IBM Multinetwork WAN Services (MWS)
Standard terms and conditions

IBM Terms of Use
Client Relationship Agreement for Services

IBM

Using this agreement, Client may order IBM Services (Services) and third party services available from IBM. Details regarding offerings or orders are provided in Attachments and Transaction Documents (TDs). This agreement and applicable Attachments and TDs are the complete agreement (Agreement) regarding transactions under this Agreement.

Services

IBM provides consulting, installation, customisation and configuration, maintenance, and other services as detailed in an Attachment or TD. Client will own the copyright in works of authorship that IBM develops for Client under a Statement of Work (SOW) (Project Materials). Project Materials exclude works of authorship delivered to Client, 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. IBM grants Client an irrevocable (subject to Client'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.

Either party may terminate a Service if a material breach concerning the Service is not remedied within a reasonable time. IBM will provide at least 90 days' notice prior to withdrawal of Service. Client will pay charges for Services provided through the effective date of termination. If Client terminates without cause or IBM terminates for breach, Client will meet all minimum commitments and pay termination or adjustment charges specified in the SOW or TD and any additional costs IBM reasonably incurs because of early termination, such as costs relating to subcontracts or relocation. IBM will take reasonable steps to mitigate any such additional costs.

Warranties and Post Warranty Support

IBM warrants that it provides Services using commercially reasonable care and skill in accordance with the applicable Attachment or TD, including any completion criteria, and that Project Materials will comply with the Attachment or TD at the time of delivery. The warranty for a Service ends when the Service ends.

The warranty for Machines acquired in Western Europe will be valid and applicable in all Western European countries, provided the Machines have been announced and made available in such countries. For purposes of this paragraph, "**Western Europe**" means Andorra, Austria, Belgium, Bulgaria,Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom, Vatican State, and any country that subsequently joins the European Union, from date of accession.

IBM does not warrant uninterrupted or error-free operation of a Service or that IBM will correct all defects or prevent third party disruptions or unauthorised third party access to a Service. 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 an Attachment or TD. Non-IBM services are sold under this Agreement as-is, without warranties of any kind. Third parties may provide their own warranties to Client.

Charges, Taxes, Payment and Verification Client agrees to pay all applicable charges specified by IBM, charges for use in excess of authorisations, any customs or other duty, tax, levy, or fee imposed by any authority resulting from Client's acquisitions under this Agreement, and any late payment fees. Amounts are due upon receipt of the invoice and payable within 30 days of the invoice date to an account specified by IBM. 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.

Client agrees to: i) pay withholding tax directly to the appropriate government entity where required by law; ii) furnish a tax certificate evidencing such payment to IBM; iii) pay IBM only the net proceeds after tax; and iv) fully cooperate with IBM in seeking a waiver or reduction of such taxes and promptly complete and file all relevant documents.

IBM may change recurring charges, labour 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 service is made available to Client.

Client will i) maintain, and provide upon request, records, system tools output, and access to Client's premises, as reasonably necessary for IBM and its independent auditor to verify Client's compliance with the Agreement, and ii) promptly order any required entitlements, pay additional charges at IBM's then current rates, and other liabilities determined as a result of such verification. These compliance verification obligations remain in effect during the term of the Agreement and for two years thereafter.

Liability and Indemnity IBM's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to 125% of the

amounts paid (if recurring charges, up to 12 months' charges apply) for the service that is the subject of the claim, regardless of the basis of the claim. This limit applies collectively to IBM, its subsidiaries, contractors, and suppliers. IBM will not be liable for special, incidental, exemplary, indirect, or consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.

The following amounts, if a party is legally liable for them, are not subject to the above cap: i) third party payments referred to in the paragraph below; ii) damages for body injury (including death); iii) damages to real property and tangible personal property; and iv) damages that cannot be limited under applicable law.

If a third party asserts a claim against Client that a Service acquired under this Agreement infringes a patent or copyright, IBM will defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM, provided that Client promptly (i) notifies IBM in writing of the claim, (ii) supplies information requested by IBM, and (iii) allows IBM to control, and reasonably cooperates in, the defence and settlement, including mitigation efforts.

