

DIR-TSO-3996 Appendix D

Customer Relationship Agreement



DIR Contract DIR-TSO-3996, as amended by the parties, ("DIR Contract DIR-TSO-3996"), this Customer Relationship Agreement (CRA) and Transaction Documents (TDs) are the complete agreement regarding transactions under DIR Contract DIR-TSO-3996 and this CRA (together, the "Agreement") under which Customer may order Programs, Services, Machines and Appliances (collectively IBM Products). TDs, such as service descriptions, order documents, statements of work or supplements, contain specific details related to an order for a Product and there may be more than one TD providing the details of an order. In the event of conflict, DIR Contract DIR-TSO-3996 prevails over this CRA and TD, and a TD prevails over this CRA.

1. Programs

- a. A Program is an IBM-branded computer program and related material available for license subject to the payment of charges. Program details are described in an Attachment called License Information (LI). Programs do not include Machine Code or Project Materials. Programs are copyrighted and licensed (not sold). When IBM accepts an order for a Program, Customer is granted a nonexclusive license to: a) use the Program only up to its authorizations and subject to its LI; b) make and install copies to support such authorized use; and c) make a backup copy. Programs may be used by Customer its authorized employees and contractors only within Customer's Enterprise, and not to provide hosting or timesharing services to any third party. Customer may not sublicense, assign, or transfer the license for any Program. Additional rights may be available for additional fees or under different terms. Customer is not granted unrestricted rights to use the Program nor has Customer paid for all of the economic value of the Program. Certain Programs may contain third party code licensed under separate agreements identified in the LI.
- b. The license granted for a Program is subject to Customer:
 - (1) reproducing copyright notices and other markings;
 - (2) ensuring anyone who uses the Program does so only for Customer's authorized use and complies with the license;
 - (3) not reverse assembling, reverse compiling, translating, or reverse engineering the Program; and
 - (4) not using any of the elements of the Program or related licensed material separately from the Program.
- c. The metric applicable to a Program license is specified in an Attachment or TD. All licenses on a server or capacity based metric must be licensed to the full capacity of the server on which the Program is installed, unless sub-capacity usage is available from IBM and Customer complies with the applicable sub-capacity requirements and terms as set forth in DIR Contract DIR-TSO-3996 and a TD.

2. Services

- a. IBM provides technical, installation, customization and configuration, maintenance, and other services as detailed in Appendix C, Pricing Index of DIR Contract DIR-TSO-3996. The Customer will own the copyright in works of authorship that IBM develops for the Customer under a Statement of Work (SOW) (Project Materials). Project Materials exclude works of authorship delivered to Customer, but not created, under the SOW, and any modifications or enhancements of such works made under the SOW (Existing Works). Some Existing Works are subject to a separate license agreement (Existing Licensed Works). A Program is an example of an Existing Licensed Work and is subject to the Program terms. In any Statement of Work: 1) IBM must specifically identify to Customer any Existing Licensed Works that are or will be incorporated into IBM's deliverables; and 3) IBM must use reasonable efforts to specifically identify to Customer any Existing Licensed Works that will be necessary for Customer's use of the Project Materials to be provided to Customer under the Statement of Work. IBM grants the Customer an irrevocable (subject to Customer's payment obligations), nonexclusive, worldwide license to use, execute, reproduce, display, perform and prepare derivatives of Existing Works that are not Existing Licensed Works. IBM retains an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works of Project Materials, subject to IBM's duties of confidentiality, if any, inherent in the content of the Project Materials.

3. Machines and Appliances

- a. A Machine is an IBM-branded device including its features, upgrades, and accessories. An Appliance is a Program and Machine combination designed for a particular function. Unless otherwise provided, terms that apply to a Program apply to the Program component of an Appliance and terms that apply to a Machine apply to the Machine component of an Appliance. Customer may not use or transfer an Appliance's Program component independently of the Appliance.
- b. Machines and parts removed or exchanged for upgrade, warranty service, or maintenance are IBM property and must be returned to IBM promptly. A replacement assumes the warranty or maintenance status of the replaced part. A Machine may include parts that are not new and in some instances Machines may have been previously installed. Regardless, IBM's warranty terms apply. Customer will promptly install or allow IBM to install mandatory engineering changes. Customer may only acquire Machines for use within Customer's Enterprise in the country where acquired and not for resale, lease, or transfer. Lease-back financing is permitted.

