

# TOWN OF DAVIE

## TOWN COUNCIL AGENDA REPORT

**TO:** Mayor and Council Members

**FROM/PHONE:** Frank Apicella/954-797-1063

**SUBJECT:** Resolution

**AFFECTED DISTRICT:** N/A

**TITLE OF AGENDA ITEM:** A RESOLUTION OF THE TOWN OF DAVIE, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH IBM AS A SOLE SOURCE PROVIDER FOR MAINTENANCE SERVICES FOR VARIOUS IBM COMPUTER SYSTEMS, PERIPHERAL EQUIPMENT AND SOFTWARE.

### **REPORT IN BRIEF:**

These services will allow maintenance to the hardware and software associated with the Town's two AS/400's and two Domino e-mail Servers located at Town Hall and at the Public Safety Facility by providing coverage over a period of 3 years. IBM is a sole source supplier of maintenance services for all IBM equipment. This contract will be performed by Midrange Support & Services, Inc. who is the exclusive reseller of all IBM equipment owned by the Town of Davie.

### **PREVIOUS ACTIONS:**

**CONCURRENCES:** Contract reviewed by the Town attorney's office.

### **FISCAL IMPACT:**

Has request been budgeted? yes

If yes, expected cost: \$ 200,654.72

Account name: Computer Maintenance & Expenses (052-0259-593-0441)

Additional Comments: The total cost will be paid out at once, but expensed over the 3 years coverage.

**RECOMMENDATION(S):** Motion to approve the resolution

### **Attachment(s):**

Maintenance Agreement

RESOLUTION \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH IBM AS A SOLE SOURCE PROVIDER FOR MAINTENANCE SERVICES FOR VARIOUS IBM COMPUTER SYSTEMS, PERIPHERAL EQUIPMENT AND SOFTWARE.

WHEREAS, the Town's current maintenance contract for IBM computer equipment, peripherals, and software will be expiring; and

WHEREAS, this IBM computer systems, peripheral equipment and software continues to be functional and requires maintenance; and

WHEREAS, IBM is a sole source provider for maintenance of IBM equipment and software; and

WHEREAS, Midrange Support & Service Inc is the exclusive reseller all of IBM equipment and software owned by the Town of Davie.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council hereby accepts the proposal made by IBM for maintenance services of various computer systems, peripheral equipment and software and authorizes the Mayor to execute the contract with IBM through Midrange Support & Services Inc., for providing around-the clock- maintenance of the IBM computer systems, peripherals and software which is attached hereto and identified as Attachment A.

SECTION 2. The Town Council hereby authorizes this expenditure from the appropriate departmental operating accounts.

SECTION 3. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2005

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

ATTEST:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2005



## Schedule for Services Acquired from an IBM Business Partner - ServiceSuite

*This Schedule contains a listing of the Eligible Machines at the Specified Locations identified below for which we will provide the identified Services as described in your end users Statement of Work. These terms are in addition to those of the referenced Statement of Work and IBM Agreement for Services Acquired from an IBM Business Partner (or any equivalent agreement signed by both of us and identified below).*

**Name and Address of Customer:**

Town of Davie  
Town of Davie  
6591 Southwest 45th Street  
Davie, FL 33314

**Customer Billing Address:**

Revised Schedule (Yes/No): No  
Schedule Effective Date: 05/17/2005  
ASPID Number: 08417924

**Business Partner Name and Address:**

AVNET INC-HALL-MARK DIVISION  
2211 SOUTH 4TH ST  
PHOENIX AZ 85003-2853

Agreement Number:  
Statement of Work Number: AR6BHQ  
Customer Number: TTDF6BHQ

AR6BHQ  
TTDF6BHQ

No  
05/17/2005  
08417924

**The Parties need not to sign this Schedule, unless either of us requests it.**

Agreed to:

Town of Davie

By: \_\_\_\_\_  
Authorized signature

Name (type or print): \_\_\_\_\_

Date: \_\_\_\_\_

Agreed to:

