

Contract Number: DIR-TSO 3996

Appendix I

E-RATE AGREEMENT

1) INTRODUCTION

This E-Rate Agreement ("Agreement"), effective as the date above ("Effective Date"), is made between the Customer identified above ("Customer") and IBM Corporation, 1 New Orchard Road, Armonk, New York 10504-1722. This document constitutes a legally binding agreement between Customer and IBM, as required by the Federal Communications Commission for compliance purposes under the Universal Service Support Mechanism for Schools and Libraries, commonly referred to as the "E-rate Program" or "Program". IBM and Customer (each a "Party," and collectively, the "Parties") agree to the following terms and conditions:

2) SCOPE

Customer has selected IBM as a supplier of E-rate eligible equipment and/or services. Customer warrants that it has (i) done so in accordance with all of the E-rate Program's competitive bidding requirements and (ii) complied with the Program's rules in all other respects. Customer further acknowledges that it is solely responsible for applying for all funding under the E-rate Program. In reliance on these warranties and acknowledgements by Customer and subject to the Department of Information Resources (DIR) Contract Number DIR-TSO-3996 and the E-rate Program's rules and the conditions set forth herein, Customer may purchase computer hardware and related products, including software licensing arrangements ("Products") and/or related services ("Services") as specified in Appendix C, Pricing Index of DIR Contract Number DIR-TSO-3996 and Attachment 1 of this Agreement, which is incorporated by this reference, in accordance with Appendix C, Pricing Index of DIR Contract Number DIR-TSO-3996 and using the E-rate discounts approved by Schools and Libraries Division of the Universal Service Administrative Company ("USAC") as described in paragraph 4 below, and IBM shall be entitled to rely on Customer's representations relating to those discounts in connection with these purchases.

Purchases of Products and Services under this Agreement shall be governed by the terms and conditions of DIR Contract Number DIR-TSO-3996. To the extent there is any conflict between DIR Contract Number DIR-TSO-3996 and this Agreement, the terms of DIR Contract Number DIR-TSO-3996 shall govern. (Notwithstanding the foregoing, the payment term in DIR Contract Number DIR-TSO-3996 may be modified (extended to 60 days from the invoice date) for purposes of orders under the E-rate Program only if the funding arrangements applicable to Customer do not support payment in accordance with the payment term in DIR Contract Number DIR-TSO-3996.) Except as expressly agreed by the Parties in a separate Contract, this Agreement also incorporates the terms of the limited warranties applicable to IBM-branded hardware Products, which can be found in the documentation IBM provides with the Product.

Customer is submitting the proposed amount for E-Rate eligible Products and Services to the Schools and Libraries Division of USAC for funding requested under the E-rate program. The deadline for Services is defined as the Service Delivery Deadline. Customer may request and be approved for an extension by USAC for additional time to complete any particular project, in which case, the terms of this Agreement shall continue to apply to such project until completion. IBM agrees to use commercially reasonable efforts to deliver and, if required, install all eligible Products and Services ordered before the Customer's E-rate Service Delivery Deadline. If the Customer's complete order is placed less than 45 days before the Service Delivery Deadline, however, or due to other circumstances beyond IBM's control, IBM cannot meet the Service Delivery Deadline, and the Customer is unable to (or fails to) extend the Service Delivery Deadline, Customer/ IBM reserve the right to cancel all or part of its order for the delayed products and/or services or pay IBM in full for whatever products and/or services it decides to order.

Customer reserves the right to propose modifications, or to reduce or eliminate items specified for purchase from Attachment 1 of this Agreement or to terminate the proposal entirely, based on the levels of E-Rate funding received. Should Customer seek such changes in the specifications for the Products and/or Services, Customer shall notify IBM of the proposed changes as soon as reasonably practicable and the Parties will determine mutually acceptable amendments to the contract and/or Statement of Work. No changes will be final unless made in writing in an addendum to this Agreement signed by both parties. Within thirty (30) days of filing its E-rate application for discounts on IBM products and/or services, Customer will deliver to IBM a copy of the Item 21 Description of Services in which those products and/or services are described.

3) PRICES

Subject to the provisions of DIR Contract Number DIR-TSO-3996 and this Agreement, Customer agrees to purchase and IBM agrees to provide the Products and /or Services as described in IBM Quotation No(s) listed above and/or Statement of Work, as detailed in Attachment 1 of this Agreement, for the Not to Exceed Price (as defined above). Customer represents and warrants that it has complied with all applicable laws and regulations concerning the procurement of these Products and/or Services and has obtained all necessary approvals and authorizations needed to enter into this Agreement.

4) COMPLIANCE WITH E-RATE PROCEDURES

a) Both parties agree to abide by all applicable FCC Regulations and E-rate Program Rules.

b) In a Funding Commitment Decision Letter ("FCDL"), USAC will designate Customer's approved discount rate or rates along with the amount(s) of funding approved which shall be provided to IBM;

c) Customer will then submit the FCC Form 486 to USAC. USAC will subsequently issue a Form 486 Receipt Notification Letter to both Customer and IBM. Customer will separately notify IBM when to begin to provide Services and/or ship Products. Form 486 cannot be filed before receipt of the FCDL from USAC. Products and services will not be shipped or started until the FCC Form 486 is processed by USAC. Upon approval of Form 486, IBM will ship the Products and/or provide the Services.

d) Both Parties acknowledge that some Products or Services may be used for a combination of eligible and ineligible functions. If Customer uses Products or Services in a partially ineligible manner, Customer understands that applicable E-rate funding requests must be cost-allocated according to USAC requirements.

e) When Customer is ready to submit a Purchase Order to IBM, the following documentation is required for order placement: 1) Purchase Order to IBM for the Products and/or Services included in the Notice, 2) A copy of any modifications to the original Item 21 Description of Services, 3) Copies of any correspondence and/or documentation from USAC and/or the FCC, if any, adjusting or proposing to adjust the amount or nature of the funding commitment, 4) A copy of the Form 486, and 5) A copy of the FCDL(s). IBM will ship the agreed-upon Products and/or provide the agreed upon Services, resulting in an invoice(s) to Customer and USAC.