3.2 Machine Code and Built in Capacity

- a. Machines may include Machine Code (MC) and Built in Capacity (BIC). MC is computer instructions, fixes, replacements and related materials, such as data and passwords relied on, provided, used with or generated by MC, that permit the operation of the machine's processors, storage or other functionality. MC is copyrighted and licensed (not sold). IBM only

provides copies, fixes or replacements for MC for Machines under warranty or IBM maintenance, or under a separate written agreement which may be subject to additional charges. Customer agrees that all copies, fixes or replacements for MC will be obtained solely as authorized by IBM. Customer is granted a nonexclusive license to use MC only (i) on the Machine for which IBM provided it, and (ii) to access and use BIC only to the extent paid for by Customer, activated by IBM and subject to the Attachment called IBM Authorized Use Table for Machines (AUT) available from IBM and at http://www.ibm.com/systems/support/machine_warranties/machine_code/aut.html. BIC is computing resource (e.g., processors, storage and other functionality) that IBM provides for a Machine. Use of BIC may be restricted by contract, technological or other measures. Customer agrees to IBM's implementation of technological and other measures that restrict, monitor and report on use of BIC or MC, and to install any changes IBM provides; provided, however, that IBM shall thoroughly disclose or reference in a Transaction Document any and all such measures to Customer if any such measure will be used to determine charges to Customer. If IBM fails to provide such disclosure to Customer before installation of the product to be measured, then IBM shall not employ such measures to determine charges to Customer until IBM provides such disclosure. Customer may not alter, reverse assemble, reverse compile, translate or reverse engineer the MC, or circumvent or interfere, by any means, with IBM's contractual, technological or other measures that restrict, monitor or report on use of BIC or MC. While Customer's license to MC is in effect, Customer may transfer possession of the entire MC along with all of Customer's rights and obligations only with corresponding transfer of the Machine and a hardcopy of this MC license, and only if the transferee agrees to the terms of this MC license. Customer's MC license terminates immediately upon transfer. This Agreement governs MC and BIC on Machines acquired from another party. Use of BIC in excess of authorizations from IBM is subject to additional charges.

4. Warranties and Post Warranty Support

- a. IBM warrants that Programs used in their specified operating environment conform to their official published specifications. The warranty period for a Program (not the Program component of an Appliance) is one year, or the initial license term if less than one year, unless another warranty period is specified in an Attachment or TD. During the Program warranty period, IBM provides Software Subscription and Support (S&S), entitling Customer to defect correction information, restrictions, bypasses, and new releases and versions IBM makes generally available. Unless Customer elects to discontinue S&S, annual S&S renews at then-current charges as detailed in Appendix C until S&S for a version or release is withdrawn. If Customer elects to continue S&S for a Program at a designated Customer site, Customer must maintain S&S for all uses and installations of the Program at that site.
- b. IBM warrants that it provides Services using commercially reasonable care and skill in accordance with the Statement of Work or TD, including any completion criteria, and that Project Materials will comply with the Statement of Work or TD at the time of delivery. The warranty for a Service ends when the Service ends.
- c. IBM warrants that Machines used in their specified operating environment conform to their official published specifications. For a Machine or Appliance, the warranty period is specified in the Attachment or TD. During its warranty period, IBM will repair or exchange the Machine without charge, as specified in the Attachment. Warranty does not apply to Machines that Customer did not allow IBM to install as required by the TD. Customer may purchase warranty service upgrades and post warranty support where available. For Appliances, post warranty support includes maintenance and S&S.
- d. If a Machine or Program does not function as warranted during its warranty period and IBM is unable to repair or replace it with a functional equivalent, Customer may return it to IBM for a refund of the amount Customer paid (for recurring charges, up to twelve months' charges) and Customer's license or right to use it terminates.
- e. **IBM does not warrant uninterrupted or error-free operation of an IBM Product or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access to an IBM Product. These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose. IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, failure to comply with instructions provided by IBM, or if otherwise stated in a statement of work or TD. Non-IBM Products are not warranted by IBM but IBM will pass through to Customer any Manufacturer's warranty.**

5. Charges, Payment and Verification

- a. Customer agrees to pay all applicable charges specified for an IBM Product and charges for use in excess of authorizations at Customer's entitled price. Prepaid Services must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid.
- b. Upon mutual agreement by both parties, and as reflected in a revised version of Appendix C, Pricing Index of DIR Contract DIR-TSO-3996, IBM may change recurring charges, labor rates and minimum commitments on three months' notice. A change applies on the invoice date or the first day of the charging period on or after the effective date IBM specifies in the notice. IBM may change one-time charges without notice. However, a change to a one-time charge does not apply to an order if i) IBM receives the order before the announcement date of the increase and ii) within three months after IBM's receipt of the order, the product is shipped or made available to Customer.
- c. Customer will i) maintain, and provide upon request, records, system tools output, and access to Customer's premises, as reasonably necessary for IBM and its independent auditor to verify Customer's compliance with the Agreement, including MC and Program licenses and metrics, such as sub-capacity usage, and ii) promptly order and pay for required entitlements (including associated S&S and maintenance) at government pricing as of Contract signature date, and for other contractually binding or legally obligated charges and liabilities determined as a result of such verification (such as taxes), as IBM specifies in an invoice. The auditor will afford Customer an opportunity to review the findings, correct any factual errors and annotate

the findings with Customer's position before they are shared with IBM. These compliance verification obligations remain in effect during the term of any TD and for two years thereafter.