International Business Machines Corporation

By: \_\_\_\_\_  
Authorized signature

Name (type or print): \_\_\_\_\_

Date: \_\_\_\_\_



# Schedule for Services Acquired from an IBM Business Partner - ServiceSuite

-----Eligible Machine Description-----

Specified Location	Mfr	Mach Type	Mod	Order/ Serial	Related Order/ Serial	Qty	Type of Repair	Maintenance Service
TTDF68HQ	IBM	4232	302	0000CA157		1	B	1
TTDF68HQ	IBM	6331	M2N	0066CRH83		1	B	1
TTDF68HQ	IBM	6546	0AN	0024PFY93		1	B	1
TTDF68HQ	IBM	3570	C01	000058485		1	B	1
TTDF68HQ	IBM	7208	342	0000P6610		1	B	1
TTDF68HQ	IBM	7852	40Z	0042T5963		1	B	1
TTDF68HQ	IBM	7852	40Z	0042X0266		1	B	1
TTDF68HQ	IBM	9406	720	00004MH6M		1	B	1
TTDF68HQ	IBM	9406	270	00005DKGM		1	B	1
TTDF68HQ	IBM	6892	47U	0000LPY54		1	B	1
TTDF68HQ	IBM	3570	C01	000058461		1	B	1
TTDF68HQ	IBM	7208	342	0000P6562		1	B	1
TTDF68HQ	IBM	7208	342	0000V0169		1	B	1
TTDF68HQ	IBM	7852	40Z	0042T1325		1	B	1
TTDF68HQ	IBM	7852	400	0042T4925		1	B	1
TTDF68HQ	IBM	7852	40Z	0042X0275		1	B	1
TTDF68HQ	IBM	9406	720	00004MCZM		1	B	1
02777476	IBM	3489	V11	0023ZCH27		1	B	1
08900794	IBM	9406	270	00005DKFM		1	B	1
09048175	IBM	2381	001	0011C4004		1	B	1
09048175	IBM	3490	E11	0000B4115		1	B	1
09048175	IBM	4234	012	0000D5252		1	B	1
09048175	IBM	4234	012	0000D6091		1	B	1
09048175	IBM	7208	012	000037463		1	B	1
09048175	IBM	7855	010	000011856		1	B	1
09048175	IBM	9309	002	0000A6266		1	B	1
09048175	IBM	9348	001	000024344		1	B	1



# Schedule for Services Acquired from an IBM Business Partner - ServiceSuite

Customer Technical Contact Name (if applicable):

-----Eligible Machine Description-----

Mach. Type	Mod.	Serial/Order Number	Support Service	Product Group / Service Option	Qty.
			Specified Location TTD6BHQ City, State: SWMA FOR OS/400 AND I5/OS		
9406	720	00004MH6M	SWMA FOR OS/400 AND I5/OS	SUPPORT SUBSCRIPTION P20 FULL SHIFT	1
9406	270	00005DKGM	SWMA FOR OS/400 AND I5/OS	SUPPORT SUBSCRIPTION P05 FULL SHIFT	1
9406	720	00004MCZM	Specified Location 08900794 City, State: SWMA FOR OS/400 AND I5/OS	SUPPORT SUBSCRIPTION P20 FULL SHIFT	1
9406	270	00005DKFM		SUPPORT SUBSCRIPTION P05 FULL SHIFT	1



## Schedule for Services Acquired from an IBM Business Partner - ServiceSuite

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### Legends:

#### <sup>2</sup>TYPE OF REPAIR SERVICE:

- A) On-Site Repair/Exchange Services, Monday through Friday (excluding holidays), 8am to 5pm, next business day
- B) On-Site Repair/Exchange Services, 7 days a week, 24hrs/day
- C) On-Site Repair/Exchange Services, Monday through Friday (excluding holidays), 8am to 5pm, 4 hour response objective  
This type of repair service includes a response objective and is not a guarantee
- D) On-Site Repair/Exchange Services, 7 days a week, 24hrs/day, 2 hour response objective  
This type of repair service includes a response objective and is not a guarantee
- X) EasyServe (remotely delivered services)

#### <sup>3</sup>MAINTENANCE SERVICES

- 1) Maintenance of IBM Machines
- 2) Maintenance of non-IBM Machines
- 3) Warranty Service Upgrade
- 18) Post Installation Coverage (PIC) Service Upgrade, for selected Non-IBM Machines

A (C) indicates a Machine that will have Usage Charges billed separately

# **IBM** Statement of Work for Services Acquired from an IBM Business Partner

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## ServiceSuite

### 1. Scope of Services

We will provide to you the Services described in this Statement of Work for the Machines we specify (called "Eligible Machines"). We will identify the Eligible Machines, and the Services that apply to them, in a Schedule to this Statement of Work. The Schedule will also identify the Specified Locations at which the Services will be provided. A Specified Location may be your entire information processing environment, or a portion thereof, which may be resident at multiple sites or a single building.

