drive
Add DVD/CDRW Drive
Gigabit Network Connection
Monitor Media and Documentation
Linux Option
Upgrade Warranty 4hr Response Time, M-F 8am-6pm
Upgrade Warranty to 4hr Response Time, 7x24
Add Win 2000 Server OS
Remove Remote Management Card
Upgrade from SCSI to Fibre Channel

Table 5
Attachment "A"
Contract VA-030801-IBM

IBM

Service	Desktop	Laptop	Server
Imaging (copying of system config from a master to other machines)	$750 set-up per image, plus $25 per unit imaged	$750 set-up per image, plus $25 per unit imaged	$25-50
Asset Tagging	$12	$12	$15-40
Deployment/Installation	$100	$100	$65-90
Data Transfer (from retired machine to new unit)	$600 per 20 machines	$600 per 20 machines	$30-100

Imaging: This depends on the number of different images and the volume of systems
Asset Tagging: This is a pure volume/ discount range
Deployment/Installation: This is done provided the customer has a script to follow and we are not responsible for shipping.
Data Transfer: We have to define what types of files we will migrate (.doc,.xls, etc). The customer has to supply a server to move the data out to and back from. If this is not organized it could eat up an hour per system. If it is organized it should take about 15 minutes.

MASTER AGREEMENT
CONTRACT VA – 030801-IBM
BETWEEN
THE COMMONWEALTH OF VIRGINIA
AND
INTERNATIONAL BUSINESS MACHINES CORPORATION

1. SCOPE OF CONTRACT

This is an agreement (the "Agreement") between the Commonwealth of Virginia ("Commonwealth") and International Business Machines Corporation (the "Contractor"), a corporation having its principal place of business at New Orchard Road, Armonk, NY 10504. This Agreement contains the Contractual terms and conditions by which the Commonwealth and Contractor will establish a Master Contract for the use by State Agencies, Institutions, and other public bodies as defined in § 2.2-4301 of the Virginia Public Procurement Act (VPPA), and hereinafter referred to as "Authorized Users", to acquire Personal Computers (Desktops), Notebooks, and PC Servers ("Products"), Services, and Software (Software/Firmware), pursuant to the Commonwealth's Request For Proposal #2003-040, (the "RFP") and the Contractor's proposal, in response thereto.

2. INTERPRETATION OF AGREEMENT

As used in this Agreement, "software" and "software product" shall include all related materials and documentation, whether in machine-readable or printed form.

The documents comprising this Agreement, and their order of precedence in case of conflict, are: (1) this document, consisting of Terms and Conditions labeled 1 through 75, Attachment A entitled Product Pricing, Attachment B entitled Reporting Format, and Attachment C entitled Lobbying Certificate and Attachment D entitled IBM Acquisition Agreement; (2) IBM Statement of Limited Warranty, as amended and IBM International Program License Agreement, as amended; (3) the specific sections of the Contractor's proposal dated May 5, 2003 in response the following sections of the Commonwealth's RFP 2003-40 dated April 4, 2003 and amendments thereto: Section III. A entitled "Products and Services", Section III. C entitled "Pricing, Quality, and Service Requirements", and Appendices C, D, E, F, and G; and (4) all executed Orders and Attachments referencing this Agreement. The foregoing documents represent the complete and final agreement of the parties with respect to the subject matter of this Agreement.

If any term or condition of this Agreement is found to be illegal or unenforceable, it shall be severed, and the validity of the remaining terms and conditions shall not be affected.

Nothing in this Agreement shall be construed as an express or implied waiver of the Commonwealth's sovereign or Eleventh Amendment immunity, or as a pledge of its full faith and credit.

3. EXCLUSIVITY OF TERMS AND CONDITIONS

The Virginia Information Technologies Agency (VITA) will not sign or execute any additional contract, license or other agreement, including shrink-wrap Software, containing contractual terms and conditions as a result of this procurement. Any documents signed by persons other than the Contracts Manager, VITA, shall have no validity and the attached Terms and Conditions shall supersede all such agreements. Vendors should read and understand all of the Terms and Conditions prior to submitting a bid.

4. VENDORS MANUAL

This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.dgs.state.va.us/dps under "Manuals."

5. APPLICABLE LAWS AND COURTS

This solicitation and any resulting Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

6. ANTI-DISCRIMINATION

By submitting their offers, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §2.2-4311 of the Virginia Public Procurement Act. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the Contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that Contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E).

In every Contract over $10,000 the provisions in a. and b. below apply:

a. During the performance of this Contract, the Contractor agrees as follows:

1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for meeting these requirements.

b. The Contractor will include the provisions of 1. above in every subcontract or purchase order over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

7. ETHICS IN PUBLIC CONTRACTING

By submitting their offers, offerors certify that their offers are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their offer, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

8. IMMIGRATION REFORM AND CONTROL ACT OF 1986

By submitting their offers, offerors certify that they do not and will not during the performance of this Contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

9. DEBARMENT STATUS

By submitting their offerors, offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting offers on Contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

10. ANTITRUST

By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said Contract.

11. MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs AND RFPs

Failure to submit an offer on the official state form provided for that purpose shall be a cause for rejection of the offer. Modification of or additions to any portion of the Request for Proposal may be cause for rejection of the offer; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a offer as non-responsive. As a precondition to its acceptance, the Commonwealth may, in its sole discretion, request that the offeror withdraw or modify non-responsive portions of an offer which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the Contract shall be effective unless reduced to writing and signed by the parties.

12. PAYMENT

a. To Prime Contractor:

1) Invoices for items ordered and delivered shall be submitted by the Contractor directly to the payment address shown on the purchase order/Contract. All invoices shall show the state Contract number and/or purchase order number; or the federal employer identification number (for proprietorships, partnerships, and corporations).

2) Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.

3) All goods or services provided under this Contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the Contract price, regardless of which public agency is being billed.

4) The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.

5) **Unreasonable Charges**. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges that are not in dispute (Code of Virginia, § 2.2-4363).

b. To Subcontractors:

1) A Contractor awarded a Contract under this solicitation is hereby obligated:

(a) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the Contract; or

(b) To notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.

2) The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the Contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary Contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

13. QUALIFICATIONS OF OFFERORS

The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods and the offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the Contract and to provide the services and/or furnish the goods contemplated therein.

14. COMMENCEMENT OF ACCEPTANCE TESTING

The Commonwealth shall "Acceptance Test" the equipment within thirty (30) days of delivery. The "Acceptance Test" shall consist of forty-eight (48) consecutive business hours in conformance with the Contractor's technical specifications and functional descriptions as delineated herein. All "Acceptance Test" failures shall be reported to Contractor for disposition in accordance with IBM's "Statement of Limited Warranty" (SOLW) as amended and incorporated herein. Any failures not specifically identified to the Contractor within thirty (30) days shall be considered to have successfully passed the Acceptance Test.

15. REQUIRED PERFORMANCE LEVEL

To qualify for acceptance, delivered Equipment must perform in accordance with the technical specifications and functional descriptions, as contained or referenced in this Agreement, calculated over a period of forty-eight (48) consecutive business hours. The Commonwealth shall not pay any charges, either beforehand or retroactively, associated with the Contractor's requirement to achieve this performance level. If any Equipment does not meet the standard of performance during the initial forty-eight (48) consecutive business hours, then the Commonwealth shall follow the procedures outlined in Section 14 above. At the Commonwealth's sole discretion, the acceptance period shall continue on a day-to-day basis until delivered Equipment meets the standard of performance for forty-eight (48) consecutive business hours.

16. ACCEPTANCE

The Equipment shall be deemed accepted on the first day after successful completion of the acceptance period. Upon request, the Commonwealth shall provide written confirmation of acceptance. If the standard of performance has not been met after thirty (30) calendar days have elapsed from the start of the acceptance period, the Commonwealth shall first follow the escalation procedures in accordance with SOLW, as amended and incorporated herein. Should the Commonwealth and Contractor be unable

to agree on a solution after all Warranty remedies have been exhausted the Commonwealth may avail itself of the remedies for breach.

17. ASSIGNMENT OF CONTRACT

To the fullest extent permitted by law, the parties agree that Contractor's rights under this Agreement shall not be assignable, in whole or in part, to any other party without the Commonwealth's written consent, and that any purported assignment or transfer without such consent shall be null and void. If any law limits the right of the parties to prohibit assignment or nonconsensual assignments, the effective date of the assignment shall be as follows. The Contractor shall give the purchasing office prompt written notice of the assignment, signed by authorized representatives of both the Contractor and the assignee. This written notice shall be on the Virginia Information Technologies Agency's (VITA's) "Assignment Notice / Payment Instruction" form and shall provide all information requested on that form. Copies of the form may be obtained from the Contracts Manager VITA. Upon VITA's acknowledgment of receipt of the properly executed form, the Assignee shall notify the using agency or agencies receiving the goods or services of the assignment and shall supply the using agency with a copy of the properly executed form. Any payments made prior to the using agency's receipt of such notification and form shall not be covered by this assignment.

In the event the Commonwealth receives any notice from a third party claiming to be an assignee of any rights of the Contractor under this Agreement, Contractor agrees that payment or other performance in respect of those rights shall not be due until at least thirty days after the Commonwealth's receipt of the notice required by the above paragraph or receipt of a similarly executed notice confirming the absence or revocation of the purported assignment. The Office of Acquisition Services of VITA shall promptly notify the Contractor of any assignment notice it receives.

18. MODIFICATIONS

This Contract may be modified in accordance with 2.2-4309 of the Code of Virginia. The representatives noted below may only make such modifications. No modifications to this Contract shall be effective unless it is in writing and signed by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing.

Any Contract issued on a firm fixed price basis may not be increased more than twenty five percent (25%) or $50,000.00 whichever is greater, without the approval of the Governor of the Commonwealth of Virginia or his authorized designee.

Authorized Representatives:

Commonwealth of Virginia:	Contractor:
Contracts Manager, VITA	Ms. Kim Turnbull-Hall Consulting Client Representative

19. TAXES

Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request, and can be obtained online at http://www.tax.state.va.us/. Deliveries against this Contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

20. USE OF BRAND NAMES

Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict offerors to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article that the public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The offeror is responsible to clearly specify and identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified.

21. TRANSPORTATION AND PACKAGING

By submitting their offer, all offerors certify and warrant that the price offered for F.O.B. destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

22. INSURANCE

By signing and submitting a proposal under this solicitation, the offeror certifies that if awarded the Contract, it will have the following insurance coverage at the time the Contract is awarded. For construction Contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the Code of Virginia. The offeror further certifies that the Contractor and any subcontractors will maintain these insurance coverages during the entire term of the Contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

INSURANCE COVERAGES AND LIMITS REQUIRED:

a. Worker's Compensation - Statutory requirements and benefits.

b. Employers Liability - $100,000.

c. Commercial General Liability - $500,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage, and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The Commonwealth of Virginia must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage.

23. ANNOUNCEMENT OF AWARD

Upon the award or the announcement of the decision to award a contract as a result of this solicitation, ASD will publicly post such notice on its website at http://asd.state.va.us/ for a minimum of ten (10) days. Additionally, a public posting of the award will be available on the eVA webpage at http://awards.dgs.state.va.us/Award-View.asp.

24. DRUG-FREE WORKPLACE

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

25. NONDISCRIMINATION OF CONTRACTORS

An offeror, or Contractor shall not be discriminated against in the solicitation or award of this Contract because of race, religion, color, sex, national origin, age, or disability or against faith-based organizations. If the award of this Contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this Contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his

objection, access to equivalent goods, services, or disbursements from an alternative provider.

26. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION

The eVA Internet electronic procurement solution, web site portal www.eva.state.va.us, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service, and complete the Ariba Commerce Services Network registration.

Vendors are strongly encouraged to register prior to submitting a bid or offer. Failure to register will result in the bid being found non-responsive and rejected. All vendors must register in both the eVA and the Ariba Commerce Services Network Vendor Registration Systems.

a. eVA Basic Vendor Registration Service: $25 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is $500 per order. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, and electronic bidding, as they become available.

b. eVA Premium Vendor Registration Service: $200 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is $500 per order. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments, and ability to research historical procurement data, as they become available.

Effective until July 1, 2003, the Commonwealth will direct AMS not to invoice for the 1% transaction fee for orders issued during the period July 1, 2002, through June 30, 2003, to allow additional time for vendors to become electronically enabled. AMS will continue to invoice for transaction fees accrued prior to July 1, 2002. To enable vendors to analyze the future impact of transaction fees, AMS will issue "no pay" invoices for transaction fees that would normally accrue during the period of July 1, 2002, through June 30, 2003. For contracts that extend beyond June 30, 2003, contractors may request price adjustments to incorporate the eVA transaction fee, as provided in the Price Escalation/De-escalation clause in the Terms and Conditions of the contract.

c. Ariba Commerce Services Network Registration. The Ariba Commerce Services Network (ACSN) registration is required and provides the tool used to transmit

information electronically between state agencies and vendors. There is no additional fee for this service.

27. eVA BUSINESS-TO-GOVERNMENT CONTRACTS

The eVA Internet electronic procurement solution, web site portal www.eva.state.va.us, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

Failure to comply with the requirements in a. and b. below will be just cause for the Commonwealth to reject your bid/offer or terminate this contract for default.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following:

a. Submit a fully executed American Management Systems, Inc., (AMS) Trading Partner Agreement, a copy of which can be accessed and downloaded from www.eva.state.va.us. AMS is the Commonwealth's service provider to implement and host the eVA e-procurement solution.

b. Provide an electronic catalog (price list) for items awarded under a term contract. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from www.eva.state.va.us.

28. BREACH

The Contractor shall be deemed in breach of this Agreement if the Contractor (a) fails to make any Product or Service ready for acceptance testing by the specified delivery date; (b) repeatedly fails to respond to requests for maintenance or other required service within the time limits set forth in this Agreement; (c) fails to comply with any other term of this Agreement and fails to cure such noncompliance within ten days (or such greater period as is acceptable to the Commonwealth) following Contractor's receipt of a Show Cause Notice identifying such noncompliance; or (d) fails to provide a written response to the Commonwealth's Show Cause Notice within ten days after receiving same.

The Contractor shall not be in breach of this Agreement if its default was due to causes beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in either its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

In the event of breach, in addition to any other remedies provided by law, the Commonwealth may cancel its obligations with respect to any or all unaccepted Products

or Services. All costs for de-installation and return of Products shall be borne by the Contractor. In no event shall any failure by the Commonwealth to exercise any remedy available to it be construed as a waiver of or consent to any breach.

29. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS

Any commitment made by the Contractor within the scope of this Contract shall be binding upon Contractor. For the purposes of this Contract, a commitment by the Contractor includes:

a. Prices and options committed to remain in force over a specified period(s) of time;

b. Any written warranty or representation made by the Contractor in this solicitation as to hardware or software performance, or other physical design or functional characteristics of that which is offered.

30. DELIVERY DATE

The Contractor shall deliver the Products, and Software ready for testing within twenty-one (21) days After Receipt of the Order (ARO). If delivery of all Products and Software is not completed within the time specified, the Commonwealth may cancel the Order without further obligation. The Commonwealth may postpone any delivery date by notifying the Contractor at least seven (7) days prior to the delivery date. However, the delivery date shall not be postponed more than a total of thirty (30) days. The Contractor and the Commonwealth reserve the right to mutually agree in writing to a longer delivery period.

31. RISK OF LOSS OR DAMAGE

The Contractor shall have the risk of loss or damage to all equipment up to the time it is delivered to the IBM-designated carrier for shipment to the Commonwealth location. Thereafter, the Commonwealth assumes the risk. Each Product will be covered by insurance, arranged and paid by the Contractor for the Commonwealth, covering the period until it is delivered to your designated location. For any loss or damage, the Commonwealth must 1) report the loss or damage in writing to the Contractor within 10 business days of delivery and 2) follow the applicable claim procedure.

32. PRIME CONTRACTOR SPONSORED PRODUCT PROMOTIONS

The Prime Contractor, at his/her discretion, is allowed to sponsor product / Service promotions during the Contract term or any extensions thereof under the following conditions:

1) Prime Contractor is required to provide in writing to VITA, at least 5 days prior to the promotion, the dates of the promotion or the duration of the promotion to include the commencement date and the ending date; the acceptable writing may be e-mail, or correspondence via USPS or other, and
2) Prime Contractor is required to identify in writing, the exact products / services covered in the promotion, and
3) Prime Contractor is required to identify in writing, the pricing during the promotion or the percentage discount, and
4) All Prime Contractor Sponsored Product / Service Promotions are required to be available to all Authorized Users of the Contract, should the Prime Contractor request a promotion that would be limiting, either through product configuration or quantities of products, the Commonwealth at its discretion, will not provide a written agreement. Both parties agree that promotions shall not target any one Authorized User, or a few Authorized Users, and
5) All Prime Contractor sponsored Product / Service Promotions shall be mutually agreed to in writing, and Prime Contractor shall be in breach of the Agreement in the absence of a writing from both parties; the writing may be e-mail or correspondence via USPS or other, and
6) In any instance of conflict between this clause, "Prime Contractor Sponsored Product / Service Promotions" and the Agreement, this clause shall take precedence. And
7) In any event wherein the Prime Contractor proposes prices that are different than the Contract prices to any Authorized User, without first obtaining mutual agreement in the format as identified herein, the Prime Contractor shall be in breach of the Agreement and the Commonwealth shall have all remedies available under Contract and law. And
8) The Commonwealth, at its discretion, may assist in advertising the promotion. This assistance will consist of advertising space on its (Commonwealth's) various web sites, or other assistance at its (Commonwealth's) discretion.