5) PRODUCT/ SERVICE SUBSTITUTIONS

Customer agrees to submit product/ service substitution requests for any and all desired changes to product/service delivery from Customer's original Item 21 Description of Products/ Services documentation, unless USAC has already approved a "global" substitution request for the product or service. Vendor shall not be required to deliver any products or services that deviate from the original Description of Products/ Services attachment until product/ service substitution approval has been obtained.

6) SERVICE PROVIDER IDENTIFICATION NUMBER ("SPIN") CHANGES

Customer may not submit a SPIN change request to the USAC without prior written consent from IBM.

7) ELIGIBLE USERS AND LOCATIONS

Customer understands that discounted equipment and services may only be deployed at eligible locations and used by eligible users. IBM will not install discounted equipment and/or services in ineligible locations or configurations, nor in any configuration that deviates from the originally stated purpose in Customers' Item 21 Attachment or PIA correspondence. IBM will not be held liable for penalties assessed by the USAC if Customer moves or reconfigures discounted equipment or services in an ineligible manner.

If at any time and for any reason, the USAC determines any products or services to be ineligible for E-rate discounts, Customer will be charged in full for any such items delivered under the Contract in accordance with Appendix C, Pricing Index of DIR Contract Number DIR-TSO-3996.

8) PAYMENT AND INVOICES

IBM will use the Service Provider Invoice (SPI) method for billing the Customer unless the Customers specifically request use of the Billed Entity Application for Reimbursement (BEAR) process. IBM can provide supplemental documentation that includes a breakout of the FRN number being billed, the USAC portion and the Customer/Applicant portion. As Services are performed and/or Products are shipped to Customer, IBM shall submit invoices and supporting documentation to Customer and USAC. Based on the Item 21 Description of Services, the IBM order will be placed exactly as stated on the Customer Purchase Order which matches the Item 21 Description. Should a product on the IBM quotation(s) reach its end of life before the order is placed, the product will be substituted with a similar product as indicated on the global product/service substitution form. If the Products and/or Services are not on the Item 21 Description of Services, the Customer will be invoiced for those items in full and the Customer's portion will be adjusted accordingly.

Customer understands and agrees that: Customer shall be liable for any discounted amount that IBM submits to USAC for payment for which USAC refuses to pay and for which IBM is not at fault. Customer is required to pay the non-discounted portion of all eligible discounted invoices in accordance with payment terms stipulated in this Agreement. Customer understands that all goods and services deemed ineligible by USAC at any time and for any reason are to be paid in full by customer.

Compensation shall be based on actual Services provided in accordance with Appendix C, Pricing Index of DIR Contract Number DIR-TSO-3996 during the term of this Agreement. Customer shall process invoices and make payments in accordance with DIR Contract Number DIR-TSO-3996. Purchase orders may be terminated at any time prior to the time that manufacturing begins for Products or resources have been committed for Services.

9) SERVICE CERTIFICATIONS

Customer agrees to sign and submit any required service certifications within the time proscribed by USAC. If Customer disputes the information contained in the service certification, Customer agrees to notify IBM within one calendar day of receipt.

10) TERMS AND CONDITIONS

Appendix A, Standard Terms and Conditions of DIR Contract Number DIR-TSO-3996 shall take precedence over any Terms and Conditions listed in this Appendix G, E-Rate Agreement and any additional Terms and Conditions listed here shall not diminish any Terms and Conditions in Appendix A of DIR-TSO-3996. (Notwithstanding the foregoing, the payment term in DIR Contract Number DIR-TSO-3996 may be modified (extended to 60 days from the invoice date) for purposes of orders under the E-rate Program only if the funding arrangements applicable to Customer do not support payment in accordance with the payment term in DIR Contract Number DIR-TSO-3996.)

1) REGULATORY COMPLIANCE

Customer certifies that it has complied with all applicable laws, orders and regulations of any governmental authority with jurisdiction over its activities in connection with this Agreement, including, but not limited to gift and entertainment

rules applicable to the E-Rate program.

2) **TERMINATION**

Either party may terminate this Agreement in accordance with Section 11 of Appendix A, Termination, of DIR Contract Number DIR-TSO-3996. The terms or conditions of DIR Contract Number DIR-TSO-3996 and this Agreement will control the acceptance and shipment of any such orders.

3) **MISCELLANEOUS**

The use of preprinted forms, such as purchase orders, will be for convenience only, and all preprinted terms and conditions stated on such forms will not apply to the Agreement or to goods or services purchased or provided under the Agreement. IBM and Customer acknowledge that Products licensed or sold under this or any resulting Agreement are subject to the export control laws and regulations of the United States or those of other countries in which they are used and agree to abide by those laws and regulations.

Limitation of Liability shall be in accordance with Section 10.K of Appendix A to DIR Contract Number DIR-TSO-3996. DIR Contract Number DIR-TSO-3996 and this Agreement are the exclusive statements of the understanding between IBM and Customer regarding this subject matter and supersedes any prior or oral agreements between the parties.

This Agreement is hereby executed on behalf of the Parties by their duly authorized representatives.

IBM Corporation	Customer
Signature:	Signature:
Name:	Name:
Position:	Position:
Date:	Date:

Attachment 1

[Attach if applicable, a Statement of Work].