The specific terms regarding Machine maintenance and Program support Services contained in this Statement of Work apply only when you have contracted for an associated Machine maintenance Service or Program support Service as specified in the Schedule.

These Services are available for Machines normally used for business, professional, or trade purposes, rather than personal, family, or household purposes.

### 2. Contract Period

Start Date: 05-24-2005

End Date: 05-23-2008

Unless specified otherwise, IBM will automatically renew each contracted Service for the same number of years as the contract period specified above. You may notify IBM (at least one month prior to the end of the current contract period) of your desire to change the length of the renewal. Charges will be recalculated at the start of each renewal period. Either of us can select not to renew by providing written notification (at least one month prior to the end of the current contract period) to the other of their decision not to renew.

### 3. IBM Responsibilities

When you contract for an applicable Service, IBM agrees to deliver the Service in accordance with the terms and responsibilities identified in the Service description set out in this Statement of Work or an associated Change Authorization. For basic maintenance of IBM Machines, the Service description is set out in our Agreement (referenced in the signature block above).

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Each of us agrees that the complete agreement between us about this transaction consists of 1) this Statement of Work and its Schedules, 2) supplemental terms referenced herein, and 3) the IBM Agreement for Services Acquired from an IBM Business Partner (or any equivalent agreement in effect between us) identified below. By signing below, both of us agree to the terms of this Statement of Work without modification.

Agreed to:  
Town of Davie

Agreed to:  
International Business Machines Corporation

By \_\_\_\_\_  
Authorized signature

By \_\_\_\_\_  
Authorized signature

Name (type or print):

Name (type or print):

Date:

Date:

Customer Company address:

Statement of Work number: AR6BHQ

Town of Davie  
6591 Southwest 45th Street  
Davie, FL 33314

Agreement number:

Customer number: TTDF6BHQ

Telephone number:

IBM Address:

Billing Address:

IBM CORPORATION  
4111 NORTHSIDE PARKWAY  
ATLANTA, GA 30327

Z125-5766-15 3/2005 (MK076)

contract AR6BHQ (prepared 05/17/05 16:52 AVMMORG)

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#### 4. Your Responsibilities

You agree:

1. to provide your IBM Business Partner with an inventory in which you identify all Eligible Machines to be covered at each Specified Location and to notify your IBM Business Partner whenever you wish to add Eligible Machine types to an existing Specified Location or set up new Specified Locations;
2. to return to IBM all defective CRUs (from covered Eligible Machines) within 30 days of your receipt of the replacement CRU. A "CRU" is a Machine part which is designated as a Customer Replaceable Unit (e.g. keyboards, memory, or hard disk drives). IBM provides CRUs to you for replacement by you;
3. to ensure that any access codes we provide to you are used only by those who are authorized to do so;
4. to provide your IBM Business Partner with information we request which is related to our provision of these Services to you and notify your IBM Business Partner of any changes;
5. to allow International Business Machines Corporation and its subsidiaries to store and use your business contact information, including names, business phone numbers, and business 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 acting on IBM's behalf, IBM Business Partners who promote, market and support certain IBM products and services, and assignees of International Business Machines Corporation and its subsidiaries for uses consistent with our business relationship;
6. to use any electronic diagnostic and service delivery facilities we provide to you only in support of Eligible Machines identified in the Schedule to this Statement of Work;
7. to pay any communications charges associated with accessing these Services unless we specify otherwise; and
8. to use the information obtained under these Services only for the support of the information processing requirements within your Enterprise.

#### 5. Mutual Responsibilities

If at any time either of us requests a review of the inventory count, each of us will cooperate in updating the last formal inventory.