IBM has no responsibility for claims based, in whole or part, on non-IBM services, items not provided by IBM, or any violation of law or third party rights caused by Client's content, materials, designs, or specifications.

Termination for Cause

IBM may terminate the Services for cause for reasons including, but not limited to, the following:

if Client chooses not to upgrade to a supported operating system version(s) specified in the Services Baseline; or if Client fails to provide base operating system restoration as required after a hardware failure.

Termination for Convenience

Either party may terminate this agreement by giving the other party not less than 90 days written notice. Notwithstanding the foregoing, termination for convenience is prohibited within the first 12 months of the Term.

Termination Assistance

IBM recognises (i) that the Service is vital to Client and should be continued without interruption at all times, even if there is a dispute being resolved between parties, and (ii) that upon expiration or termination of the SOW by IBM, a successor vendor may be retained to provide such Service or Client may elect to provide the Service itself.

IBM shall, during a "Termination Assistance Period," to be mutually defined by the parties, provide "Termination Assistance Services." IBM shall be paid all applicable charges for Services rendered during the Termination Assistance Period. During any Termination Assistance Period, IBM will continue to perform its obligations under this SOW with respect to Client coordination, administration and payment for such performance.

Termination Assistance Services

IBM agrees to provide reasonable assistance for the transition of Client data and/or domain names following the termination of this SOW, provided that the termination

occurred for reasons other than the breach of Client. Such assistance shall be provided on a time and materials basis based on IBM's prevailing professional services hourly rates. Additional costs associated with the Termination Assistance Services, if any, will be processed through the Project Change Control Procedure.

Cooperation during Termination Assistance Period

Client agrees to use commercially reasonable efforts during the Termination Assistance Period to expeditiously terminate the Services provided by IBM. Throughout the Termination Assistance Period, IBM agrees it will maintain at least the level and quality of Services in effect during the 90 days preceding the Termination Assistance Period, to perform the Termination Assistance Services with the same degree of service levels, accuracy, quality, completeness, timeliness, responsiveness, and cost-effectiveness as was intended in this SOW, and to cooperate in an orderly and efficient transition to a successor vendor.

Client may present a reasonable transition business plan to IBM specifically designed to achieve this objective, and IBM agrees to assist with and provide guidance with respect to such transition business plan. IBM agrees to provide the Services with the objective to achieve a seamless transition of the Services to a successor vendor. IBM's Termination Assistance Services shall not extend beyond existing responsibilities in providing the Services or existing activities under this SOW. In the event additional responsibilities are required, the Project Change Control Procedure will be used.

Other Terms and Conditions Open Source Software

This section applies only to the Open Source Software (OSS) referred to in the Client Additional Point of Contact Responsibilities section above. OSS that IBM may install, update, access or otherwise use for Client under this SOW is distributed and licensed to Client by the non-IBM OSS distributors and/or respective copyright or other right holders under their terms and conditions. IBM is not a licensee or licensor of such OSS, and performs the Services on Client's behalf. IBM is not liable for any damages arising out of the use of OSS.

IBM Tools

Client acknowledges that IBM will be using a variety of software tools ("IBM Tools") to perform the Services contained in this SOW. IBM retains the right to replace/upgrade or introduce additional tooling and processes to help provide the Services during the term of the SOW. The IBM Tools are used to support basic availability management, hardware monitoring, software monitoring of resources, notification handling, performance and capacity management, security management, configuration management, system administration, information access, automation, remote access, and problem and change management. Upon completion of these Services, all copies of the IBM Tools will be removed from Client facilities. Client has no right to make use of the IBM Tools. No right is granted to Client to make any copies of the IBM Tools in any form. Client shall not reverse assemble or reverse compile the IBM Tools in whole or part. No license to Client under any trademark, patent, copyright, and mask work protection right or any other intellectual

property right is either granted or implied by the use of the IBM Tools at Client facilities.