33. EQUIPMENT CONDITION

All Equipment to be supplied by Contractor shall be new Equipment

34. AVAILABILITY OF EQUIPMENT AND SOFTWARE

The Contractor represents and warrants that all Products were formally announced for marketing purposes before execution of this Agreement or, in the case of subsequent Orders, before execution of such Orders.

35. PATENT/COPYRIGHT PROTECTION

Contractor, at its own expense, shall defend any suit brought against the Commonwealth for the infringement of patents, copyrights or trade secrets enforceable in the United States if the claim of infringement is alleged to relate to or arise from the Contractor's or Commonwealth's use of any equipment, software, materials or information prepared,

developed or delivered in connection with performance of this Agreement. In such suit, Contractor shall indemnify the Commonwealth, its agents, officers and employees for any loss, liability or expense incurred as a result of such suit.

The purchasing agency shall notify the Contractor of such suit within a reasonable time after learning of it and shall give the Contractor the full right and opportunity to conduct the defense of the suit, subject however to the requirements of Section 2.2-510 and Section 2.2-514 of the Code of Virginia or any successor statute. If principles of governmental or public law are involved, the Commonwealth may, at its option and expense, participate in the defense of the suit.

The Contractor shall not be required to indemnify the Commonwealth for liability arising solely out of the Commonwealth's own specifications or design or solely from the combination of equipment or software furnished hereunder with any equipment or software not supplied by the Contractor.

If, any Product or Service becomes, or in the Contractor's opinion, is likely to become, the subject of a claim of infringement, Contractor may, at its option, provide non-infringing substitutes that are satisfactory to the Commonwealth, or at Contractor's option and expense, may obtain the right for the Commonwealth to continue the use of such Product or Service.

If the use of such equipment or software by the Commonwealth is prevented by permanent injunction or by Contractor's failure to procure the right for the Commonwealth to continue using the software, the Contractor agrees to take back the infringing equipment, software, materials or information and refund the total amount the Commonwealth has paid Contractor under this Agreement, less one half (1/2%) percent of the total paid for each month of use by the Commonwealth. This obligation is in addition to the obligations cited in the first four subparagraphs above.

Patent/Copyright Protection provided by Microsoft and any third party is provided solely in accordance with their licensing agreement(s).

36. NON-APPROPRIATION

All funds for payment of equipment, software or services ordered under this Contract are subject to the availability of legislative appropriation for this purpose. In the event of non-appropriation of funds by the Legislature for the items under this Contract, the Commonwealth will terminate this Contract for those goods or services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed.

If any purchases are to be supported by federal funding, and such funding is not made available, the Commonwealth may terminate this Contract for goods or services dependent on such federal funds without further obligation.

37. HEADINGS NOT CONTROLLING

Headings used in this Contract are for reference purposes only and shall not be considered to be a substantive part of this Contract.

38. TITLE TO EQUIPMENT

Clear and unrestricted title to all equipment purchased under this Agreement shall pass to the Commonwealth upon payment of the purchase price; except that Contractor reserves purchase money security interest in the Equipment until Contractor receives the amounts due. For a feature, conversion, or upgrade involving the removal of parts which become Contractor's property, Contractor reserves a security interest until Contractor receives payment of all the amounts due and the removed parts. The Commonwealth agrees to authorize Contractor to file appropriate documents to permit Contractor to perfect its purchase money security interest.

39. PRICE PROTECTION/ADJUSTMENTS

The State will not pay any additional costs above those costs provided for in the Schedule identified herein. In no event may the amount of any Contract, without adequate consideration, be increased for any purpose.

Any price decrease effectuated during the Contract period by reason of market change shall be passed on to the Commonwealth of Virginia. This decrease will be effective on the date the price decrease is announced to the general public.

40. TERM

This Agreement shall take effect on the date of its final execution by both parties, and shall continue in full force for two (2) years, "initial Term". The Commonwealth at its sole discretion may extend this Agreement for three (3) additional one (1) year periods. The Commonwealth will issue a written notification to the Contractor stating the extension period, 30 days prior to the expiration of any current Term.

41. CONTRACTUAL RECORDS

All Contractual books, records and other documents related to matters under this Contract shall be made available by Contractor to the State and its designated agents for a period of five (5) years after final payment for purposes of audit and examination.

Contractual records are hereby further defined as this Contract and all delivery/purchase orders, invoices or correspondence directly relating to this agreement.

42. LIMITATION OF LIABILITY

Under no circumstances will the Contractor or its subcontractors or suppliers be liable for any indirect, incidental, special or consequential damages, or damages from loss of profits, anticipated savings, revenue, business, goodwill, data or use of the supplies, equipment and/or services delivered or performed under this Contract. In addition, Contractor's and its subcontractors' and suppliers' entire and collective liability arising out of or relating to this Contract, including without limitation on account of performance or nonperformance of obligations hereunder, regardless of the form of the cause of action, whether in contract, tort (including without limitation negligence), statute or otherwise, shall in no event exceed three (3) times the price paid for the product (for recurring services or monthly license IBM software, 12 months' charges apply) that is subject of the claim. This limitation is per event. No such limitation shall apply in the case of (i) damages for bodily injury (including death) and damage to or loss of real property and tangible personal property to the extent caused by Contractor's, its subcontractors' or suppliers' negligence; and (ii) Contractor's, its subcontractors' or suppliers' obligations under Section 35, "Patent/Copyright Protection".

43. SITE PREPARATION

a. Equipment environmental specifications, if required, for the equipment to be delivered under this Contract shall be furnished in writing by the Contractor. These specifications shall be in such detail to ensure that the equipment to be installed shall operate efficiently from the point of view of environment.

b. The State shall prepare the site at its own expense and in accordance with the equipment environmental specifications provided by the Contractor.

44. SUPPLIES

Authorized charges do not include operational supplies (e.g. paper, tape, etc.) unless such supplies are specifically identified in the Schedule. All supplies used by the State shall conform to the Contractor's published specifications provided to State at time of equipment installation. The State reserves the right to acquire such supplies from any Contractor of its choice.

45. TERMINATION FOR CONVENIENCE

The Commonwealth may terminate this Contract in whole or in part, for Convenience at any time by submitting to the Contractor, a writing, sixty (60) days prior to the date of termination. The Commonwealth shall be obligated for all outstanding Orders, as per Contract, subsequent to this termination. The Commonwealth shall not be obligated for any other costs in the event of Termination for Convenience.

46. CONTRACTUAL DISPUTES

In accordance with Section 2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the purchasing agency no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to such agency at the time of the occurrence or beginning of the work upon which the claim is based. Tendency of claims shall not delay payment of amounts agreed due in the final payment. The purchasing agency shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

The Contractor may not invoke any available administrative procedure under Section 2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that agency fails to render its decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Section 2.2-4364, Code of Virginia or the administrative procedure authorized by Section 2.2-4365, Code of Virginia.

The Virginia Information Technologies Agency, its officers, agents and employees, including, without limitation, the Contracts Manager, are executing this Agreement and any Orders issued hereunder, solely in its or their statutory and regulatory capacities as agent for the Commonwealth agency purchasing and receiving the goods or services identified in the Appendices to this Agreement or on the subsequent Order in question and need not be joined as a party to any dispute that may arise there under.

In the event of any breach by the Commonwealth, Contractor's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Contractor's remedies include the right to terminate any license or support services hereunder..

47. CREDITS

Any credits due the State under the terms of this Contract may be applied against Contractor's invoices with appropriate information attached.

48. TITLE (SOFTWARE/FIRMWARE)

The Contractor represents and warrants that it is the sole owner of the software/firmware product or, if not the owner, has received all proper authorizations from the owner to license the software/firmware product, and has the full right and power to grant the rights contained in this Contract. Contractor further warrants and represents that the IBM software/firmware product is of original development, and that the package and its use shall not violate or infringe upon any patent, copyright, trade secret or other property right of any other person. IBM software is licensed in accordance with "IBM's

International Program License Agreement" (IPLA), as amended and incorporated herein. Microsoft and other third party software are licensed solely in accordance with their licensing agreements and IBM makes no representations or warranties on Microsoft or any third party software.

49. TERM OF LICENSE

All licenses granted under this Agreement are purchased on a non-exclusive, license basis and shall commence upon the acceptance of the software Product by the Commonwealth. Notwithstanding the foregoing, the Commonwealth may terminate the license at anytime. All licenses granted to the Commonwealth are for the use of the software Product at the Commonwealth's computing facilities at the sites identified in any executed Attachment or Order referencing this Agreement. Licenses provided by IBM are licensed in accordance with "IBM International Program License Agreement", as amended and incorporated herein. Microsoft and other third party software are licensed solely in accordance with their licensing agreements.

50. CONTRACTOR'S WARRANTY POINT-OF-CONTACT

The Contractor shall provide the Commonwealth with designated points-of-contact and make arrangements to enable its Warranty representative to receive such notification or other continuous telephone coverage to permit the Commonwealth to make such contact.

51. WARRANTY AGAINST SHUTDOWN DEVICES

Contractor warrants that the Products provided under this Agreement shall not contain any lock, counter, CPU reference, virus, worm or other device capable of halting operations or erasing or altering data programs. Contractor further warrants that neither the Contractor, nor its agents, employees or subcontractors shall insert any such device after execution of this Agreement.

52. PERIODIC PROGRESS REPORTS/INVOICES

For Contracts requiring the submission of periodic Contract performance progress reports or program status reports, the offeror will include a section on involvement of small businesses and business owned by women and minorities. This section will specify the actual dollars Contracted to-date with such businesses, actual dollars expended to-date with such businesses and the total dollars planned to be contracted for with such businesses on this Contract. This information shall be provided separately for small businesses, minority-owned businesses and women-owned businesses.

If the Contract does not require the submission of periodic progress reports, the offeror will provide the above required information on actual involvement of small businesses and businesses owned by minorities and women as part of their periodic invoices.

53. FINAL ACTUAL INVOLVEMENT REPORT

The Contractor will submit, prior to completion or at completion of the Contract and subject to final payment, a report on the actual dollars spent with small businesses and businesses owned by women and minorities during the performance of the Contract. At a minimum, this report shall include for each firm Contracted with and for each business class (i.e. small, minority-owned, women-owned) the total actual dollars spent on this Contract, the planned involvement of the firm and business class as specified in the proposal, and the actual percent of the total estimated Contract value.

54. BUY OUTS – THIRD PARTY ACQUISITION

Contractor shall promptly notify the VITA Contracts Manager in the event that the intellectual property in or business associated with any Product or Service covered by this Agreement is acquired from the Contractor by a third party or in the event the Contractor or substantially all of its assets is acquired by a third party.

The terms and conditions of this Agreement including but not limited to the license rights and related services shall not be affected in such event identified above even if the successor or assignee already has an agreement with the Commonwealth covering products and services of the type covered by this Agreement. The Contractor's responsibilities under this Agreement shall not be released by such acquisition. In addition, prior to any acquisition, Contractor shall obtain for the Commonwealth's benefit the assignee's agreement to fully perform this Agreement.

The successor or assignee, by taking any benefit, including acceptance of payment, under this Agreement ratifies this Agreement.

The failure of any successor or assignee of the Contractor to acknowledge its obligation to adhere to the terms and conditions of this Agreement shall constitute a breach of this Agreement for which the successor or assignee and the original Contractor shall be liable and subject to debarment.

55. ORDERS

Authorized Users of this Contract may order Products and Software from this Contract by one of the following Order methods:

A. Purchase Order: An official Purchase Order form issued by an Authorized User.

B. Delivery Order (DO): A DO issued by the Office of Acquisition Services, VITA.

C. EVA: eVA is the Commonwealth's total e-procurement solution. Contractor shall accept any and all orders issued through eVA.

D. Charge/Credit Card:

1) Any order/payment transaction processed through the Commonwealth's contract with American Express (AMEX). Each order must not exceed $5,000, or the then current charge card limit. Payment will made by AMEX to Contractor within three (3) business days.

2) Any other order/payment charge or credit card process, such as AMEX, MASTERCARD, or VISA under contract for use by an Authorized User.

This ordering authority is limited to issuing orders for the Products/Software available under this Agreement. Under no circumstances shall any Authorized User of the Commonwealth have the authority to modify this Agreement.

Contractor acknowledges that the forgoing is not limited to preclude the Commonwealth from issuing Orders against subject Contract as it so chooses.

56. INVOICING

The Contractor shall remit each invoice to the ordering entity, or Authorized User. The Contractor shall issue invoices, identifying at a minimum, the components listed below.

a. manufacturer's product number
b. product description
c. price per unit
d. quantities of merchandise
e. extended price
f. date ordered
g. date delivered
h. listing of returns

57. COMMONWEALTH'S RIGHTS TO COMPUTER SOFTWARE

Notwithstanding anything to the contrary in this Agreement, the Commonwealth shall have:

a. Unlimited use of the Software Products on the machines for which it is acquired and on any replacement equipment;
b. Use of such Software Products with a backup system if the system(s) for which it was acquired is for any reason, inoperative or during an emergency, or the performance of engineering changes in features or model;

c. The right to use such Software Products at any Commonwealth installation to which the machine(s) may be transferred by the Commonwealth;
d. The right to copy such software for safekeeping or backup purposes; and
e. The Commonwealth shall have the right to reproduce any and all physical documentation supplied under the terms of this Agreement, provided, however, that such reproduction shall be for the sole use of the Commonwealth and shall be subject to the same restrictions or use and disclosure as are contained elsewhere in this Agreement.

It is further agreed that the Commonwealth's right to computer software is in accordance with the IPLA, as amended and incorporated herein. Microsoft and other third party software are licensed solely in accordance with their licensing agreements.

Nothing contained herein shall be construed to restrict or limit the Commonwealth's rights to use any technical data that the Commonwealth may already possess or acquire under proper authorization from other sources.

58. MAINTENANCE RENEWAL

Maintenance under this agreement shall be renewed at the option of the State. The State shall issue a written notification to the Contractor for each twelve (12) month period that maintenance services are required after the initial three (3) year warranty/maintenance period.

59. COMPLIANCE WITH FEDERAL LOBBYING ACT

a. Contractor shall not, in connection with this Agreement, engage in any activity prohibited by 31 U.S.C.A. Section 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal Contracting and financial transactions") or by the regulations issued from time to time there under (together, the "Lobbying Act"), and shall promptly perform all obligations mandated by the Lobbying Act in connection with this Agreement, including, without limitation, obtaining and delivering to the Commonwealth all necessary certifications and disclosures.

b. Contractor is hereby advised that a significant percentage of the funds used to pay Contractor's invoices under this Agreement may be federal funds. Under no circumstances shall any provision of this Agreement be construed as requiring or requesting the Contractor to influence or attempt to influence any person identified in 31 U.S.C.A. Section 1352 (a) (1) in any matter.

c. A representative of Contractor shall sign the certification attached as Attachment "C" and deliver such certification to the Commonwealth simultaneously with the execution and delivery of this Agreement. Contractor shall have the certification signed by a representative with knowledge of the facts and shall fulfill the promises of undertakings set forth in the certification.

60. CONTRACTOR'S REPORT OF SALES

The Contractor shall provide reporting on a monthly basis that breaks out the spend amounts by Agency, Institution of Higher Education, Municipality and other Public Body, as well as the departmental and/or divisional levels that are buying. Reports shall be provided on the 15th of each month, reporting transactions that took place in the immediately prior month. At any time thereafter, as appropriate, additional reports may be agreed upon.

All reports are expected to be forwarded electronically via Email using Microsoft Excel Spreadsheet format to a list of email addresses that will be provided later. The specific types of information expected to be captured in each report are detailed below and in the "Reporting Format" spreadsheet, an example of which is contained in Appendix "B" to this Agreement.

a. Spend by Agency, Institution of Higher, Public Body, etc. at 3 levels:
   - COV Agency/Institution/Municipality level (refer to "COV Level" worksheet)
   - System level (refer to "System Level" worksheet)
   - Component level (refer to "Component Level" worksheet)
b. A column where you indicate whether the line item was a Standard Configuration or a Off-spec purchase
c. For each component, index price, discount offered (according to discount schedule) and actual price charged
d. Invoice Payment speed in days by Agency, Institution of Higher Education, Public Body, etc. for calculation of early payment discounts, if applicable
e. An indication whether an item was ordered through eVA
f. Other information that is necessary to the state for the proper monitoring and tracking of spending and any rebates due

Electronic copies of reports are expected to be provided to the Commonwealth no later than 15 days following the end of each month.

You will be provided a listing of the proper name and spelling of each Agency and Institution of Higher Education and Public Body, to be used in your reporting.

61. SURCHARGE ADJUSTMENT

The Contractor must pay the Department of General Services (DGS), a Surcharge Adjustment (SCA) fee under this contract. The Contractor must remit the SCA within 30 days after the end of each quarterly reporting period as established in the clause entitled "Contractor's Report of Sales". The SCA equals two percent (2%) of the total quarterly sales reported. Contractor shall remit the SCA together with a copy of the Contractor's Report of Sales as delineated in the paragraph herein entitled "Contractor's Report of Sales". The SCA reimburses the Commonwealth and defrays the costs for Spend

Management procurements and the administration of the subsequent awards. The SCA amount due must be paid by check with identification of "Contract number", "report amounts", and "report period", on either the check stub or other remittance material. DGS may at its discretion, agree to an electronic funds transfer, in lieu of a check, however in the absence of an express written agreement from DGS that validates agreement, then the payment shall be made by check as described herein made payable to the Department of General Services.