#### 6. Automatic Inventory Increases

We will automatically increase the inventory count at a Specified Location whenever:

1. an Eligible IBM Machine is added to the inventory. If the Machine is under warranty when added, maintenance Services will commence at warranty exit. If the Machine is not under warranty when added, maintenance Services will commence at the later of a) the date of installation or b) the previous yearly anniversary of the start of the contract period. IBM Machines specifically excluded from coverage at contract period start will remain outside the scope of this Statement of Work unless you request we add them during the contract period. However, all Eligible IBM Machines added to your inventory during the contract period will be included in the inventory count and receive maintenance Services as set out in this Section; or
2. an Eligible non-IBM Machine, of the same type as other non-IBM Machines already covered at that Specified Location, is added to the inventory. If the Machine is under warranty when added, maintenance Services will commence at warranty exit. If the Machine is not under warranty when added, maintenance Services will commence at the later of a) the date of installation or b) the previous yearly anniversary of the start of the contract period.

The maintenance Services that apply for these Machines will be the same as that which you are receiving for all other Eligible Machines of the same type.

Newly installed IBM Machines of the same type for which you have already selected Warranty Service Upgrade will be added at date of actual installation and will be covered at the same Warranty Service Upgrade support level.

#### 7. Charges and Payment

Your IBM Business Partner sets the charges and terms governing charges. Your IBM Business Partner may impose an additional charge for some actions, e.g., termination, or for our provision of some additional services, e.g., Service upgrades, additional Systems Administrators, additional reports, or support for other Products. These actions or additional services are identified in this Statement of Work with an asterisk (\*). Where you see an asterisk, check with your IBM Business Partner to determine if you will incur an additional charge. You will make payment directly to your IBM Business Partner.

#### 8. Termination

You have committed to continue Services for the entire contract period. However, you may terminate Services for an Eligible Machine, on notice to us (copy to your IBM Business Partner), if you permanently remove it from productive use within your Enterprise. Otherwise, if you choose to terminate Services and these are not being replaced by equivalent Services, you may do so by providing us one monthly written notice (copy to your IBM Business Partner), after the Services have been covered under this Statement of Work for at least one year.\*

#### 9. Satisfaction Guarantee

If, for any reason, you are not completely satisfied with a Service we provide to you under this Statement of Work, notify us in writing within one month of the time you first become dissatisfied. We will try to resolve the problem to your satisfaction. If we are unable to do so, you will receive a credit equal to the prorated charge for the Service for the period of time you were dissatisfied.

## 10. Maintenance Services

### Maintenance of IBM Machines

We will provide Service for Machines, as described in our Agreement, for those Eligible IBM Machines specified in the Schedule.

## 11. Support Services

### ISeries Software Services

#### IBM Software Maintenance for OS/400, I5/OS and Selected Products

IBM will provide software maintenance support, as described below, for those Eligible Programs for which you are licensed and for which you order this Service.

#### General:

1. IBM makes available to you the most current commercially available version, release or update to all of the Programs for which you acquire support under this Service, should any be made available.
2. IBM provides you with assistance for your a) routine, short duration installation and usage (how-to) questions and b) code defect related questions.
3. IBM provides assistance via telephone and, if available, electronic access, only to your information systems (IS) technical support personnel during the normal business hours (IBM published prime shift hours) of your IBM support center. This assistance is not available to your end users. IBM provides Severity 1 assistance 24 hours a day, every day of the year. Consult the IBM Software Support Guide, which may be found at <http://techsupport.services.ibm.com/guides/handbook.html> for details. A 24x7 all severity option is available at extra charge.
4. In some instances, IBM may request that you allow it to remotely access your system to assist you in isolating the software problem cause. You will remain responsible for adequately protecting your system and all data contained therein whenever we remotely access it with your permission.
5. This Service does not include assistance for a) the design and development of applications, b) your use of Programs in other than their specified operating environment, or c) failures caused by products for which IBM is not responsible under this Service.

**Eligible Programs:** Licensed programs for which this Service is available are listed at <http://www.ibm.com/services/si/swm/> or may be obtained from your IBM marketing representative.

**Software Maintenance After License Fee:** The Software Maintenance After License fee is a one time charge to resume Software Maintenance if you a) did not renew this Service prior to the end of the then current support period or b) terminated this Service. The new support period in such an instance begins on the date that IBM accepts your order.