Wireless Networks – Acknowledgement

Client acknowledges and agrees that wireless technology systems offer new functionality and added convenience, but they also introduce unique security exposures, including, without limitation, risks that "hackers" with wireless devices may gain access to such systems and other systems connected to such systems or intercept data transmitted by such systems. Numerous techniques are available that may mitigate some of the unique security risks associated with wireless technology systems, including, without limitation, proper configuration control and change management procedures, access point administration controls, the use of strong cryptography, and an effective audit program. Client is solely responsible for selecting those wireless security features and processes that Client determines meet Client's needs and for implementing, administering and maintaining such features and processes.

Subcontractors

IBM may subcontract all or any portion of the Services, however, subcontracting all or any portion of the Services does not relieve IBM of its obligations or duties as outlined within this SOW.

Governing Laws and Geographic Scope

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 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. Client is responsible for its use of IBM and Non-IBM services.

Both parties agree to the application of the laws of England to this Agreement, without regard to conflict of law principles. The rights and obligations of each party are valid only in the country where the transaction is performed. All disputes will be brought before and subject to the exclusive jurisdiction of the following courts of competent jurisdiction: the English courts.

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 this Agreement.

General

Parties will not disclose confidential information without a separate, signed confidentiality agreement. If confidential information is exchanged in connection with this Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this Agreement.

Client accepts an Attachment or TD by ordering, using, or making a payment for, the service. Since this Agreement may apply to many future orders, IBM reserves the right to modify it by providing Client at least three months' written notice. However, changes are not retroactive; they apply, as of the effective date, only to new orders and renewals. For

transactions with a defined renewable contract period, Client may request that IBM defer the change effective date until the end of the current contract period. Client accepts changes by placing new orders after the change effective date or allowing transactions to renew after receipt of the change notice. Except as provided above, all changes to the agreement must be in writing signed by both parties. If there is a conflict, an Attachment or TD prevails over the terms of this agreement.

IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any responsibility for Client's business or operations. Each party is responsible for determining the assignment of its personnel and contractors, and for their direction, control, and compensation. IBM Business Partners are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings.

Client is responsible for obtaining all necessary permissions to use, provide, store and process content in services, and grants IBM permission to do the same. Client is responsible for adequate content back-up. Some of Client's content may be subject to governmental regulation or may require security measures beyond those specified by IBM for an offering. Client will not input or provide such content unless IBM has first agreed in writing to implement additional required security measures.

IBM and its subcontractors may process the business contact information of Client, its employees and contractors worldwide for our business relationship, and Client has obtained the necessary consents. IBM will comply with requests to access, update, or delete such contact information. IBM may use personnel and resources in locations worldwide and third party suppliers to support the delivery of services.

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other. Assignment of IBM rights to receive payments and by IBM in conjunction with the sale of the portion of IBM's business that includes the service is not restricted.

All notices under this Agreement must be in writing and sent to the address below, unless a party designates in writing a different address. The parties consent to the use of electronic means and facsimile transmissions for communications as a signed writing. Any reproduction of the Agreement made by reliable means is considered an original. The Agreement supersedes any course of dealing, discussions or representations between the parties.

No right or cause of action for any third party is created by this Agreement or any transaction under it. Neither party will bring a legal action arising out of or related to this Agreement more than two years after the cause of action arose. Neither party is responsible for failure to fulfil its nonmonetary obligations due to causes beyond its control. Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations. Where approval, acceptance, consent, access, cooperation or similar action by either party is required, such action will not be unreasonably delayed or withheld.

The Agreement applies to IBM and Client (the signatories below) and their respective Enterprise companies who avail themselves of the Agreement. The signatories shall coordinate the activities of Enterprise companies under this Agreement. Enterprise companies include (i) companies within the same country that Client or IBM control (by owning greater than 50% of the voting shares), and (ii) any other entity that controls, is controlled by or is under common control as Client or IBM and has signed a participation Attachment.

Agreed to:
Client Company Name:

By_____
Authorised signature

Title:

Name (type or print):

Date:

Client number:

Enterprise number:

Client address:

Agreed to:
IBM United Kingdom Limited

By_____
Authorised signature

Title:

Name (type or print):

Date:

Agreement number:

IBM address:

Registered in England and Wales with number 741598
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