If the full amount of the SCA is not paid within 30 calendar days after the end of the applicable reporting period, it shall constitute a Contract debt to the Commonwealth of Virginia, and the State may exercise all rights and remedies available under law. Failure to submit sales reports, falsification of sales reports, and or failure to pay the SCA in a timely manner may result in termination or cancellation of this Contract. Willful failure or refusal to furnish the required reports, falsification of sales reports, or failure to make timely payment of the SCA constitutes sufficient cause for terminating this Contract for default.

It is the intent of the Commonwealth to capture 2% of all sales, including but not limited to temporary reduced pricing, fire sales, one time sales, trade ins, and promotional items that have been marked down under this Contract.

62. NONVISUAL ACCESS TO TECHNOLOGY:

All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of any State agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with the following non-visual access standards from the date of purchase or upgrade until the expiration of this Agreement:

(i) Effective, interactive control and use of the Technology shall be readily achievable by non-visual means;

(ii) The Technology equipped for non-visual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;

(iii) Non-visual access technology shall be integrated into any networks used to share communications among employees, program participants or the public; and

(iv) The technology for non-visual access shall have the capability of providing equivalent access by non-visual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing non-visual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (i) the Technology is not available with non-visual access because the essential elements of the Technology are visual and (ii) non-visual equivalence is not available.

Installation of hardware, software, or peripheral devices used for non-visual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of non-visual access software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing non-visual access standards is achieved and a validation of concept demonstration.

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, 2.2-3500 through 2.2-3504 of the Code of Virginia.

63. CONTINGENT FEE WARRANTY

The Contractor represents and warrants that the Contractor has not employed or retained any company or person, except Contractor's regular, full-time employees, for the purpose of soliciting or securing this Agreement and has not given or agreed to give anything of value to any such company or person contingent upon the award or making of this Agreement. If either or both of the foregoing representations is untrue, the Commonwealth shall have the right to terminate this Agreement without liability or, in its discretion, recover from the Contractor the full amount of any such contingent compensation.

64. PRIME CONTRACTOR RESPONSIBILITY

If the Contractor's proposal includes any goods or services to be supplied by another party, the Contractor agrees as follows:

a. The Contractor shall act as prime contractor for the procurement and maintenance of the entire proposed configuration and shall be the sole point of contact with regard to all obligations under this Agreement.
b. The Contractor hereby represents and warrants that the Contractor has made such other party aware of the proposed use and disposition of the other party's Product or services, and that such other party has agreed in writing that it has no objection thereto.

65. THIRD PARTY BILLING

All goods or services provided under this Contract, that are to be paid for with public funds, shall be billed by the Contractor at the contract price, regardless of which public agency is being billed.

66. OPERATIONAL RESTRICTIONS

Contractor warrants that, except as specifically agreed in writing all Products may be operated at any time for the convenience of the Commonwealth (exclusive of time required for preventive maintenance, remedial maintenance and approved engineering changes). Without limiting the foregoing, Contractor warrants that there are no restrictions as to consecutive hours or length of personnel shifts. The Commonwealth may make the Products available to any Commonwealth agency or any other users under conditions where the Commonwealth supervises such use.

67. TYPE CONTRACT

This is an Indefinite Delivery, Indefinite Quantity requirements Master Contract.

68. INSPECTION

All Equipment is subject to inspection and test. Equipment that does not meet specifications may be rejected. Failure to reject, however, does not relieve the Contractor of liability subsequently revealed when goods are used after acceptance has occurred. If defects are found at any time during the term of this Agreement, the Contractor shall repair or replace the defective goods in accordance with the SOLW as amended and incorporated herein. This remedy shall be in addition to any other remedies or obligations under this Agreement or provided by law and the amount of the remedy or remedies shall be capped in accordance with Section 42 herein.

69. RECORDS

The Commonwealth shall maintain appropriate daily records documenting performance during the acceptance period and such records shall be conclusive for purposes of determining acceptance.

70. WARRANTY

In this Agreement "Warranty" of Equipment shall mean: (1) all labor, parts and travel necessary to keep the Equipment in good operating condition and preserve its operating efficiency in accordance with its technical specifications; and (2) Any necessary shipment and insurance costs; and (3) Any Software and Firmware maintenance costs.

Warranty of Equipment shall not include electrical work external to the Equipment, the furnishing of supplies, or adding or removing accessories, attachments, or other devices not provided under this Agreement. Warranty of Equipment also shall not include repair of damage resulting from transportation by the Commonwealth between Commonwealth sites or from accident, unless the accident is caused by negligent or intentional acts or omissions of Contractor or its agents.

The Warranty prices listed in this Agreement include all Software and Firmware maintenance costs and Equipment costs of labor, parts, travel, factory overhaul, rehabilitation, transportation and substitute Equipment as necessary. If it is necessary to remove any Equipment from a Commonwealth location where On-site warranty is specified, the Contractor shall provide substitute Equipment at the time of removal. Substitute Equipment shall be comparable to the Equipment removed. In instances where it is necessary for the Contractor to return the Equipment to the factory, the Contractor shall be responsible for all costs of the Equipment from the time it leaves the Commonwealth site until it is returned to the Commonwealth site in good operating condition. Only new standard parts or parts equal in performance to new parts shall be used in effecting repairs. Parts that have been replaced shall become the property of the Contractor. Replacement parts installed shall become the property of the Commonwealth.

All desktops, notebooks, and servers delivered under this Agreement shall include a three (3) year On-site Warranty that commences after delivery, except as otherwise agreed upon as apart of an upgrade option or downgrade option on the original purchase of the product.

All warranties provided by the Contractor are in accordance with IBM's "IPLA" and "SOLW", as amended and incorporated herein.

ALL SOFTWARE AND FIRMWARE SHALL BE CONSIDERED AN INTEGRAL COMPONENT OF THE EQUIPMENT AND THE CONTRACTOR SHALL RESPOND TO ALL REQUESTS FOR WARRANTY SERVICE FOR ANY FAILURE. Microsoft and other third party software are licensed solely in accordance with their licensing agreement.

71. COMMONWEALTH'S RESPONSIBILITIES DURING WARRANTY

a. During any term of Warranty, Commonwealth personnel shall not perform or attempt repairs to the Equipment except as authorized in writing by the Contractor.
b. The Commonwealth shall permit access to the Equipment which is to be maintained, subject to the installation site's security regulations,
c. The Commonwealth may provide storage space for spare parts and working space, including heat, light, ventilation, electric current and outlets, and telephones (for local calls only) for the use of maintenance personnel.
d. The Commonwealth shall maintain the site in accordance with the equipment environmental specifications furnished by the Contractor.

72. PRINCIPAL PERIOD OF MAINTENANCE (WARRANTY)

For standard on-site warranty response, the Principal Period of Maintenance (PPM), for desktops, notebooks and servers shall be from 8:00 a.m. to 5:00 p.m., Monday through Friday,

excluding State/Institutions of Education holidays. Warranties with longer PPMs may be purchased. Please note that holidays may vary across individual Institutions of Higher Education

73. RESPONSE TIME

During the PPM, the Contractor will respond by telephone within two (2) hours after notification from the Commonwealth of a problem for desktops, notebooks and servers. The Contractor shall make commercially reasonable efforts to complete all repairs by the end of the next working day after notification by the Commonwealth of a malfunction. Once a technician is onsite, and depending on the diagnosis, next day repairs may not always be possible. This may be due to the need to order a specific replacement part, or the severity of the problem may indicate a longer period of time to rectify the problem onsite. It is the Contractor's objective to complete repairs by the next working day after notification of a problem by the Commonwealth. Warranty options with shorter response times may be purchased.

74. EQUIPMENT REPLACEMENT DURING WARRANTY

If the Equipment provided fails to perform in accordance with technical specifications and functional descriptions contained or referenced in this Agreement and is subject to warranty response three (3) or more times during any ninety (90) day period, then the Contractor shall, upon the Commonwealth's request, follow its escalation procedures detailed in Part 1 of the "IBM Statement of Limited Warranty", as amended and attached herein. IBM will make every commercially reasonable effort to provide the best solution to the Commonwealth. Should the escalation process determine replacement equipment is the solution, IBM will replace the Equipment as mutually agreed to by the parties.

75. DISPOSITION OF SOFTWARE

Unless otherwise instructed by the Contractor, the State shall erase, destroy or otherwise render unusable the Software Product within thirty (30) days from the date of the Commonwealth's termination of the license. A letter certifying this destruction shall be sent to the Contractor as soon as this process is completed. The Commonwealth shall have the right to retain one copy for archival purposes.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

INTERNATIONAL BUSINESS MACHINES CORPORATION	COMMONWEALTH OF VIRGINIA
BY: Kim Turnbull Hall	BY: Joe A Parr
NAME: Kim Turnbull Hall	NAME: Joe A. Parr
TITLE: IBM Client Executive	TITLE: Tech Contracts Mgr
DATE: August 7, 2003	DATE: 8/7/03

ATTACHMENT "A"
TO
AGREEMENT VA - 030801 – IBM

PRODUCT PRICING

Attachment "A" is hereby incorporated into and made an integral part of Agreement Number VA - 030801 – IBM between International Business Machines Corporation and the Commonwealth of Virginia. In the event of any consistency between this Attachment "A" and Agreement VA- 030801 - IBM, the provisions of Agreement VA- 030801 - IBM shall Control.

PRODUCTS AND PRICING

Desktop, notebook and server products, miscellaneous services, and associated pricing/discounts are delineated in Tables 1, 2, 3, 4, and 5 to this Attachment "A". Tables 1, 2, 3, 4, and 5 are incorporated herein and made an integral part of this Attachment "A" to the Agreement.

Standard Configuration Pricing Applicability

Category	Expectations
Future Configs Pricing	The % discount off index for each of the standard configs will be applicable to all future standard configurations that replace current ones, as was stipulated in the Section III.C of the RFP
Pricing Involving Options	If an option in the options list associated with each config is purchased (this could refer to substitution, addition or deletion of a component), the price of the resulting machine will be: ▪ Discounted Price of Standard config components + Discounted Price of option components
	If an option that is NOT in the options list associated with each config is purchased (this could refer to substitution, addition or deletion of a component), the price of the resulting machine will be: ▪ Discounted Price of Standard Config components + (Index Price of Option component x (1 – Off-spec Discount for Option component))
Pricing Involving Component Removal from Standard Configs	If one or more Components within a standard config is removed, the resulting machine will be: ▪ Discounted Price of Standard Config components – Sum of Discounted Prices of Components removed ▪
Future Options Pricing	Future option Components that replace current ones will be priced at the same discounts off index as the current ones
Date used for Discounted Price Calculation	The date of index pricing with respect to which discounts will be applied to arrive at discounted price will be the order date, NOT quote date

REBATES

IBM shall provide a 1% Quarterly Rebate on all purchases

VIRGINIA PUBLIC SCHOOL TEACHER PURCHASE PROGRAM

All public school teachers' purchases are subject to the following provisions:

a. Public school teachers may purchase Personal Computers (PCs) from this Agreement. All public school teachers' purchases shall be in compliance with the procedures set forth herein.
b. In no instance shall the Commonwealth be responsible for any debts incurred by public school teachers or any debts incurred by their actions.
c. All public school teacher purchases are limited to the Products identified on the Agreement, at the prices identified on the Agreement.
d. The Contractor shall only sell Products to public school teachers who have executed the separate sales agreement as identified as Attachment D, to this Agreement.
e. The Contractor shall only sell Products to public school teachers who have completed a "Public School Teacher Certification Form" on line and obtained an Authorization Number from the Commonwealth.
f. The Contractor is responsible for verifying the Authorization Number, on-line, prior to the sale.
g. The Contractor shall identify to the Commonwealth, its (the Contractor's) web site that the teachers can be forwarded to, or hyperlinked to, to order on-line.
h. In no instance shall the Commonwealth be obligated or otherwise responsible in any way for the Contractor being remiss in not obtaining an executed sales agreement as identified in Attachment D, to this Agreement, and verification of an Authorization Number from the Commonwealth.
i. Attachment D to this Agreement is attached hereto and is hereby incorporated herein and made an integral component of the Agreement.
j. In any occurrence whereby the Contractor has identified "a prime Contractor sponsored promotion" under the Agreement, it is at the sole discretion of the Contractor to provide the same promotion to public school teachers.
k. The Contractor shall include a separate category entitled "Public School Teacher purchases" in all of its SCA reporting.

SHIP TO BILL TO ADDRESSES

The shipping and billing addresses will be included on individual orders referencing this Contract

DELIVERY

Shipment by the Contractor shall be FOB destination. Shipping charges will be included in the discounted price of the units. No additional charges will be allowed. Units will be pre-assembled, with the exception of attaching peripheral devices. All internal cards, modems, etc. will be installed, along with appropriate drivers. Delivery will not exceed 21 days ARO. Contractor will notify the ordering Agency within 5 days if all or part of the order will not meet the delivery requirement. The ordering Authorized User, at its option, may elect to establish a new delivery date, or amend or cancel the order. Emergency/rush delivery requiring special shipping and handling will be at Authorized Users' expense (with prior approval only). Rush delivery that occurs as a result of the Contractor's error will be free of charge

RETURN OF SYSTEM

If a system is returned to a Contractor for failure of performance, the Contractor will, at the Authorized User's discretion, refund all amounts paid to the Contractor for such system or replace the system, and the following shall apply:

1. Within twenty (20) days of written notification by the using Authorized User, the Contractor will make arrangements for the return of the system.
2. All shipping and insurance costs will be borne by the Contractor.
3. Contractor will be liable for damages to the system, unless caused by fault or negligence of the Authorized User that occur during the return process.
4. If the system is returned to the Contractor for any other reason, then the Authorized User will be responsible for all costs associated with the preparation of the system for shipping, and for shipping costs to the Contractor's nearest service location.

SELF MAINTAINER PROGRAM

The Contractor's self-maintainer program is contained in the IBM Self-Maintainer Guide, pages 1 through 10, which is attached hereto and is incorporated herein to this Attachment "A" to the Agreement.

TECHNOLOGY REFRESH

Both parties recognize that the marketplace changes with the continuing advance and progress of technology. It is the intent of both parties to review and assess the viability of the technology on a quarterly basis. Therefore, for the purposes of this Contract, in any instance whereby the Contractor requests a change in configurations, options, revisions, and/or updates, the Contractor will provide those in writing to the Commonwealth. Upon receipt of those changes by the Commonwealth, and acceptance, a written modification to the Contract shall be executed by both parties.

VITA POINTS OF CONTACT

Contract Compliance Information:

Mrs. T. J. Hudson, CPPB, VCO
Contracts Administrator
Phone: 804-371-5971
E-Mail: thudson@dit.state.va.us
Fax: 804-371-5969

Contract Management:

Joe A. Parr, CPPO, VCO
Contract officer
Phone: 804-371-5991
E-Mail: jparr@dit.state.va.us
Fax: 804-371-5969

IBM POINTS OF CONTACT

IBM Contact Supporting the COV:

Ms. Kim Turnbull-Hall
Consulting Client Representative
9201 Arboretum Parkway
Richmond, VA 23236
Phone: 804-327-4636
E-Mail: turnbull@us.ibm.com
Fax: 804-327-4636

State/Local Government:
Dionne Huff
Phone : 800-656-0833, x 6415
E-Mail : dhuff@ibm4pcs.com

K-12 Education:
Anne West
Phone: 800-656-0833, x 6418
E-Mail: awest@ibm4pcs.com

Higher Education:
Bryce Judd
Phone: 800-656-0833, x 6513
E-Mail: bjudd@ibm4pcs.com

Contract Management:

Charles Malsz
IBM Contracts and Negotiations
12902 Federal Systems Park Drive
Fairfax, VA 22033
Phone: 703-633-4594

IBM Technical Support:
Phone: 800-722-2227

IBM Maintenance Support:
Phone: 800-IBM-SERV or 800-426-7378

IBM Global Finance (Leasing):
Billie Sue Taylor
Phone: 804-327-4960

Inside PC Sales Specialist:
Marc Shropshire
Phone: 770-863-1858 PC

Sales Specialist - Virginia:
Laura Soles
Phone: 804-327-4886

xSeries Sales Specialist - Virginia:
Alex Salazar
Phone: 301-803-6217

Table 1
Attachment "A'
Contract VA-030801-IBM

IBM Desktops

Desktop Configuration #1	Requirement	IBM Response
Network Optimized	Business Network Grade	NetVista M Series - Yes
Processor:	Intel® Celeron® Processor	Celeron 2.0
Chassis	Tower	Tower
CPU Speed:	1.80GHz	2.0 GHz
Cache:	128K	128KB
Memory:	256MB DDR Non-ECC SDRAM, 1	256MB, 1 DIMM
Keyboard:	PS/2 Keyboard, No Hot Keys	IBM Preferred Pro Kybd
Monitors:	17 inch CRT color monitor (16.0 viewable)	17" FST CRT (16" viewable)
Video Board:	Integrated Video	Integrated Video
Boot Hard Drive:	20GB EIDE 7200RPM	40GB 7200RPM
Floppy Drive:	1.44MB 3.5 Inch Floppy Drive	1.44MB 3.5 Inch Floppy
Operating System:	Windows® XP Professional Version with CD	Windows XP Pro w/ CD Avail.
Mouse:	PS/2 2 button mouse	PS/2 2 button mouse
Network Adapters (NICs):	10/100 Ethernet	10/100 Ethernet
1st Removable Media:	CD-ROM	CD-ROM
1st Removable Speed	24x	48x
I/O Ports	Min of 4, with 2 in front on remainder in the back	6 Ports/2 in front/4 in back
PCI Slots	Min of 1 open	3 open Slots
Audio Solutions:	Embedded Sound Blaster	Yes
Speakers:	Internal or External Audio Speaker	Yes
Documentation:	Resource CD contains	Yes
Energy Star Label:	Energy Star Label	Yes
Warranty	3Yr Parts + Onsite Labor (Next	Yes