6. Liability and Indemnity

Liability and Indemnity shall be in accordance with the terms of Section 10. A. and 10. K. of Appendix A of DIR Contract DIR-TSO-3996.

7. Termination

Termination shall be handled in accordance with Appendix A, Section 11. B. of DIR Contract DIR-TSO-3996.

8. Governing Laws and Geographic Scope

- a. Each party is responsible for complying with: i) laws and regulations applicable to its business and Content, and ii) import, export and economic sanction laws and regulations, including defense trade control regime of any jurisdiction including the International Traffic in Arms Regulations and those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. Customer is responsible for its use of IBM Products.
- b. Both parties agree to the application of the laws of the State of Texas, United States, without regard to conflict of law principles. The rights and obligations of each party are valid only in the United States and the country where the transaction is performed or, if IBM agrees, the country where the product is placed in productive use, except all licenses are valid in the United States and as specifically granted. IBM will not serve as the exporter or importer of any Content. If any provision of the Agreement is invalid or unenforceable, the remaining provisions remain in full force and effect. Nothing in the Agreement affects statutory rights of consumers that cannot be waived or limited by contract. The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under the Agreement.

9. General

- a. Parties will not disclose confidential information without a separate, signed confidentiality agreement. If confidential information is exchanged in connection with the Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this CRA.
- b. Customer accepts a TD by ordering, enrolling, using, or making a payment for, the product, offering or service. For transactions with a defined renewable contract period, Customer may request that IBM defer the change effective date until the end of the current contract period.
- c. IBM is an independent contractor, not Customer's agent, joint venture, partner, or fiduciary, and does not undertake to perform any of Customer's regulatory obligations, or assume any responsibility for Customer's business or operations. Each party is responsible for determining the assignment of its personnel and all contractors and subprocessors, and for their direction, control, and compensation.
- d. IBM maintains a robust set of business conduct and related guidelines covering conflicts of interest, market abuse; anti-bribery & corruption; and fraud. IBM and its personnel comply with such policies and require contractors and subprocessors to have similar policies.
- e. As used in this paragraph, "Content" includes any information or data Customer may provide, make available or grant access to in connection with IBM providing Services, maintenance, or Program support. Customer is responsible for obtaining all necessary rights and permissions to enable, and grants such rights and permissions to, IBM, and its contractors and subprocessors to use, provide, store and process Content in the Services, maintenance, or Program support. This includes Customer providing required information, making necessary disclosures and obtaining consent, if required, before providing individuals' information, including personal or other regulated information in such Content. Customer is responsible for adequate backup of Content unless the parties have otherwise specifically agreed in Appendix L, Statement of Work Template. If any Content could be subject to governmental regulation or may require security measures beyond those specified by IBM for an offering, Customer will not input, provide, or allow access to such Content unless specifically permitted in the terms of the relevant TD or unless IBM has otherwise first agreed in writing to implement additional security and other measures. Customer warrants that the European General Data Protection Regulation (EU/2016/679 (GDPR) does not apply to the Content it provides IBM.
- f. IBM and its affiliates, and their contractors and subprocessors, may, wherever they do business, store and otherwise process business contact information (BCI) of Customer, its personnel and authorized users, for example, name, title, business phone number, business email address, and postal address for business dealings with them. This provision does not apply to Content, but is included instead to comply with various laws and regulations which necessitate notification and consent for the use of such information in IBM's performance of its obligations under this contract and its applicable Transaction Documents
- g. Account Data (the logon information required to verify an authentication service; it can be the user name, password, and the authentication service which the logon information is stored) is information Customer provides to IBM, other than Content, about Customer or its users that IBM needs to enable Customer's acquisition or use of an IBM Product or information collected concerning such acquisition or use. IBM, its contractors and subprocessors may process, store and use Account Data wherever they do business to enable product features, administer use, personalize experience, and otherwise support or improve use of an IBM Product as described in IBM's Online Privacy Statement.
- h. Assignment of IBM rights to receive payments is subject to Customer's express written consent. This CRA applies to IBM and Customer.

- i. No right or cause of action for any third party is created by the Agreement or any transaction under it. Neither party will bring a legal action arising out of or related to the Agreement more than four years after the cause of action arose. Where approval, acceptance, consent, access, cooperation or similar action by either party is required, such action will not be unreasonably delayed or withheld.