# **IBM** Agreement for Service Acquired from an IBM Business Partner

*Thank you for your business. We strive to provide you with high quality Services. If, at any time, you have any questions or problems, or are not completely satisfied, please let us know. Our goal is to do our best for you.*

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

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

## **Part 1 - General**

### **1.1 - Definitions**

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

**Machine** is a machine, its features, conversions, upgrades, elements, or accessories, or any combination of them. The term "Machine" includes an IBM Machine and any non-IBM Machine (including other equipment) for which we may provide maintenance Services.

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

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

**PAGES 2 THROUGH 4 ARE ALSO PART OF THIS AGREEMENT. This Agreement and its applicable Attachments and Transaction Documents are the complete agreement between us regarding these Services and replace any prior oral or written communications regarding these Services. No machines or licensed program products are acquired under this Agreement. Such items are available only under the terms of 1) the IBM Customer Agreement (or any equivalent agreement between us) or 2) the applicable third-party agreement. By signing below for our respective Enterprises, each of us agrees to the terms of this Agreement. Once signed 1) any reproduction of this Agreement, an Attachment, or Transaction Document made by reliable means (for example, photocopy or facsimile) is considered an original and 2) all Services you order under this Agreement are subject to it.**

Agreed to:  
Town of Davie

Agreed to:  
International Business Machines Corporation

By \_\_\_\_\_  
Authorized signature

By \_\_\_\_\_  
Authorized signature

Name (type or print):

Name (type or print):

Date:

Date:

Enterprise number:

Agreement number:

Enterprise address:

IBM Address:

Town of Davie  
6591 Southwest 45th Street  
Davie, FL 33314

IBM CORPORATION  
4111 NORTHSIDE PARKWAY  
ATLANTA, GA 30327

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

# **IBM** Agreement for Service Acquired from an IBM Business Partner

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## **1.2 - Agreement Structure**

### **Attachments**

Some Services have terms in addition to those we specify in this 'Agreement. We provide the additional terms in documents called "Attachments", which are also part of this Agreement. Attachments will be signed by both of us if requested by either of us. Your IBM Business Partner makes the Attachments available to you for signature.

### **Transaction Documents**

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

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

### **Conflicting Terms**

If there is a conflict among the terms in the various documents, those of an Attachment prevail over those of this Agreement. The terms of a Transaction Document prevail over those of both of these documents.

### **Our Acceptance of Your Request for Service**

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

1. providing you a transaction document, or
2. providing the Service.

### **Your Acceptance of Additional Terms**

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

1. signing the Attachment or Transaction Document
2. using the Service, or allowing others to do so; or
3. making any payment to your IBM Business Partner for the Service.

## **1.3 - Charges and Payment**

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

## **1.4 - Changes to the Agreement Terms**

In order to maintain flexibility in our Services, we may change the terms of this Agreement by giving you three months' written notice. However, these changes are not retroactive. They apply, as of the effective date we specify in the notice, only to new requests for Service and ongoing transactions. Part 3 of this Agreement contains additional provisions for changes to the terms of individual Service transactions. Otherwise, for a change to be valid, both of us must sign it. Additional or different terms in any written communication from you are void.

## **1.5 - Limitations of Liability**

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

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

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

### **Items for Which We are Not Liable**

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

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

## **1.6 - Mutual Responsibilities**

Both of us agree that under this Agreement:

1. neither of us grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent;
2. all information exchanged is non confidential. If either of us requires the exchange of confidential information, it will be made under a signed confidentiality agreement;
3. each is free to enter into similar agreements with others;
4. each grants the other only the licenses and rights specified. No other licenses or rights (including licenses or rights under patents) are granted;

# **IBM** Agreement for Service Acquired from an IBM Business Partner

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

## **1.7 - Your Other Responsibilities**

You agree:

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

## **1.8 - Agreement Termination**

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

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

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

## **1.9 - Geographic Scope**

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

## **1.10 - Governing Law**

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

## **Part 2 - Warranty Terms**

### **2.1 - Warranty for IBM Services**

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

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

### **2.2 - Extent of Warranty**

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

### **2.3 - Items Not Covered by Warranty**

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

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

## **Part 3 - Services**

### **3.1 - IBM Services**

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

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

### **3.2 - Personnel**

# **IBM** Agreement for Service Acquired from an IBM Business Partner

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

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

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

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

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

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

### **3.4 - Changes to Service Terms**

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

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

### **3.5 - Renewal**

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

### **3.6 - Termination and Withdrawal**

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

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

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

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

### **3.7 - Service for Machines**

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

When the type of Service requires that you deliver the failing Machine to us, you agree to ship it suitably packaged (prepaid unless we specify otherwise) to a location we designate. After we have repaired or exchanged the Machine, we will return it to you at our expense unless we specify otherwise. We are responsible for loss of, or damage to, your Machine while it is 1) in our possession or 2) in transit in those cases where we are responsible for the transportation charges.

You agree to:

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

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

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

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

# **IBM** Agreement for Service Acquired from an IBM Business Partner

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Repair and exchange Services do not cover:

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

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

We provide maintenance Services for selected non-IBM Machines.

When you request maintenance Services under this Agreement, your IBM Business Partner will inform you of the date on which maintenance Services will begin. We may inspect the Machine within one month following that date. If the Machine is not in an acceptable condition for service, you may have us restore it. \*Alternatively, you may withdraw your request for maintenance Services.\*

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

<u>Part</u>	<u>Serial</u>	<u>StartDate</u>	<u>3-Year \$</u>	<u>Software</u>	<u>3-Year \$</u>	<u>P#</u>
3489-V13	23ZCH27	5/25/2005	\$ 162.59			
6546-0AN	24PFY93	5/25/2005	\$ 239.83			
9406-720	4MH6M	5/25/2005	\$ 19,292.06	6/6/2005	\$ 29,307.25	P20-24x7
7852-40Z	42T5963	5/25/2005	\$ 153.12			
3570-C01	58485	5/25/2005	\$ 6,887.29			
7208-342	P6610	5/25/2005	\$ 2,498.64			
9406-720	4MCZM	5/25/2005	\$ 19,316.43	6/6/2005	\$ 29,307.25	P20-24x7
7852-40Z	42T1325	5/25/2005	\$ 152.57			
3570-C01	58461	5/25/2005	\$ 6,798.08			
7208-342	P6562	5/25/2005	\$ 2,466.28			
7852-400	42T4925	5/25/2005	\$ 152.57			
9406-270	5DKGM	5/25/2005	\$ 7,170.06	2/4/2006	\$ 2,883.27	P05-24x7
7208-342	V0169	5/25/2005	\$ 2,466.28			
7852-40Z	42X0266	5/25/2005	\$ 152.57			
9406-270	5DKFM	5/25/2005	\$ 7,170.06	2/4/2006	\$ 2,883.27	P05-24x7
7852-40Z	42X0275	5/25/2005	\$ 152.57			
6331-M2N	66WW90	6/6/2005				
6331-M2N	66CRH83	5/25/2005	\$ 239.83			
3477	88HG182	5/25/2005	can not quote			
3488-XXX						
4247-A00	43913	6/6/2005				
3490-E11	B4115	5/25/2005	removed			
2381-001	11C4004	5/25/2005	\$ 557.94			
4234-012	D6091	5/25/2005	\$ 4,580.02			
4234-012	D5252	5/25/2005	\$ 4,580.02			
7208-012	37463	5/25/2005	removed			
7855-010	11856	5/25/2005	\$ 60.79			
9309-002	A6266	5/25/2005	\$ 284.41			
9348-001	24344	5/25/2005	removed			
6547-0AN	DVMHH	6/6/2005				
6892-47U	23LPY54	5/25/2005	\$ 397.36			
3477-FC3	N233KR047	5/25/2005	can not quote			
8504-001	1000398	_____				
8580-A34	2619287	_____				
9309-002	A6264	_____				
9309-002	A6265	_____				
4232-302	01CA157	5/25/2005	\$ 1,279.60			

\$ 87,210.97  
 \$ 64,381.03  
 \$ 49,062.72

**Total 3-Year Hardware Maintenance 24x7**  
**Total 3-Year Software Maintenance 24x7**  
**3-Year Passport Software Renewal July 2005**

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