OEM	IBM
Model	M42
Reference	Website
Discount	36.4%

Table 1-1

Table 1 (Cont.)
Attachment "A"
Contract VA-030801-IBM

IBM Desktops

Desktop Configuration #2	Requirement	IBM Response
Network Optimized	Business Network Grade	NetVista M Series -
Processor:	Pentium® 4 Processor	Pentium 4
Chassis	Tower	Tower
CPU Speed:	2.20GHz, 533FSB	2.4 GHz
Cache:	256K	512KB
Memory:	256MB DDR Non-ECC	256MB, 1 DIMM
Keyboard:	PS/2 Keyboard, No Hot Keys	IBM Preferred Pro Kybd
Monitors:	17 inch CRT color monitor (16.0 viewable)	17" FST CRT (16" viewable)
Video Board:	Integrated Video	Integrated Video
Boot Hard Drive:	40GB EIDE 7200RPM	40GB 7200RPM
Floppy Drive:	1.44MB 3.5 Inch Floppy Drive	1.44MB 3.5 Inch Floppy
Operating System:	Windows® XP Professional Version with CD	Windows XP Pro w/ CD Avail.
Mouse:	PS/2 2-Button Mouse	PS/2 2 button mouse
Network Adapters (NICs):	10/100 Ethernet	10/100 Ethernet
1st Removable Media:	CD-ROM	CD-ROM
1st Removable Speed	24x	48x
I/O Ports	Min of 4, with 2 in front on remainder in the back	6 Ports/2 in front/4 in back
PCI Slots	Min of 1 open	3 open Slots
Audio Solutions:	Embedded Sound Blaster	Yes
Speakers:	Internal or External Audio	Yes
Documentation:	Resources CD contains	Yes
Energy Star Label:	Energy Star Label	Yes
Warranty	3Yr Parts + Onsite Labor	Yes

OEM	IBM
Model	M42
Reference	Website
Discount	31.6%

Table 1 (Cont.)
Attachment "A"
Contract VA-030801-IBM

IBM Desktops

Desktop Configuration #3	Requirement	IBM Response
Network Optimized	Business Network Grade	etVista M Series
Processor:	Pentium® 4 Processor	Pentium 4
Chassis	Tower	Tower
CPU Speed:	2.53GHz, 533FSB	2.53 GHz
Cache:	512K Cache	512KB
Memory:	512MB DDR Non-ECC SDRAM, 1 DIMMs	512MB, 1 DIMM
Keyboard:	PS/2 Keyboard, No Hot Keys	IBM Preferred Pro Kybd
Monitors:	17 inch CRT color monitor (16.0 viewable)	17" FST CRT (16" viewable)
Video Board:	Integrated Video	Integrated Video
Boot Hard Drive:	80GB EIDE 7200RPM	80GB 7200RPM
Floppy Drive:	1.44MB 3.5 Inch Floppy Drive	1.44MB 3.5 Inch Floppy
Operating System:	Windows® XP Professional Version with CD	Windows XP Pro w/ CD Avail.
Mouse:	PS/2 2-Button Mouse	PS/2 2 button mouse
Network Adapters (NICs):	10/100 Ethernet	10/100 Ethernet
1st Removable Media:	CD-RW	CD-RW
1st Removable Speed	24x	48x
I/O Ports	Min of 4, with 2 in front on remainder in the back	6 Ports/2 in front/4 in back
PCI Slots	Min of 1 open	3 open Slots
Audio Solutions:	Embedded Sound Blaster	Yes
Speakers:	Internal or External Audio	Yes
Documentation:	Resources CD contains	Yes
Energy Star Label:	Energy Star Label	Yes
Warranty	3Yr Parts + Onsite Labor	Yes

OEM	IBM
Model	M42
Reference	Website
Discount	24.4%

Table 1 (Cont.)
Attachment "A"
Contract VA-030801-IBM

Desktop options

Discount	**15%**
Discount for Monitors	**12%**

Upgrade to Pentium Processor *(Specify Below)*
Specify Here
Upgrade 1 Processor Speed *(Specify Below)*
Specify Here
Change to Small Form Factor
Change to Desktop
No Monitor Option
Upgrade to 19" CRT Monitor
Upgrade to 21" CRT Monitor
Upgrade to 15" LCD Monitor
Upgrade to 17" LCD Monitor
Additional 128MB RAM
Additional 256MB RAM
Additional 512MB RAM (1 DIMMS)
Additional 512MB RAM (2 DIMMS)
Add 56K Modem
Replace mouse with MS Intellimouse
Upgrade to 30GB Hard Drive
Upgrade to 40GB Hard Drive
Upgrade to 80GB Hard Drive
Change from Windows XP to Windows 2000
Upgrade to CDRW Drive
Upgrade to DVD Drive
Upgrade to DVD/CDRW Drive
Add separate 32MB Graphics Accelerator Card
Add separate 64MB Graphics Accelerator Card
Upgrade to 10/100/1000 Card
Upgrade to External Speakers
Add UPS
Specify Here
Reduce warranty to 1 year
Reduce warranty to 2 years
Extend warranty to 4 years
Extend warranty to 5 years

Table 2
Attachment "A"
Contract VA-030801-IBM

IBM Notebooks

Notebook cfg 1	Requirement	Response
Laptop Type	Business Grade, Network Optimized	Yes
Processor	Mobile Celeron™ Processor	Yes
CPU Speed	1.60GHz	1.6 GHz
Cache	256K	256K
Memory:	256MB SDRAM, 1 DIMMS	256MB, 1 DIMM
Hard Drive:	20GB Hard Drive, 5400 RPM	40GB, 5400 RPM
Dedicated Video Memory	None	16MB DDR-SDRAM
Operating System:	Windows® XP Professional Version	Yes
Modem:	Internal 56K Modem	56K V.90
Network Card	10/100 Ethernet Connector	10/100
Wireless Communications	None	Wireless Ready w/antenna
Floppy Disk Drive (Yes/No, fixed/modular etc.)	Yes, Modular or Fixed	Yes/Modular (if not desired would reduce cost $65)
Fixed Optical Device	CD-ROM Drive	CD-ROM
Fixed Optical Device Speed	24X	24X
Display:	14.1in XGA Display	14.1" XGA
Battery Type	Lithium-Ion	Lithium-Ion 8 Cell
Minimum Battery Life	3hrs	3.8-4.0 hours
Warranty	3Yr Parts + Onsite Labor (Next	Yes
Carrying Case	No Carrying Case	Agreed
Weight in lbs		Approx. 6 lbs
Other		TrackPoint, ThinkVantage Tools (See Attachment A)

OEM	IBM
Model	ThinkPad R40
Reference	Website
Discount	48.2%

Table 2 (Cont.)
Attachment "A"
Contract VA-030801-IBM

IBM Notebooks

Notebook cfg 2	Requirement	IBM Response
Laptop Type	Business Grade, Network Optimized	Yes
Processor	Mobile Pentium® 4 Processor M	Pentium 4M
CPU Speed	2.0GHz-M	2.0 GHz
Cache	256K	512mb
Memory:	256MB DDR SDRAM, 1 DIMMS	256MB, 1 DIMM
Hard Drive:	20GB Hard Drive, 5400 RPM	40GB, 5400 RPM
Dedicated Video Memory	None	16MB DDR-SDRAM
Operating System:	Windows® XP Professional Version with	Yes
Modem:	Internal 56K Modem	56K V.90
Network Card	10/100 Ethernet Connector	10/100
Wireless Communications	None	Wireless Ready w/antenna
Floppy Disk Drive (Yes/No, fixed/modular etc.)	Yes, Modular or Fixed	Yes/Modular (if not desired would reduce cost $65)
Fixed Optical Device Options :	CD-ROM Drive	CD-ROM
Fixed Optical Device Speed	24X	24X
Display:	14.1in XGA Display	14.1" XGA
Battery Type	Lithium-Ion	Lithium-Ion 8 Cell
Minimum Battery Life	3hrs	4 hours
Warranty	3Yr Parts + Onsite Labor (Next Business	Yes
Carrying Case	No Carrying Case	Agreed
Weight in lbs		Approx. 6 lbs.
Other		Point, ThinkVantage Tools (See Attachment A)

OEM	IBM
Model	ThinkPad R40
Reference	Website
Discount	34.4%

Table 2-2

Table 2 (Cont.)
Attachment "A"
Contract VA-030801-IBM

IBM Notebooks

Notebook cfg 3	Requirement	IBM Response
Laptop Type	Business Grade, Network Optimized	Yes
Processor	Mobile Pentium® 4 Processor M	Pentium 4M
CPU Speed	2.2GHz-M	2.2GHz
Cache	512K	512mb
Memory:	512MB, SDRAM, 1 DIMMS	512MB, SDRAM, 1 DIMM
Hard Drive:	30GB Hard Drive, 5400 RPM	40GB, 5400 RPM
Dedicated Video Memory	None	16MB DDR-SDRAM
Operating System:	Windows® XP Professional Version with	Yes
Modem:	Internal 56K Modem	56K V.90
Network Card	10/100 Ethernet Connector	10/100
Wireless Communications	None	Wireless Ready w/antenna
Floppy Disk Drive (Yes/No, fixed/modular etc.)	Yes, Modular or Fixed	Yes/Modular (if not desired would reduce cost $65)
Fixed Optical Device Options :	CD-RW Drive	DVD/CD-RW Combo
Fixed Optical Device Speed	24X	24x/10x/24x/8x
Display:	15.0in XGA Display	15.0" XGA Display
Battery Type	Lithium-Ion	Lithium-Ion 8 Cell
Minimum Battery Life	3hrs	3.6 hours
Warranty	3Yr Parts + Onsite Labor (Next Business	Yes
Carrying Case	No Carrying Case	Agreed
Weight in lbs		Approx 6.7 lbs.
Other		Point, ThinkVantage Tools (See Attachment A)

OEM	IBM
Model	ThinkPad R40
Reference	Website
Discount	38.9%

Table 2 (Cont.)
Attachment "A"
Contract VA-030801-IBM

IBM Notebooks

Notebook cfg 4	Requirement	Reference
Laptop Type	Business Grade, Network Optimized	Yes
Processor	Intel Pentium M	Intel Pentium M Centrino
CPU Speed	1.4 GHz	1.4 GHz
Cache	1MB	1MB
Memory:	512MB, SDRAM, 1 DIMMS	512MB, SDRAM, 1 DIMM
Hard Drive:	30GB Hard Drive, 5400 RPM	40GB, 5400 RPM
Dedicated Video Memory	None	16MB DDR-SDRAM
Operating System:	Windows® XP Professional Version with	Yes
Modem:	Internal 56K Modem	56K V.90
Network Card	10/100 Ethernet Connector	10/100
Wireless	Integrated 802.11b Wireless	Intel 802.11b Wi-Fi
Floppy Disk Drive (Yes/No, fixed/modular etc.)	Yes, Modular or Fixed	Yes/Modular (if not desired would reduce cost $65)
Fixed Optical Device Options :	CD-RW Drive	DVD/CD-RW Combo
Fixed Optical Device Speed	24X	24x/10x/24x/8x
Display:	14.0in XGA Display	14.1" XGA Display
Battery Type	Lithium-Ion	Lithium-Ion 8 Cell
Minimum Battery Life	3hrs	5.7-6.2 hours
Warranty	3Yr Parts + Onsite Labor (Next Business	Yes
Carrying Case	No Carrying Case	Agreed
Weight in lbs		Approx. 6.1-6.7
Other		94, TouchPad&TrackPoint, ThinkVantage Tools (See Attachment A)

OEM IBM

Table 2-4

Table 2 (Cont.)
Attachment "A"
Contract VA-030801-IBM

Model	ThinkPad R40
Reference	Website
Discount	35.1%

Table 2 (Cont.)
Attachment "A"
Contract VA-030801-IBM

IBM Notebooks

Discount	**15%**
Discount for Monitors	**12%**

Upgrade to Pentium Processor *(Specify Below)*
See Notes for Part # by Configuration
Upgrade 1 Processor Speed *(Specify Below)*
See Notes for Part # by Configuration
Additional 128MB RAM
Additional 256MB RAM
Additional 512MB RAM
Add 17" CRT Monitor
Add 19" CRT Monitor
Add 21" CRT Monitor
Upgrade to 30GB Harddrive
Upgrade to 40GB Harddrive
Upgrade to 60GB Harddrive
Upgrade to 802.11b Wireless LAN Card
Upgrade to 802.11b Integrated Wireless
Upgrade to CD-RW Drive
Upgrade to DVD Drive
Upgrade to DVD/CDRW Drive
Add Port Replicator
Add Docking Station
Upgrade to SXGA Display
Additional Battery (same specs as the one in base config)
Change from Windows XP to Windows 2000
Add Nylon Carrying Case
3-yr Asset Tracking
Reduce warranty to 1 year
Reduce warranty to 2 years
Extend warranty to 4 years
Extend standard warranty to 5 years
Upgrade Warranty 4hr Response Time, M-F 8am-6pm

TAble 3
Attachment "A"
Contract VA-030801-IBM

IBM Notebooks

OEM	Product Category	Index Used	Discount off Index	Comments
IBM	ktop, NetVista/ThinkCe	Std Web price	16.0%	Please refer to our **Attachment** tab of our proposal: IBM NetVista A30&A30p desktops Aug2002, IBM NetVista Family of desktops Oct2002, IBM NetVista M42 desktops Nov2002, IBM NetVista S42 desktops Jan2003
IBM	Notebook, ThinkPad	Std Web price	16.0%	Please refer to our **Attachment** tab of our proposal: IBM ThinkPad
IBM	Displays, ThinkVision	Std Web price	12.0%	Please refer to our **Attachment** tab of our proposal: IBM Monitor Brochures
IBM	Options	Std Web price	15.0%	Please refer to our **Attachment** tab of our proposal: IBM Options Brochures
IBM	Intellistations	Std Web price	15.0%	our proposal: IBM Intellistation Brochures
IBM	Server	Std Web price	14.0%	

TAble 4
Attachment "A"
Contract VA-030801-IBM

IBM Servers

Server cfg 1	Requirement	IBM Response
Number of U's	1	1
Chassis	Rack	Rack
Max # of Processors	2	2
Included # of Processors	1	1
Processor Speed	Intel Pentium III 1.13GHz	2.67 Xeon
L2 Cache size	512K	512K
Max Memory	4GB	8GB
Included Memory	512MB	512MB
# Drive Bays	2	6
# Drives Included	2	2
Hard Disk Capacity per Drive (SCSI)	18GB	36GB
Hard Drive Speed	10K RPM	10K
Max Internal Capacity	438 GB	438GB
# Externally Accessible Bays	1	2
Primary Controller	RAID 0, Dual Channel	Raid 0 dual
Network card	Dual on board NICs, at least	yes
Fixed Optical Device	CD-ROM Drive	CD-ROM Drive
Optical Device Speed	24X	24X
Number of PCI Slots	2 Total	2
Remote Management Card	Yes, included	no
Operating System	None	none
Deployment Rails	Included	included
Warranty	3 YR Parts & Labor, NBD	3yr Parts &Labor,NBD

OEM	IBM
Model	xServer x345
Refeence	Web-site
Discount	30.1%

TAble 4 (Cont.)
Attachment "A"
Contract VA-030801-IBM

IBM Servers

Server cfg 2	Requirement	IBM Response
Number of U's	2	2
Chassis	Rack	Rack
Max # of Processors	2	2
Included # of	1	1
Processor Speed	Intel Xeon, 1.8GHz	2.67 Xeon
L2 Cache size	512K	512K
Max Memory	6GB	8GB
Included Memory	1GB	512K
# Drive Bays	3	6
# Drives Included	3	3
Hard Disk Capacity per Drive (SCSI)	36GB	36GB
Hard Drive Speed	10K RPM	10K
Max Internal Capacity	438 GB	438GB
# Externally Accessible Bays	2	2
Primary Controller	RAID 5, Dual Channel	RAID 5, Dual Channel
Network card	Dual on board NICs, at least	yes
Fixed Optical Device	CD-ROM Drive	CD-ROM Drive
Optical Device Speed	24X	24X
Number of PCI Slots	3-4 Total	5
Remote Management Card	Yes, included	no
Operating System	None	none
Deployment Rails	Included	Included
Warranty	3 YR Parts & Labor, NBD	3yr parts & labor,NBD

OEM	IBM
Model	xServer x345
Reference	Web-site
Discount	31.0%

Table 4-2

Table 4 (Cont.)
Attachment "A"
Contract VA-030801-IBM

IBM Servers

Server cfg 3	Requirement	IBM Response
Number of U's	4	7
Chassis	Rack	Rack
Max # of Processors	4	4
Included # of Processors	1	1
Processor Speed	Intel Xeon, 1.8GHz	Intel Xeon [illegible]
L2 Cache size	1MB	2MB
Max Memory	10GB	12GB
Included Memory	2GB	2GB
# Drive Bays	4	12
# Drives Included	4	4
Hard Disk Capacity per Drive (SCSI)	36GB	36GB
Hard Drive Speed	10K RPM	10K RPM
Max Internal Capacity	584 GB	1752 GB
# Externally Accessible Bays	2	16
Primary Controller	RAID 5, Dual Channel	RAID 5, Dual Channel
Network card	Dual on board NICs, at least one with support for load balancing and failover	Dual NIC's one on Board and one PCI adapter with Failover
Fixed Optical Device	CD-ROM Drive	CD-ROM Drive
Optical Device Speed	24X	24X
Number of PCI Slots	6 Total	7
Remote Management Card	Yes, included	Yes,included
Operating System	None	None
Deployment Rails	Included	Included
Warranty	3 YR Parts & Labor, NBD	3yr parts & labor,NBD

OEM	IBM
Model	xServer x255
Reference	Web-site
Discount	27.0%

Table 4-4
Attachment "A"
Contract VA-030801-IBM

IBM Server Options

Discount **15.70%**

Change from rack to tower chassis
2nd Processor Option Kit - Same Speed
Additional 128MB RAM
Additional 256MB RAM
Additional 512MB RAM
Additional 1GB RAM
Increase each disk capacity to 36GB, 10K RPM, SCSCI Hot Plug (quote pricing for ALL disks)
Increase each disk capacity to 73GB, 10K RPM, SCSCI Hot Plug (quote pricing for ALL disks)
Increase each disk capacity to 146GB, 10K RPM, SCSCI Hot Plug (quote pricing for ALL disks)
Increase each drive speed to 15K RPM (quote pricing for ALL disks)
Increase each disk capacity to 36GB, 15K RPM, SCSCI Hot Plug (quote pricing for ALL disks)
Increase each disk capacity to 73GB, 15K RPM, SCSCI Hot Plug (quote pricing for ALL disks)
Remove Deployment Rails
Internal SDLT Tape Drive (110 GB/220 GB)
External DLT Tape Drive (40 GB/80 GB)
Add CDRW Drive
Add DVD Drive
Add DVD/CDRW Drive
Gigabit Network Connection
Monitor Media and Documentation
Linux Option
Upgrade Warranty 4hr Response Time, M-F 8am-6pm
Upgrade Warranty to 4hr Response Time, 7x24
Add Win 2000 Server OS
Remove Remote Management Card
Upgrade from SCSI to Fibre Channel

Table 5
Attachment "A"
Contract VA-030801-IBM

IBM

Service	Desktop	Laptop	Server
Imaging (copying of system config from a master to other machines)	$750 set-up per image, plus $25 per unit imaged	$750 set-up per image, plus $25 per unit imaged	$25-50
Asset Tagging	$12	$12	$15-40
Deployment/Installation	$100	$100	$65-90
Data Transfer (from retired machine to new unit)	$600 per 20 machines	$600 per 20 machines	$30-100

Imaging: This depends on the number of different images and the volume of systems
Asset Tagging: This is a pure volume/ discount range
Deployment/Installation: This is done provided the customer has a script to follow and we are not responsible for shipping.
Data Transfer: We have to define what types of files we will migrate (.doc,.xls, etc). The customer has to supply a server to move the data out to and back from. If this is not organized it could eat up an hour per system. If it is organized it should take about 15 minutes.

IBM
Personal Computing Division

US
WARRANTY
SELF-MAINTAINER
GUIDE

Visit our website: http://www.ibm.com/pc/wsm/

Version 4.0

Prolog

Forward any changes, updates or suggestions to Karen Y Smith - Lotus Notes -IBMUSM20 (KYSMITH) or Internet - kysmith@us.ibm.com.

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II. Process

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IBM Warranty Self-Maintainer Reimbursement Rates 7

II. Process Overview

Customer/ Machine Eligibility

- This program is open to all IBM customers who own IBM Personal Computing Division products that are under warranty. All IBM Personal Computer Division machines and options designated Customer Carry-In Repair/Exchange or IBM on-site Repair/Exchange are eligible. The program does not provide for 3rd party providers to perform warranty work.

Process Details

- The IBM Rep submits a Lotus Notes IBM Warranty Self-Maintainer Request form. The form must contain the customer's legal name, enterprise number, customer address & contact name, and IBM branch office address.

- The Program Manager prepares and forwards the Agreement to the Customer.

- The Agreement is reviewed and signed by the Customer and returned to the Program Manager.

- The Program Manager submits the Agreement to Contract Operations for approval.

- The Program Manager sends the Customer a welcome package containing a signed copy of the Agreement and additional program information.

- The Customer is issued a Warranty Start-Up service kit which contains training courses

- The Customer is invoiced $1,000.00 for the Warranty Start-Up fee.

  Training Costs:
  - Web based & Self Paced Computer Based Training is included in the Warranty Start-Up Fee.

  Ordering Additional Copies of Training Materials:
  - Call the IBM PC Institute at 800-937-3737 for details and pricing.

- After the technician completes the training requirements, their names and course data are loaded into IBM's dealer management system. Course completion is required to maintain warranty certification.

- Access to Eclaim on the Web is provided after the Customer becomes IBM warranty authorized.

IBM Warranty Self-Maintainer Reimbursement Rates

Machine Type	Reimbursement Rate
IBM Desktop	$50.00 per incident
IBM Server	$75.00 per incident
IBM Mobile Products	$50.00 per incident
IBM Monitors - Exchange	$25.00 per incident
Options By IBM	$25.00 per incident
Travel Reimbursement	$25.00 per incident during on-site phase of the warranty

Notes: Notes 1, 2, 3 apply to all products.

1. When submitting multiple claims for on-site machines, from the same customer location, only one claim should be coded with an "O" for on-site service. The remainder should be coded with a "C" for carry in service.

2. Multiple repair actions within 10 days are considered single incident and only one labor reimbursement will be paid. If an additional repair action is required as a result of a defective part received from IBM, reimbursement will be provided. Servicers should code the warranty claim as Type Service 03 (Parts Warranty) and provide the machine type and serial number of the machine under warranty.

3. Customer Replaceable Units (keyboards, mice, batteries, adapters, etc.) are available directly to customers through the HelpCenter. Servicers that elect to replace these items will receive a $25.00 handling fee. Labor and travel reimbursement do not apply.

All rates are effective January 2003.

Revision History

September 3, 2002 – Added URL for website.

ATTACHMENT "B"
CONTRACT VA-030801-IBM
REPORTING FORMAT

ILLUSTRATIVE

COV Spend Report for June 2003

This report shows the overall spend each month by Agency/Institution/Municipality

[illegible]	[illegible]
Supreme Court	200,000
DIT	500,000

ATTACHMENT "B"
CONTRACT VA-030801-IBM
REPORTING FORMAT

System Level Report

ILLUSTRATIVE

This report provides the details of every system bought by each Agency/Institution/Municipality

PO #	Order #	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	Discount %	Unit Discounted Price on Order Date ($)	Extended Discounted Price on Order Date ($)
11188	222888	Supreme Court	6/25/03	06/23/03	Y	30	1	Orange Y288	Desktop	Desktop 1	S1234	Public Web Price	$ 2,800.00	$ 2,800.00	48%	$ 1,456.00	$ 1,456.00
11189	222889	DIT	6/25/03	06/23/03	Y	10	2	Lemon X118	Laptop	Laptop 2	S1238	Public Web Price	$ 3,000.00	$ 6,000.00	53%	$ 1,410.00	$ 2,820.00
11190	222890	DIT	6/25/03	06/23/03	Y	20	2	Lemon Y200	Laptop	Off-spec	S1232	Public Web Price	$ 2,500.00	$ 5,000.00	38%	$ 1,550.00	$ 3,100.00

ATTACHMENT "B"
CONTRACT VA-030801-IBM
REPORTING FORMAT

Component Level Report

ILLUSTRATIVE ILLUSTRATIVE

This report provides the detail of every single SKU of each system purchased

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
11188	222888	Supreme Court	6/25/03	6/23/03	Desktop	Orange Y288	Desktop 1	CPU	11111	2.0GHz Pentium 4	1	$ 300.00	$ 300.00	48%	$ 156.00	$ 156.00
								RAM	11112	512 MB 1 DIMM	1	$ 400.00	$ 400.00	48%	$ 208.00	$ 208.00
								Hardrive	11113	60GB 7200 RPM	1	$ 200.00	$ 200.00	48%	$ 104.00	$ 104.00
								Monitor	11114	17in CRT	1	$ 600.00	$ 600.00	48%	$ 312.00	$ 312.00
								Optical Device	11115	48X CD-ROM	1	$ 300.00	$ 300.00	48%	$ 156.00	$ 156.00
								Warranty	11116	3-yr NBD	1	$ 1,000.00	$ 1,000.00	48%	$ 520.00	$ 520.00
											Subtotal	$2,800.00	$2,800.00	48%	$ 1,456.00	$ 1,456.00
11189	222889	DIT	6/25/03	6/23/03	Laptop	Lemon X118	Laptop 2	CPU	11117	1.5GHz Pentium M	2	$ 400.00	$ 800.00	53%	$ 188.00	$ 376.00
								RAM	11118	1GB 1 DIMM	2	$ 600.00	$ 1,200.00	53%	$ 282.00	$ 564.00
								Hardrive	11119	40 GB 7200 RPM	2	$ 200.00	$ 400.00	53%	$ 94.00	$ 188.00
								Monitor	11120	15.1 TFT	2	$ 600.00	$ 1,200.00	53%	$ 282.00	$ 564.00
								Optical Device	11121	48X CD-ROM	2	$ 300.00	$ 600.00	53%	$ 141.00	$ 282.00
								Warranty	11122	3-yr NBD	2	$ 900.00	$ 1,800.00	53%	$ 423.00	$ 846.00
											Subtotal	$3,000.00	$6,000.00	53%	$ 1,410.00	$ 2,820.00

ATTACHMENT "C"
TO
RFP # 2003-040
THE VIRGINIA INFORMATION TECHNOLOGIES AGENCY

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee or an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and Contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: Kim Turnbull Hall

Printed Name: Kim Turnbull Hall

Organization: IBM Corporation

Date: August 7, 2003

Amendment to IBM's
Statement of Limited Warranty
and
Made a Part of Master Agreement
Contract VA-030801-IBM
BETWEEN
THE COMMONWEALTH OF VIRGINIA
AND
INTERNATIONAL BUSINESS MACHINES CORPORATION

Part 1- General Terms; What this Warranty Covers
The third sentence is changed to read as follows: "The Date of Installation is on delivery (specified in paragraph 70, Warranty) and defined herein as the second business day after the product's standard transit allowance period.

Page 2, Limitation of Liability

Consistent with section Section 42 of the Contract Document, the third and fourth paragraphs of this section are revised to read as follows:

Under no circumstances will the Contractor or its subcontractors or suppliers be liable for any indirect, incidental, special or consequential damages, or damages from loss of profits, anticipated savings, revenue, business, goodwill, data or use of the supplies, equipment and/or services delivered or performed under this Contract. In addition, Contractor's and its subcontractors' and suppliers' entire and collective liability arising out of or relating to this Contract, including without limitation on account of performance or nonperformance of obligations hereunder, regardless of the form of the cause of action, three whether in contract, tort (including without limitation negligence), statute or otherwise, shall in no event exceed three (3) times the price paid for the product (for recurring services or monthly license IBM software, 12 months' charges apply).that is subject of the claim. This limitation is per event..No such limitation shall apply in the case of (I)damages for bodily injury (including death) and damage to or loss of real property and tangible personal property to the extent caused by Contractor's, its subcontractors' or suppliers' negligence; and (ii) Contractor's, its subcontractors' or suppliers' obligations under Section 35, "Patent/Copyright Protection".

Part 2-Country-unique Terms
Delete Part 2- Country unique Terms in its entirety.

End of Amendment

IBM Statement of Limited Warranty

Z125-4753-07 11/2002

Part 1 - General Terms

This Statement of Limited Warranty includes Part 1 - General Terms, Part 2 - Country-unique Terms, and Part 3 - Warranty Information. The terms of Part 2 replace or modify those of Part 1. The warranties provided by IBM in this Statement of Limited Warranty apply only to Machines you purchase for your use, and not for resale. The term "Machine" means an IBM machine, its features, conversions, upgrades, elements, or accessories, or any combination of them. The term "Machine" does not include any software programs, whether pre-loaded with the Machine, installed subsequently or otherwise. ***Nothing in this Statement of Limited Warranty affects any statutory rights of consumers that cannot be waived or limited by contract.***

What this Warranty Covers

IBM warrants that each Machine 1) is free from defects in materials and workmanship and 2) conforms to IBM's Official Published Specifications ("Specifications") which are available on request. The warranty period for the Machine starts on the original Date of Installation and is specified in Part 3 - Warranty Information. The date on your invoice or sales receipt is the Date of Installation unless IBM or your reseller informs you otherwise. Many features, conversions, or upgrades involve the removal of parts and their return to IBM. A part that replaces a removed part will assume the warranty service status of the removed part. Unless IBM specifies otherwise, these warranties apply only in the country or region in which you purchased the Machine.

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. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THAT PERIOD. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

What this Warranty Does not Cover

This warranty does not cover the following:

- any software programs, whether pre-loaded or shipped with the Machine, or installed subsequently;
- failure resulting from misuse (including but not limited to use of any Machine capacity or capability, other than that authorized by IBM in writing), accident, modification, unsuitable physical or operating environment, or improper maintenance by you;
- failure caused by a product for which IBM is not responsible; and
- any non-IBM products, including those that IBM may procure and provide with or integrate into an IBM Machine at your request.

The warranty is voided by removal or alteration of identification labels on the Machine or its parts.

IBM does not warrant uninterrupted or error-free operation of a Machine.

Any technical or other support provided for a Machine under warranty, such as assistance via telephone with "how-to" questions and those regarding Machine set-up and installation, is provided **WITHOUT WARRANTIES OF ANY KIND**.

How to Obtain Warranty Service

If the Machine does not function as warranted during the warranty period, contact IBM or your reseller to obtain warranty service. If you do not register the Machine with IBM, you may be required to present proof of purchase as evidence of your entitlement to warranty service.

What IBM Will Do to Correct Problems

When you call for service, you must follow the problem determination and resolution procedures that IBM specifies. A technician will attempt to make an initial diagnosis of your problem and help you resolve it over the telephone.

The type of warranty service applicable to your Machine is specified in Part 3 - Warranty Information.

You are responsible for downloading and installing designated Machine Code (microcode, basic input/output system code (called "BIOS"), utility programs, device drivers, and diagnostics delivered with an IBM Machine) and other software updates from an IBM Internet Web site or from other electronic media, and following the instructions that IBM provides.

If your problem can be resolved with a Customer Replaceable Unit ("CRU") (e.g., keyboard, mouse, speaker, memory, hard disk drive and other easily replaceable parts), IBM will ship these parts to you for replacement by you.

If the Machine does not function as warranted during the warranty period and your problem cannot be resolved over the telephone, through your application of Machine Code or software updates, or with a CRU, IBM or your reseller, if approved by IBM to provide warranty service, will either, at its discretion, 1) repair it to make it function as warranted, or 2) replace it with one that is at least functionally equivalent. If IBM is unable to do either, you may return the Machine to your place of purchase and your money will be refunded.

IBM or your reseller will also manage and install selected engineering changes that apply to the Machine.

Exchange of a Machine or Part

When the warranty service involves the exchange of a Machine or part, the item IBM or your reseller 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 will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty service status of the replaced item.

Your Additional Responsibilities

Before IBM or your reseller exchanges a Machine or part, you agree to remove all features, parts, options, alterations, and attachments not under warranty service.

You also agree to:

1. ensure that the Machine is free of any legal obligations or restrictions that prevent its exchange;
2. obtain authorization from the owner to have IBM or your reseller service a Machine that you do not own; and
3. where applicable, before service is provided:
   a. follow the service request procedures that IBM or your reseller provides;
   b. backup or secure all programs, data, and funds contained in the Machine;
   c. provide IBM or your reseller with sufficient, free, and safe access to your facilities to permit IBM to fulfill its obligations; and
   d. inform IBM or your reseller of changes in the Machine's location.

4. (a) ensure all information about identified or identifiable individuals (Personal Data) is deleted from the Machine (to the extent technically possible), (b) allow IBM, your reseller or an IBM supplier to process on your behalf any remaining Personal Data as IBM or your reseller considers necessary to fulfill its obligations under this Statement of Limited Warranty (which may include shipping the Machine for such processing to other IBM service locations around the world), and (c) ensure that such processing complies with any laws applicable to such Personal Data.

Limitation of Liability

IBM is responsible for loss of, or damage to, your Machine only while it is 1) in IBM's possession or 2) in transit in those cases where IBM is responsible for the transportation charges.

Neither IBM nor your reseller are responsible for any of your confidential, proprietary or personal information contained in a Machine which you return to IBM for any reason. You should remove all such information from the Machine prior to its return.

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), except for any liability that cannot be waived or limited by applicable laws, IBM is 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 charges (if recurring, 12 months' charges apply) for the Machine that is subject of the claim. For purposes of this item, the term "Machine" includes Machine Code and Licensed Internal Code ("LIC").

This limit also applies to IBM's suppliers and your reseller. It is the maximum for which IBM, its suppliers, and your reseller are collectively responsible.

UNDER NO CIRCUMSTANCES IS IBM, ITS SUPPLIERS OR RESELLERS LIABLE FOR ANY OF THE FOLLOWING EVEN IF INFORMED OF THEIR POSSIBILITY: 1) THIRD PARTY CLAIMS AGAINST YOU FOR DAMAGES (OTHER THAN THOSE UNDER THE FIRST ITEM LISTED ABOVE); 2) LOSS OF, OR DAMAGE TO, DATA; 3) SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR 4) LOST PROFITS, BUSINESS REVENUE, GOODWILL OR ANTICIPATED SAVINGS. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

Governing Law

Both you and IBM consent to the application of the laws of the country in which you acquired the Machine 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 Statement of Limited Warranty, without regard to conflict of law principles.

THESE WARRANTIES GIVE YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE OR JURISDICTION TO JURISDICTION.

Jurisdiction

All of our rights, duties, and obligations are subject to the courts of the country in which you acquired the Machine.

Part 2 - Country-unique Terms

AMERICAS

ARGENTINA

Governing Law: *The following is added after the first sentence:*

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the Ordinary Commercial Court of the city of Buenos Aires.

BRAZIL

Governing Law: *The following is added after the first sentence:*

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the court of Rio de Janeiro, RJ.

PERU

Limitation of Liability: *The following is added at the end of this section:*

In accordance with Article 1328 of the Peruvian Civil Code the limitations and exclusions specified in this section will not apply to damages caused by IBM's willful misconduct ("dolo") or gross negligence ("culpa inexcusable").

NORTH AMERICA

How to Obtain Warranty Service: *The following is added to this Section:*

To obtain warranty service from IBM in Canada or the United States, call 1-800-IBM-SERV (426-7378).

CANADA

Limitation of Liability: *The following replaces item 1 of this section:*

1. damages for bodily injury (including death) or physical harm to real property and tangible personal property caused by IBM's negligence; and

Governing Law: *The following replaces "laws of the country in which you acquired the Machine" in the first sentence:*

laws in the Province of Ontario.

UNITED STATES

Governing Law: *The following replaces "laws of the country in which you acquired the Machine" in the first sentence:*

laws of the State of New York.

ASIA PACIFIC

AUSTRALIA

What this Warranty Covers: *The following paragraph is added to this section:*

The warranties specified in this Section are in addition to any rights you may have under the Trade Practices Act 1974 or other similar legislation and are only limited to the extent permitted by the applicable legislation.

Limitation of Liability: *The following is added to this section:*

Where IBM is in breach of a condition or warranty implied by the Trade Practices Act 1974 or other similar legislation, IBM's liability is limited to the repair or replacement of the goods or the supply of equivalent goods. Where that condition or warranty relates to right to sell, quiet possession or clear title, or the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, then none of the limitations in this paragraph apply.

Governing Law: *The following replaces "*laws of the country in which you acquired the Machine*" in the first sentence:*

laws of the State or Territory

CAMBODIA, LAOS, AND VIETNAM

Governing Law: *The following replaces "*laws of the country in which you acquired the Machine*" in the first sentence:*

laws of the State of New York, United States of America.

CAMBODIA, INDONESIA, LAOS, AND VIETNAM

Arbitration: *The following is added under this heading:*

Disputes arising out of or in connection with this Statement of Limited Warranty shall be finally settled by arbitration which shall be held in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Center ("SIAC Rules") then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the SIAC. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Statement of Limited Warranty prevails over any other language version.

HONG KONG S.A.R. OF CHINA AND MACAU S.A.R. OF CHINA

Governing Law: *The following replaces "*laws of the country in which you acquired the Machine*" in the first sentence:*

laws of Hong Kong Special Administrative Region of China.

INDIA

Limitation of Liability: *The following replaces items 1 and 2 of this section:*

1. liability for bodily injury (including death) or damage to real property and tangible personal property will be limited to that caused by IBM's negligence; and
2. as to any other actual damage arising in any situation involving nonperformance by IBM pursuant to, or in any way related to the subject of this Statement of Limited Warranty, the charge paid by you for the individual Machine that is the subject of the claim. For purposes of this item, the term "Machine" includes Machine Code and Licensed Internal Code ("LIC").

Arbitration: *The following is added under this heading*

Disputes arising out of or in connection with this Statement of Limited Warranty shall be finally settled by arbitration which shall be held in Bangalore, India in accordance with the laws of India then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Bar Council of India. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Statement of Limited Warranty prevails over any other language version.

JAPAN

Governing Law: *The following sentence is added to this section:*

Any doubts concerning this Statement of Limited Warranty will be initially resolved between us in good faith and in accordance with the principle of mutual trust.

MALAYSIA

Limitation of Liability: *The word **"SPECIAL"** in item 3 of the fifth paragraph is deleted.*

NEW ZEALAND

What this Warranty Covers: *The following paragraph is added to this section:*

The warranties specified in this section are in addition to any rights you may have under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited. The Consumer Guarantees Act 1993 will not apply in respect of any goods which IBM provides, if you require the goods for the purposes of a business as defined in that Act.

Limitation of Liability: *The following is added to this section:*

Where Machines are not acquired for the purposes of a business as defined in the Consumer Guarantees Act 1993, the limitations in this Section are subject to the limitations in that Act.

PEOPLE'S REPUBLIC OF CHINA (PRC)

Governing Law: *The following replaces "*laws of the country in which you acquired the Machine*" in the first sentence:*

laws of the State of New York, United States of America (except when local law requires otherwise).

PHILIPPINES

Limitation of Liability: *Item 3 in the fifth paragraph is replaced by the following:*

SPECIAL (INCLUDING NOMINAL AND EXEMPLARY DAMAGES), MORAL, INCIDENTAL, OR INDIRECT DAMAGES FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR

Arbitration: The following is added: under this heading

Disputes arising out of or in connection with this Statement of Limited Warranty shall be finally settled by arbitration which shall be held in Metro Manila, Philippines in accordance with the laws of the Philippines then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Philippine Dispute Resolution Center, Inc.. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Statement of Limited Warranty prevails over any other language version.

SINGAPORE

Limitation of Liability: *The words "**SPECIAL**" and "**ECONOMIC**" in item 3 in the fifth paragraph are deleted.*

EUROPE, MIDDLE EAST, AFRICA (EMEA)

THE FOLLOWING TERMS APPLY TO ALL EMEA COUNTRIES:

The terms of this Statement of Limited Warranty apply to Machines purchased from IBM or an IBM reseller.

How to Obtain Warranty Service:

If you purchase a Machine in Austria, Belgium, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Monaco, Netherlands, Norway, Portugal, Spain, San Marino, Sweden, Switzerland, United Kingdom or Vatican State, you may obtain warranty service for that Machine in any of those countries from either (1) an IBM reseller approved to perform warranty service or (2) from IBM, provided the Machine has been announced and made available by IBM in the country in which you wish to obtain service. If you purchased a Personal Computer Machine in Albania, Armenia, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Federal Republic of Yugoslavia, Former Yugoslav Republic of Macedonia (FYROM), Moldova, Poland, Romania, Russia, Slovak Republic, Slovenia, or Ukraine, you may obtain warranty service for that Machine in any of those countries from either (1) an IBM reseller approved to perform warranty service or (2) from IBM.

If you purchase a Machine in a Middle Eastern or African country, you may obtain warranty service for that Machine from the IBM entity within the country of purchase, if that IBM entity provides warranty service in that country, or from an IBM reseller, approved by IBM to perform warranty service on that Machine in that country. Warranty service in Africa is available within 50 kilometers of an IBM approved service provider. You are responsible for transportation costs for Machines located outside 50 kilometers of an IBM approved service provider.

*Add the following paragraph in **Western Europe** (Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Monaco, Netherlands, Norway, Portugal, Spain, San Marino, Sweden, Switzerland, United Kingdom, Vatican State):*

The warranty for Machines acquired in Western Europe shall be valid and applicable in all Western Europe countries provided the Machines have been announced and made available in such countries.

Governing Law:

The phrase "the laws of the country in which you acquired the Machine" *is replaced by:*

1) "the laws of Austria" **in Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldova, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia**; 2) "the laws of France" **in Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis & Futuna**; 3) "the laws of Finland" **in Estonia, Latvia, and Lithuania**; 4) "the laws of England" **in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe**; and 5) "the laws of South Africa" **in South Africa, Namibia, Lesotho and Swaziland.**

Jurisdiction: *The following exceptions are added to this section:*

1) **In *Austria*** the choice of jurisdiction for all disputes arising out of this Statement of Limited Warranty and relating thereto, including its existence, will be the competent court of law in Vienna, Austria (Inner-City); 2) **in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, West Bank/Gaza, Yemen, Zambia, and Zimbabwe** all disputes arising out of this Statement of Limited Warranty or related to its execution, including summary proceedings, will be submitted to the exclusive jurisdiction of the English courts; 3) in **Belgium** and **Luxembourg**, all disputes arising out of this Statement of Limited Warranty or related to its interpretation or its execution, the law, and the courts of the capital city, of the country of your registered office and/or commercial site location only are competent; 4) **in France, Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis & Futuna** all disputes arising out of this Statement of Limited Warranty or related to its violation or execution, including summary proceedings, will be settled exclusively by the Commercial Court of Paris; 5) in **Russia**, all disputes arising out of or in relation to the interpretation, the violation, the termination, the nullity of the execution of this Statement of Limited Warranty shall be settled by Arbitration Court of Moscow; 6) **in South Africa, Namibia, Lesotho and Swaziland**, both of us agree to submit all disputes relating to this Statement of Limited Warranty to the jurisdiction of the High Court in Johannesburg; 7) **in Turkey** all disputes arising out of or in connection with this Statement of Limited Warranty shall be resolved by the Istanbul Central (Sultanahmet) Courts and Execution Directorates of Istanbul, the Republic of Turkey; 8) in each of the following specified countries, any legal claim arising out of this Statement of Limited Warranty will be brought before, and settled exclusively by, the competent court of a) Athens for **Greece**, b) Tel Aviv-Jaffa for **Israel**, c) Milan for **Italy**, d) Lisbon for **Portugal**, and e) Madrid for **Spain**; and 9) **in the United Kingdom**, both of us agree to submit all disputes relating to this Statement of Limited Warranty to the jurisdiction of the English courts.

Arbitration: *The following is added under this heading:*

In Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldova, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia all disputes arising out of this Statement of Limited Warranty or related to its violation, termination or nullity will be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Center of the Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with these rules. The arbitration will be held in Vienna, Austria, and the official language of the proceedings will be English. The decision of the arbitrators will be final and binding upon both parties. Therefore, pursuant to paragraph 598 (2) of the Austrian Code of Civil Procedure, the parties expressly waive the application of paragraph 595 (1) figure 7 of the Code. IBM may, however, institute proceedings in a competent court in the country of installation.

In Estonia, Latvia and Lithuania all disputes arising in connection with this Statement of Limited Warranty will be finally settled in arbitration that will be held in Helsinki, Finland in accordance with the arbitration laws of Finland then in effect. Each party will appoint one arbitrator. The arbitrators will then jointly appoint the chairman. If arbitrators cannot agree on the chairman, then the Central Chamber of Commerce in Helsinki will appoint the chairman.

EUROPEAN UNION (EU)

THE FOLLOWING TERMS APPLY TO ALL EU COUNTRIES:

Consumers have legal rights under applicable national legislation governing the sale of consumer goods. Such rights are not affected by the warranties provided in this Statement of Limited Warranty.

How to Obtain Warranty Service: *The following is added to this section:*

To obtain warranty service from IBM in EU countries, see the telephone listing in Part 3 - Warranty Information.

You may contact IBM at the following address:

IBM Warranty & Service Quality Dept.
PO Box 30
Spango Valley
Greenock
Scotland PA16 0AH

AUSTRIA, DENMARK, FINLAND, GREECE, ITALY, NETHERLANDS, NORWAY, PORTUGAL, SPAIN, SWEDEN AND SWITZERLAND

Limitation of Liability: *The following replaces the terms of this section in its entirety:*

Except as otherwise provided by mandatory law:

1. IBM's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this Statement of Limited Warranty or due to any other cause related to this Statement of Limited Warranty is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if IBM is at fault) or of such cause, for a maximum amount equal to the charges you paid for the Machine. For purposes of this item, the term "Machine" includes Machine Code and Licensed Internal Code ("LIC").

   The above limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which IBM is legally liable.

2. **UNDER NO CIRCUMSTANCES IS IBM, ITS SUPPLIERS OR RESELLERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**

FRANCE AND BELGIUM

Limitation of Liability: *The following replaces the terms of this section in its entirety:*

Except as otherwise provided by mandatory law:

1. IBM's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this Statement of Limited Warranty is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if IBM is at fault), for a maximum amount equal to the charges you paid for the Machine that has caused the damages. For purposes of this item, the term "Machine" includes Machine Code and Licensed Internal Code ("LIC").

   The above limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which IBM is legally liable.

2. **UNDER NO CIRCUMSTANCES IS IBM, ITS SUPPLIERS OR RESELLERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**

THE FOLLOWING TERMS APPLY TO THE COUNTRY SPECIFIED:

AUSTRIA

What this Warranty Covers: *The following replaces the first sentence of the first paragraph of this section:*

The warranty for an IBM Machine covers the functionality of the Machine for its normal use and the Machine's conformity to its Specifications.

The following paragraphs are added to this section:

The warranty period for Machines is 12 months from the date of delivery. The limitation period for consumers in action for breach of warranty is the statutory period as a minimum. In case IBM or your reseller is unable to repair an IBM Machine, you can alternatively ask for a partial refund as far as justified by the reduced value of the unrepaired Machine or ask for a cancellation of the respective agreement for such Machine and get your money refunded.

The second paragraph does not apply.

What IBM Will Do to Correct Problems: *The following is added to this section:*

During the warranty period, transportation for delivery of the failing Machine to IBM will be at IBM's expense.

Limitation of Liability: *The following paragraph is added to this section:*

The limitations and exclusions specified in the Statement of Limited Warranty will not apply to damages caused by IBM with fraud or gross negligence and for express warranty.

The following sentence is added to the end of item 2:

IBM's liability under this item is limited to the violation of essential contractual terms in cases of ordinary negligence.

EGYPT

Limitation of Liability: *The following replaces item 2 in this section:*

as to any other actual direct damages, IBM's liability will be limited to the total amount you paid for the Machine that is the subject of the claim. For purposes of this item, the term "Machine" includes Machine Code and Licensed Internal Code ("LIC").

Applicability of suppliers and resellers (unchanged).

FRANCE

Limitation of Liability: *The following replaces the second sentence of the first paragraph of this section:*

In such instances, regardless of the basis on which you are entitled to claim damages from IBM, IBM is liable for no more than: (items 1 and 2 unchanged).

GERMANY

What this Warranty Covers: *The following replaces the first sentence of the first paragraph of this section:*

The warranty for an IBM Machine covers the functionality of the Machine for its normal use and the Machine's conformity to its Specifications.

The following paragraphs are added to this section:

The minimum warranty period for Machines is twelve months. In case IBM or your reseller is unable to repair an IBM Machine, you can alternatively ask for a partial refund as far as justified by the reduced value of the unrepaired Machine or ask for a cancellation of the respective agreement for such Machine and get your money refunded.

The second paragraph does not apply.

What IBM Will Do to Correct Problems: *The following is added to this section:*

During the warranty period, transportation for delivery of the failing Machine to IBM will be at IBM's expense.

Limitation of Liability: *The following paragraph is added to this section:*

The limitations and exclusions specified in the Statement of Limited Warranty will not apply to damages caused by IBM with fraud or gross negligence and for express warranty.

The following sentence is added to the end of item 2:

IBM's liability under this item is limited to the violation of essential contractual terms in cases of ordinary negligence.

HUNGARY

Limitation of Liability: *The following is added at the end of this section:*

The limitation and exclusion specified herein shall not apply to liability for a breach of contract damaging life, physical well-being, or health that has been caused intentionally, by gross negligence, or by a criminal act.

The parties accept the limitations of liability as valid provisions and state that the Section 314.(2) of the Hungarian Civil Code applies as the acquisition price as well as other advantages arising out of the present Statement of Limited Warranty balance this limitation of liability.

IRELAND

What this Warranty Covers: *The following is added to this section:*

Except as expressly provided in these terms and conditions, all statutory conditions, including all warranties implied, but without prejudice to the generality of the foregoing all warranties implied by the Sale of Goods Act 1893 or the Sale of Goods and Supply of Services Act 1980 are hereby excluded.

Limitation of Liability: *The following replaces the terms of section in its entirety:*

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 this Statement of Limited Warranty 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 occurring on the date of occurrence of the last such Default.

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

This section sets out the extent of IBM's liability and your sole remedy.

1. IBM will accept unlimited liability for death or personal injury caused by the negligence of IBM.
2. Subject always to the **Items for Which IBM is Not Liable** below, IBM will accept unlimited liability for physical damage to your tangible property resulting from the negligence of IBM.
3. Except as provided in items 1 and 2 above, IBM's entire liability for actual damages for any one Default will not in any event exceed the greater of 1) EUR 125,000, or 2) 125% of the amount you paid for the Machine directly relating to the Default.

Items for Which IBM is Not Liable

Save with respect to any liability referred to in item 1 above, under no circumstances is IBM, its suppliers or resellers 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, or anticipated savings.

SLOVAKIA

Limitation of Liability: *The following is added to the end of the last paragraph:*

The limitations apply to the extent they are not prohibited under §§ 373-386 of the Slovak Commercial Code.

SOUTH AFRICA, NAMIBIA, BOTSWANA, LESOTHO AND SWAZILAND

Limitation of Liability: *The following is added to this section:*

IBM's entire liability to you for actual damages arising in all situations involving nonperformance by IBM in respect of the subject matter of this Statement of Warranty will be limited to the charge paid by you for the individual Machine that is the subject of your claim from IBM.

UNITED KINGDOM

Limitation of Liability: *The following replaces the terms of this section is in its entirety:*

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 this Statement of Limited Warranty 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.

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 greater of 1) Pounds Sterling 75,000, or 2) 125% of the total purchase price payable or the charges for the Machine directly relating to the Default.

These limits also apply to IBM's suppliers and resellers. They state the maximum for which IBM and such suppliers and resellers 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 suppliers or resellers 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, or anticipated savings.

Part 3 - Warranty Information

This Part 3 provides information regarding the warranty applicable to your Machine, including the warranty period and type of warranty service IBM provides.

Warranty Period

The warranty period may vary by country or region and is specified in the table below. NOTE: "Region" means either Hong Kong or Macau Special Administrative Region of China.

Machine type XXXX

Country or Region of Purchase	Warranty Period	Type of Warranty Service

A warranty period of 3 years on parts and 1 year on labor means that IBM provides warranty service without charge for:

1. parts and labor during the first year of the warranty period; and
2. parts only, on an exchange basis, in the second and third years of the warranty period. IBM will charge you for any labor provided in performance of the repair or replacement(s) in the second and third year of warranty period.

Types of Warranty Service

If required, IBM provides repair or exchange service depending on the type of warranty service specified for your Machine in the above table and as described below. Warranty service may be provided by your reseller if approved by IBM to perform warranty service. Scheduling of service will depend upon the time of your call and is subject to parts availability. Service levels are response time objectives and are not guaranteed. The specified level of warranty service may not be available in all worldwide locations, additional charges may apply outside IBM's normal service area, contact your local IBM representative or your reseller for country and location specific information.

1. Customer Replaceable Unit ("CRU") Service

IBM will ship CRU parts to you for your replacement. If IBM instructs you to return the replaced CRU, you are responsible for returning it to IBM in accordance with IBM's instructions. If you do not return the defective CRU, if IBM so instructs, within 30 days of your receipt of the replacement CRU, IBM may charge you for the replacement.

2. On-site Service

IBM or your reseller will either repair or exchange the failing Machine at your location and verify its operation. You must provide suitable working area to allow disassembly and reassembly of the IBM Machine. The area must be clean, well lit and suitable for the purpose. **For some Machines, certain repairs may require sending the Machine to an IBM service center.**

3. Courier or Depot Service*

You will disconnect the failing Machine for collection arranged by IBM. IBM will provide you with a shipping container for you to return your Machine to a designated service center. A courier will pick up your Machine and deliver it to the designated service center. Following its repair or exchange, IBM will arrange the return delivery of the Machine to your location. You are responsible for its installation and verification.

4. Customer Carry-In or Mail-In Service

You will deliver or mail as IBM specifies (prepaid unless IBM specifies otherwise) the failing Machine suitably packaged to a location IBM designates. After IBM has repaired or exchanged the Machine, IBM will make it available for your collection or, for Mail-in Service, IBM will return it to you at IBM's expense, unless IBM specifies otherwise. You are responsible for the subsequent installation and verification of the Machine.

* This type of service is called ThinkPad EasyServ or EasyServ in some countries.

The IBM Machine Warranty worldwide web site at http://www.ibm.com/servers/support/machine_warranties/ provides a worldwide overview of IBM's Limited Warranty for Machines, a Glossary of IBM definitions, Frequently Asked Questions (FAQs) and Support by Product (Machine) with links to Product Support pages. **The IBM Statement of Limited Warranty is also available on this site in 29 languages.**

To obtain warranty service contact IBM or your IBM reseller. In Canada or the United States, call 1-800-IBM-SERV (426-7378). In the EU countries, see the telephone numbers below.

EU Country Telephone List

Phone numbers are subject to change without notice.

Austria -- 43-1-24592-5901	Italy --39-02-482-9202
Belgium -- 02-718-4339	Luxembourg -- 352-360385-1
Denmark -- 4520-8200	Netherlands --020-514-5770
Finland -- 358-9-4591	Portugal -- 351-21-7915-147
France -- 0238-557-450	Spain --34-91-662-4916
Germany -- 07032-15-4920	Sweden -- 46-8-477-4420
Greece -- 30-210-688-1220	United Kingdom -- 01475-555-055
Ireland --353-1-815-4000	

Amendment to IBM's
International Program License Agreement
And
Made a Part of Master Agreement
Contract VA-030801-IBM
BETWEEN
THE COMMONWEALTH OF VIRGINIA
AND
INTERNATIONAL BUSINESS MACHINES CORPORATION

Page 2- Money Back Guarantee

In the first sentence, replace the word "invoice" with "delivery", the changed sentence is as follows:

"If for any reason You are dissatisfied with the Program and You are the original licensee, You may obtain a refund of the amount You paid for it; if within 30 days of Your delivery date You return the Program and its PoE to the party from whom You obtained it.

Section 4. Limitation of Liability

Delete Section 4. Limitation of Liability in its entirety and replace with the sentence below as follows:

Under no circumstances will the Contractor or its subcontractors or suppliers be liable for any indirect, incidental, special or consequential damages, or damages from loss of profits, anticipated savings, revenue, business, goodwill, data or use of the supplies, equipment and/or services delivered or performed under this Contract. In addition, Contractor's and its subcontractors' and suppliers' entire and collective liability arising out of or relating to this Contract, including without limitation on account of performance or nonperformance of obligations hereunder, regardless of the form of the cause of action, three whether in contract, tort (including without limitation negligence), statute or otherwise, shall in no event exceed three (3) times the price paid for the product (for recurring services or monthly license IBM software, 12 months' charges apply).that is subject of the claim. This limitation is per event. No such limitation shall apply in the case of (I)damages for bodily injury (including death) and damage to or loss of real property and tangible personal property to the extent caused by Contractor's, its subcontractors' or suppliers' negligence; and (ii) Contractor's, its subcontractors' or suppliers' obligations under Section 35, "Patent/Copyright Protection".

Section 5. General ;Subsection 7.

Change this subsection to read as follows:

"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 permitted by the Section 42, Limitation of Liability of the Contract document VA-030801-IBM, for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable.

Part 2- Country-unique Terms
Delete Part 2- Country-unique Terms in its entirety.

END OF AMENDMENT

International Program License Agreement

国际软件许可协议

國際程式授權合約

Mezinárodní licenční smlouva pro programy

Conditions Internationales d'Utilisation de Logiciels IBM

Internationale Nutzungsbedingungen für Programmpakete

Accordo Internazionale di Licenza di Programmi (IPLA)

プログラムのご使用条件

프로그램 라이센스 계약(IPLA)

Międzynarodowa Umowa Licencyjna na Program

Acordo Internacional de Licenciamento do Programa

Acuerdo Internacional de Programas Bajo Licencia (IPLA)

Uluslararası Program Lisans Sözleşmesi

Z125-3301-12

International Program License Agreement

Part 1 - General Terms

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, OR USING THE PROGRAM YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS,

- **DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, OR USE THE PROGRAM; AND**
- **PROMPTLY RETURN THE PROGRAM AND PROOF OF ENTITLEMENT TO THE PARTY FROM WHOM YOU ACQUIRED IT TO OBTAIN A REFUND OF THE AMOUNT YOU PAID. IF YOU DOWNLOADED THE PROGRAM, CONTACT THE PARTY FROM WHOM YOU ACQUIRED IT.**

"IBM" is International Business Machines Corporation or one of its subsidiaries.

"License Information" ("LI") is a document that provides information specific to a Program. The Program's LI is available at http://www.ibm.com/software/sla/. The LI may also be found in a file in the Program's directory, by the use of a system command, or as a booklet which accompanies the 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), 4) related licensed materials, and 5) license use documents or keys, and documentation.

A "Proof of Entitlement" ("PoE") is evidence of Your authorization to use a Program at a specified level. That level may be measured, for example, by the number of processors or users. The PoE is also evidence of Your eligibility for warranty, future upgrade prices, if any, and potential special or promotional opportunities. If IBM does not provide You with a PoE, then IBM may accept the original paid sales receipt or other sales record from the party (either IBM or its reseller) from whom You acquired the Program, provided that it specifies the name of the Program and the usage level acquired.

"You" and "Your" refer either to an individual person or to a single legal entity.

This Agreement includes Part 1 - General Terms, Part 2 - Country-unique Terms (if any), License Information, and Proof of Entitlement and is the complete agreement between You and IBM regarding the use of the Program. It replaces any prior oral or written communications between You and IBM concerning Your use of the Program. The terms of Part 2 and License Information may replace or modify those of Part 1. To the extent there is a conflict between the terms of this Agreement and those of the IBM International Passport Advantage Agreement, the terms of the latter agreement prevail.

1. Entitlement

License

The Program is owned by IBM or an IBM supplier, and is copyrighted and licensed, not sold.

IBM grants You a nonexclusive license to use the Program when You lawfully acquire it.

You may 1) use the Program up to the level of use specified in the PoE and 2) make and install copies, including a backup copy, to support such use. The terms of this license apply to each copy You make. You will reproduce all copyright notices and all other legends of ownership on each copy, or partial copy, of the Program.

If You acquire the Program as a program upgrade, after You install the upgrade You may not use the Program from which You upgraded or transfer it to another party.

You will ensure that anyone who uses the Program (accessed either locally or remotely) does so only for Your authorized use and complies with the terms of this Agreement.

You may not 1) use, copy, modify, or distribute the Program except as provided in this Agreement; 2) reverse assemble, reverse compile, or otherwise translate the Program except as specifically permitted by law without the possibility of contractual waiver; or 3) sublicense, rent, or lease the Program.

IBM may terminate Your license if You fail to comply with the terms of this Agreement. If IBM does so, You must destroy all copies of the Program and its PoE.

Money-back Guarantee

If for any reason You are dissatisfied with the Program and You are the original licensee, You may obtain a refund of the amount You paid for it, if within 30 days of Your invoice date You return the Program and its PoE to the party from whom You obtained it. If You downloaded the Program, You may contact the party from whom You acquired it for instructions on how to obtain the refund.

Program Transfer

You may transfer a Program and all of Your license rights and obligations to another party only if that party agrees to the terms of this Agreement. When You transfer the Program, You must also transfer a copy of this Agreement, including the Program's PoE. After the transfer, You may not use the Program.

2. Charges

The amount payable for a Program license is a one-time charge.

One-time charges are based on the level of use acquired which is specified in the PoE. IBM does not give credits or refunds for charges already due or paid, except as specified elsewhere in this Agreement.

If You wish to increase the level of use, notify IBM or the party from whom You acquired it and pay any applicable charges.

If any authority imposes a duty, tax, levy or fee, excluding those based on IBM's net income, upon the Program, then You agree to pay the amount specified or supply exemption documentation. You are responsible for any personal property taxes for the Program from the date that You acquire it.

3. Limited Warranty

IBM warrants that when the Program is used in the specified operating environment it will conform to its specifications. The warranty applies only to the unmodified portion of the Program. IBM does not warrant uninterrupted or error-free operation of the Program or that IBM will correct all Program defects. You are responsible for the results obtained from the use of the Program.

IBM provides You with access to IBM databases containing information on known Program defects, defect corrections, restrictions, and bypasses at no additional charge. Consult the IBM Software Support Guide for further information at http://www.ibm.com/software/support. IBM will maintain this information for at least one year after the original licensee acquires the Program ("Warranty Period").

If the Program does not function as warranted during the Warranty Period and the problem cannot be resolved with information available in the IBM databases, You may return the Program and its PoE to the party (either IBM or its reseller) from whom You acquired it and receive a refund in the amount You paid. If You downloaded the Program, You may contact the party from whom You acquired it for instructions on how to obtain the refund.

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. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THAT PERIOD. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

THESE WARRANTIES GIVE YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE OR JURISDICTION TO JURISDICTION.

4. 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 may be 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) 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 charges for the Program that is the subject of the claim.

This limitation of liability also applies to IBM's Program developers and suppliers. It is the maximum for which they and IBM are collectively responsible.

UNDER NO CIRCUMSTANCES IS IBM, ITS PROGRAM DEVELOPERS OR SUPPLIERS 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.**

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

5. General

1. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.
2. 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.
3. You agree to comply with all applicable export and import laws and regulations.
4. You agree to allow IBM to store and use Your contact information, including names, phone numbers, and e-mail addresses, anywhere they do business. Such information will be processed and used in connection with our business relationship, and may be provided to contractors, Business Partners, and assignees of IBM for uses consistent with their collective business activities, including communicating with You (for example, for processing orders, for promotions, and for market research).
5. Neither You nor IBM will bring a legal action under this Agreement more than two years after the cause of action arose unless otherwise provided by local law without the possibility of contractual waiver or limitation.
6. Neither You nor IBM is responsible for failure to fulfill any obligations due to causes beyond its control.
7. 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 permitted by the Limitation

of Liability section above, for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable.

6. Governing Law, Jurisdiction, and Arbitration

Governing Law

Both You and IBM consent to the application of the laws of the country in which You acquired the Program license 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.

The United Nations Convention on Contracts for the International Sale of Goods does not apply.

Jurisdiction

All of our rights, duties, and obligations are subject to the courts of the country in which You acquired the Program license.

Part 2 - Country-unique Terms

AMERICAS

ARGENTINA: Governing Law, Jurisdiction, and Arbitration (Section 6): *The following exception is added to this section:*

Any litigation arising from this Agreement will be settled exclusively by the Ordinary Commercial Court of the city of Buenos Aires.

BRAZIL: Governing Law, Jurisdiction, and Arbitration (Section 6): *The following exception is added to this section:*

Any litigation arising from this Agreement will be settled exclusively by the court of Rio de Janeiro, RJ.

CANADA: General (Section 5): *The following replaces item 7:*

7. 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 permitted by the Limitation of Liability section above for bodily injury (including death) or physical harm to real or tangible personal property caused by IBM's negligence for which IBM is legally liable.

Governing Law, Jurisdiction, and Arbitration (Section 6): *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws in the Province of Ontario

PERU: Limitation of Liability (Section 4): *The following is added at the end of this section:*

In accordance with Article 1328 of the Peruvian Civil Code, the limitations and exclusions specified in this section will not apply to damages caused by IBM's willful misconduct ("dolo") or gross negligence ("culpa inexcusable").

UNITED STATES OF AMERICA: General (Section 5): *The following is added to this section:*

U.S. Government Users Restricted Rights - Use, duplication or disclosure restricted by the GSA ADP Schedule Contract with the IBM Corporation.

Governing Law, Jurisdiction, and Arbitration (Section 6): *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of the State of New York, United States of America

ASIA PACIFIC

AUSTRALIA: Limited Warranty (Section 3): *The following is added:*

The warranties specified in this Section are in addition to any rights You may have under the Trade Practices Act 1974 or other legislation and are only limited to the extent permitted by the applicable legislation.

Limitation of Liability (Section 4): *The following is added:*

Where IBM is in breach of a condition or warranty implied by the Trade Practices Act 1974, IBM's liability is limited to the repair or replacement of the goods, or the supply of equivalent goods. Where that condition or warranty relates to right to sell, quiet possession or clear title, or the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, then none of the limitations in this paragraph apply.

Governing Law, Jurisdiction, and Arbitration (Section 6): *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of the State or Territory in which You acquired the Program license

CAMBODIA, LAOS, and VIETNAM: Governing Law, Jurisdiction, and Arbitration (Section 6): *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of the State of New York, United States of America

The following is added to this section:

Arbitration

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Center ("SIAC Rules") then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the SIAC. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

HONG KONG S.A.R. and MACAU S.A.R. of China: Governing Law, Jurisdiction, and Arbitration (Section 6): *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of Hong Kong Special Administrative Region of China

INDIA: Limitation of Liability (Section 4): *The following replaces the terms of items 1 and 2 of the first paragraph:*

1) liability for bodily injury (including death) or damage to real property and tangible personal property will be limited to that caused by IBM's negligence; and 2) as to any other actual damage arising in any situation involving nonperformance by IBM pursuant to, or in any way

related to the subject of this Agreement, IBM's liability will be limited to the charge paid by You for the individual Program that is the subject of the claim.

General (Section 5): *The following replaces the terms of item 5:*

If no suit or other legal action is brought, within three years after the cause of action arose, in respect of any claim that either party may have against the other, the rights of the concerned party in respect of such claim will be forfeited and the other party will stand released from its obligations in respect of such claim.

Governing Law, Jurisdiction, and Arbitration (Section 6): *The following is added to this section:*

Arbitration

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Bangalore, India in accordance with the laws of India then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Bar Council of India. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

JAPAN: General (Section 5): *The following is inserted after item 5:*

Any doubts concerning this Agreement will be initially resolved between us in good faith and in accordance with the principle of mutual trust.

MALAYSIA: Limitation of Liability (Section 4): *The word "SPECIAL" in item 2 of the third paragraph is deleted:*

NEW ZEALAND: Limited Warranty (Section 3): *The following is added:*

The warranties specified in this Section are in addition to any rights You may have under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited. The Consumer Guarantees Act 1993 will not apply in respect of any goods which IBM provides, if You require the goods for the purposes of a business as defined in that Act.

Limitation of Liability (Section 4): *The following is added:*

Where Programs are not acquired for the purposes of a business as defined in the Consumer Guarantees Act 1993, the limitations in this Section are subject to the limitations in that Act.

PEOPLE'S REPUBLIC OF CHINA: Charges (Section 2): *The following is added:*

All banking charges incurred in the People's Republic of China will be borne by You and those incurred outside the People's Republic of China will be borne by IBM.

Governing Law, Jurisdiction, and Arbitration (Section 6): *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of the State of New York, United States of America (except when local law requires otherwise)

PHILIPPINES: Limitation of Liability (Section 4): *The following replaces the terms of item 2 of the third paragraph:*

2. special (including nominal and exemplary damages), moral, incidental, or indirect damages or for any economic consequential damages; or

Governing Law, Jurisdiction, and Arbitration (Section 6): *The following is added to this section:*

Arbitration

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Metro Manila, Philippines in accordance with the laws of the Philippines then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Philippine Dispute Resolution Center, Inc. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

SINGAPORE: Limitation of Liability (Section 4): *The words "SPECIAL" and "ECONOMIC" are deleted from item 2 of the third paragraph.*

General (Section 5): *The following replaces the terms of item 7:*

Subject to the rights provided to IBM's suppliers and Program developers as provided in Section 4 above (Limitation of Liability), a person who is not a party to this Agreement shall have no right under the Contracts (Right of Third Parties) Act to enforce any of its terms.

TAIWAN: Limited Warranty (Section 3): The last paragraph is deleted.

EUROPE, MIDDLE EAST, AFRICA (EMEA)

Limited Warranty (Section 3): *In the European Union, the following is added:*

In the European Union, consumers have legal rights under applicable national legislation governing the sale of consumer goods. Such rights are not affected by the Limited Warranty provision set out above at section 3 of this Agreement. The territorial scope of the Limited Warranty is worldwide.

Limitation of Liability (Section 4): *In Austria, Denmark, Finland, Greece, Italy, Netherlands, Norway, Portugal, Spain, Sweden and Switzerland, the following replaces the terms of this section in its entirety:*

Except as otherwise provided by mandatory law:

1. IBM's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this agreement or due to any other cause related to this agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if IBM is at fault) or of such cause, for a maximum amount equal to the charges You paid for the Program.

   The above limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which IBM is legally liable.
2. **UNDER NO CIRCUMSTANCES IS IBM, OR ANY OF ITS PROGRAM DEVELOPERS, LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**
3. The limitation and exclusion of liability herein agreed applies not only to the activities performed by IBM but also to the activities performed by its suppliers and Program developers, and represents the maximum amount for which IBM as well as its suppliers and Program developers, are collectively responsible.

Limitation of Liability (Section 4): *In France and Belgium, the following replaces the terms of this section in its entirety:*

Except as otherwise provided by mandatory law:

1. IBM's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if IBM is at fault), for a maximum amount equal to the charges You paid for the Program that has caused the damages.

   The above limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which IBM is legally liable.
2. **UNDER NO CIRCUMSTANCES IS IBM, OR ANY OF ITS PROGRAM DEVELOPERS, LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**
3. The limitation and exclusion of liability herein agreed applies not only to the activities performed by IBM but also to the activities performed by its suppliers and Program developers, and represents the maximum amount for which IBM as well as its suppliers and Program developers, are collectively responsible

Governing Law, Jurisdiction, and Arbitration (Section 6)

Governing Law

The phrase "the laws of the country in which You acquired the Program license" is replaced by: 1) "the laws of Austria" **in Albania, Armenia, Azerbeijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldavia, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia;** 2) "the laws of France" **in Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia,**

Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis & Futuna; 3) "the laws of Finland" **in Estonia, Latvia, and Lithuania;** 4) "the laws of England" **in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe;** and 5) "the laws of South Africa" **in South Africa, Namibia, Lesotho and Swaziland.**

Jurisdiction

The following exceptions are added to this section:

1) In **Austria** the choice of jurisdiction for all disputes arising out of this Agreement and relating thereto, including its existence, will be the competent court of law in Vienna, Austria (Inner-City); 2) **in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, West Bank/Gaza, Yemen, Zambia, and Zimbabwe** all disputes arising out of this Agreement or related to its execution, including summary proceedings, will be submitted to the exclusive jurisdiction of the English courts; 3) **in Belgium** and **Luxembourg,** all disputes arising out of this Agreement or related to its interpretation or its execution, the law, and the courts of the capital city, of the country of Your registered office and/or commercial site location only are competent; 4) **in France, Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis & Futuna** all disputes arising out of this Agreement or related to its violation or execution, including summary proceedings, will be settled exclusively by the Commercial Court of Paris; 5) **in Russia,** all disputes arising out of or in relation to the interpretation, the violation, the termination, the nullity of the execution of this Agreement shall be settled by Arbitration Court of Moscow; 6) **in South Africa, Namibia, Lesotho and Swaziland,** both of us agree to submit all disputes relating to this Agreement to the jurisdiction of the High Court in Johannesburg; 7) **in Turkey** all disputes arising out of or in connection with this Agreement shall be resolved by the Istanbul Central (Sultanahmet) Courts and Execution Directorates of Istanbul, the Republic of Turkey; 8) in each of the following specified countries, any legal claim arising out of this Agreement will be brought before, and settled exclusively by, the competent court of a) Athens for **Greece,** b) Tel Aviv-Jaffa for **Israel,** c) Milan for **Italy,** d) Lisbon for **Portugal,** and e) Madrid for **Spain;** and 9) **in the United Kingdom,** both of us agree to submit all disputes relating to this Agreement to the jurisdiction of the English courts.

Arbitration

In Albania, Armenia, Azerbeijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldavia, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia all disputes arising out of this Agreement or related to its violation, termination or nullity will be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Center of the Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with these rules. The arbitration will be held in Vienna, Austria, and the official language of the proceedings will be English. The decision of the arbitrators will be final and binding upon both parties. Therefore, pursuant to paragraph 598 (2) of the Austrian Code of Civil Procedure, the parties expressly waive the application of paragraph 595 (1) figure 7 of the Code. IBM may, however, institute proceedings in a competent court in the country of installation.

In Estonia, Latvia and Lithuania all disputes arising in connection with this Agreement will be finally settled in arbitration that will be held in Helsinki, Finland in accordance with the arbitration laws of Finland then in effect. Each party will appoint one arbitrator. The arbitrators

will then jointly appoint the chairman. If arbitrators cannot agree on the chairman, then the Central Chamber of Commerce in Helsinki will appoint the chairman.

AUSTRIA: Limited Warranty (Section 3): *The following is inserted at the beginning of this Section:*

The Warranty Period is twelve months from the date of delivery. The limitation period for consumers in action for breach of warranty is the statutory period as a minimum.

The warranty for a Program covers the functionality of the Program for its normal use and the Program's conformity to its specifications.

The final two paragraphs are replaced with the following:

This is our sole obligation to You, except as otherwise required by applicable statutory law.

General (Section 5): The following is added to item 4:

For purposes of this clause, contact information will also include information about You as a legal entity, for example revenue data and other transactional information.

GERMANY: Limited Warranty (Section 3): *The same changes apply as those in **Limited Warranty (Section 3)** under **Austria** above.*

Limitation of Liability (Section 4): *The following paragraph is added to this Section:*

The limitations and exclusions specified in this Section will not apply to damages caused by IBM intentionally or by gross negligence.

General (Section 5): *The following replace the terms of item 5:*

Any claims resulting from this Agreement are subject to a statute of limitation of three years, except as stated in Section 3 (Limited Warranty) of this Agreement.

HUNGARY: Limitation of Liability (Section 4): *The following is added at the end of this section:*

The limitation and exclusion specified herein shall not apply to liability for a breach of contract damaging life, physical well-being, or health that has been caused intentionally, by gross negligence, or by a criminal act.

The parties accept the limitations of liability as valid provisions and state that the Section 314.(2) of the Hungarian Civil Code applies as the acquisition price as well as other advantages arising out of the present Agreement balance this limitation of liability.

IRELAND: Limited Warranty (Section 3): *The following is added to this section:*

Except as expressly provided in these terms and conditions, all statutory conditions, including all warranties implied, but without prejudice to the generality of the foregoing, all warranties implied by the Sale of Goods Act 1893 or the Sale of Goods and Supply of Services Act 1980 are hereby excluded.

Limitation of Liability (Section 4): *The following replaces the terms of this section in its entirety:*

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 an Agreement 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 occurring on the date of occurrence of the last such Default.

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

2. Except as provided in item 1 above, IBM's entire liability for actual damages for any one Default will not in any event exceed the greater of 1) €125,000, or 2) 125% of the amount You paid for the Program directly relating to the Default. These limits also apply to any of IBM's suppliers and Program developers. They state the maximum for which IBM and such suppliers 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 suppliers 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, or anticipated savings.

ITALY: General (Section 5): *The following is added to this section:*

IBM and Customer (hereinafter, individually, "Party") shall comply with all the obligations of the applicable provisions of law and/or regulation on personal data protection. Each of the Parties will indemnify and keep the other Party harmless from any damage, claim, cost or expense incurred by the latter, directly and or indirectly, as a consequence of an infringement of the other Party of the mentioned provisions of law and/or regulations.

SLOVAKIA: Limitation of Liability (Section 4): *The following is added to the end of the last paragraph:*

The limitations apply to the extent they are not prohibited under §§ 373-386 of the Slovak Commercial Code.

General (Section 5): *The terms of item 5 are replaced with the following:*

THE PARTIES AGREE THAT ANY LEGAL OR OTHER ACTION RELATED TO A BREACH OF THIS AGREEMENT MUST BE COMMENCED NO LATER AS DEFINED BY THE LOCAL LAW (4 YEARS) FROM THE DATE ON WHICH THE CAUSE OF ACTION AROSE.

SOUTH AFRICA, NAMIBIA, LESOTHO, SWAZILAND: Limited Warranty (Section 3): *The following is added at the end of the first paragraph:*

notwithstanding any advice or assistance that IBM may have given to You prior to the selection of such Programs.

SWITZERLAND: General (Section 5): *The following is added to item 4:*

For purposes of this clause, contact information will also include information about You as a legal entity, for example revenue data and other transactional information.

UNITED KINGDOM: Limited Warranty (Section 3): *The following replaces the first sentence in< the fourth paragraph of this section:*

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 SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Limitation of Liability (Section 4): *The following replaces the terms of this section in its entirety:*

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 an Agreement 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. 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;
   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; and
   c. 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.
2. IBM's entire liability for actual damages for any one Default will not in any event, except as provided in item 1 above, exceed the greater of 1) £75,000, or 2) 125% of the amount You paid for the Program directly relating to the Default. These limits also apply to IBM's suppliers and Program developers. They state the maximum for which IBM and such suppliers 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 suppliers 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, or anticipated savings.

Special Agreement For
Virginia Public School Teacher Purchase Program

I am a Public School Teacher in the Commonwealth of Virginia and have completed A "Public School Teacher Certification Form" and obtained a valid Authorization Number from the Commonwealth of Virginia.

The product I am purchasing is for my own private use.
I agree to all terms of this agreement and have read and accept the "IBM Product Acquisition Agreement" below:

IBM Product Acquisition Agreement

Carefully read these terms under which IBM provides Products to you. For your order to be accepted, Product delivery must be to a valid address within United States. You accept the terms of this IBM Acquisition Agreement ("Agreement") by your act of ordering the Product(s), or by your initial use of the Products, unless there is an IBM Customer Agreement or any equivalent agreement in effect between us. In such instance, that agreement governs this transaction.

If a Product is quoted at an incorrect price due to typographical error or error in pricing information: (1) IBM has the right to refuse or cancel any orders placed for the Product quoted at the incorrect price, even if IBM has confirmed the receipt of your order and charged your credit or debit card; and, (2) if IBM has charged your credit or debit card but subsequently canceled your order, IBM will promptly issue a credit to your credit or debit card account for the amount charged.

1. **Definitions**

Logoed Product is a product which carries the IBM logo under license from IBM but which is not manufactured, warranted, or supported by IBM. Such Logoed Products will be identified accordingly.

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, BIOS, utility programs, device drivers, and diagnostics delivered with an IBM Machine.

Product is a Machine or a Program.

Program is a computer software program, whether pre-loaded on a Machine or provided separately, including related licensed materials such as documentation

2. **Agreement Structure**

This Agreement, including its associated warranty statements, license agreements, and Transaction Documents (e.g., invoice, order confirmation, and order acceptance), if any, is the complete agreement between you and IBM regarding your acquisition of the Products. Some Products 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. You accept the terms of these documents by 1) ordering a Product from IBM, or 2) making any payment for a Product. A Product becomes subject to this Agreement when IBM accepts your order by sending you a Transaction Document or by shipping the Machine or making the Program available to you. Confirmation of IBM's receipt of your order does not constitute IBM's acceptance of your order. This Agreement replaces any prior oral or written communications between you and IBM concerning your acquisition of these Products. Any additional or different terms in any order or written communications from you are void.

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.

3. **Charges and Payment**

Except for credit or debit card transactions, amounts are due upon receipt of invoice. You agree to pay as specified by IBM in the invoice, including any applicable sales, use or similar taxes, fees or duties (unless you supply exemption documentation), any late payment fee, and shipping charges. You are responsible for taxes, if any, for each Product from the date IBM ships it to you. No other discounts, quantity entitlements, or promotions apply unless expressly specified for this transaction.

4. **IBM Business Partners**

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

5. **Responsibilities**

Both of us agree that under this Agreement: 1) 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; 2) neither of us will bring a legal action more than two years after the cause of action; and 3) neither of us is responsible for failure to fulfill any obligations due to causes beyond its control. You agree: 1) to acquire Products only for your own use, and not for remarketing or leasing; 2) that you are responsible for the results obtained from the use of the Products; 3) not to assign, or otherwise transfer, this Agreement or your rights under it, or delegate your obligations, without IBM's prior written consent. Any attempt to do so is void; 4) to provide IBM with sufficient, free, and safe access to your facilities for IBM to fulfill its obligations; 5) to allow IBM to store your contact information, such as names, phone numbers, and e-mail addresses, in any country where IBM does business and to use such information internally and to communicate with you for the purposes of our business relationship; and 6) to comply with all applicable export and import laws and regulations.

6. **Machines**

Title and Risk of Loss
IBM transfers title to you or, if you choose, your lessor upon shipment. However, IBM reserves a purchase money security interest in the Machine until IBM receives payment of all 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 the amounts due and the removed parts. You agree to sign an appropriate document to permit us to perfect our purchase money security interest.

IBM bears the risk of loss for the Machine through the date on which IBM delivers it to you. Thereafter, you assume the risk.

Machine Code
For certain Machines IBM provides Machine Code. Machine Code is copyrighted and licensed (not sold) under the terms of the license agreement provided with the Machine. You accept the terms of the license for Machine Code according to the method specified in the license.

7. **Programs**

Programs are copyrighted and licensed (not sold) under the terms of the license agreements applicable to them. You accept the terms of the license for a Program according to the method specified in the license.

8. **IBM Warranties**

IBM Machines are warranted in accordance with the terms of the IBM Statement of Limited Warranty accompanying each IBM Machine.

Warranties for IBM Programs, if any, are in accordance with the warranty terms included in the applicable license agreement.

IBM will identify IBM Products that it does not warrant.

The warranties will be voided by misuse, accident, modification, unsuitable physical or operating environment, improper maintenance by you, removal or alteration of Product or parts identification labels, or failure caused by a product for which IBM is not responsible.

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. THESE WARRANTIES GIVE YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY TO YOU. IN THAT EVENT SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THAT PERIOD.

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

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

9. **IBM Return Policy**

If you are acquiring Personal Computer Products (IBM Personal Computers, Intellistation Workstations, ThinkPad Notebooks, Netfinity Servers, Options by IBM, Accessories and related Programs), you may return the Products to IBM for any reason within 30 days of delivery and obtain a refund or credit (excluding shipping and handling charges). IBM does not provide refunds for portions of a packaged offering provided at a single price. You may, of course, return the complete package for a refund. To qualify for this credit or refund (as applicable), you must call IBM at 1-800-426-7235 within 30 days after the date IBM delivers the Product to you to obtain a return-authorization form. You must return the Product, including all documentation and accessories, intact and in its original packaging, to an IBM designated location by the date IBM specifies. A copy of your invoice, the return-authorization form, and the shipping label must accompany the return. Shipping and handling charges will not be refunded.

10. **Patents and Copyrights**

For purposes of this Section, the term "Product" includes Machine 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, 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; and 2) for a Program, the amount paid by you or 12 months' charges (whichever is less). 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; 2) your modification of a Product, or a Program's use in other than the Machines and Programs with which it is designed to operate, as described in the Program's specifications; 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, or apparatus that IBM did not provide; or 4) infringement by a Logoed Product or any other non-IBM Product alone.

11. **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 IBM's patents and copyrights terms described 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, up to amount you paid for the Product that is the subject of the claim. For purposes of this item, the term "Product" includes Machine 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 are IBM, its subcontractors, or Program developers liable for any of the following: 1) third-party claims against you for damages (other than those under the first two items listed above); 2) loss of, or damage 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 they are informed of their possibility. Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above exclusion or limitation may not apply to you.

12. **General**

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.

All your rights and all of IBM's obligations are valid only in the United States. IBM will not process any orders for delivery to addresses that are not valid within the United States.

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.

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

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