



1. Definitions

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

Order is the specified Services in the quote provided to CUSTOMER.

Service Description is the language describing the Services to be performed as referenced in the Order.

2. Term and Termination

The Term of this Order shall be for the period of the dates to be mutually agreed upon. If either party materially breaches any provision of this Order without cure after thirty (30) days written notice thereof, then the other party may terminate this Order. CUSTOMER will be liable for payment for Services rendered up to the effective termination date.

3. Site Readiness

If Services are to be performed on-site at CUSTOMER's location, CUSTOMER will provide IBM with workspace, local telephone, and access to CUSTOMER's computer system, software, related equipment, and facilities as necessary to perform the Services. IBM consultants will abide by CUSTOMER's reasonable identification and security policies.

CUSTOMER is responsible for promptly obtaining and providing to IBM all Required Consents necessary for IBM to provide the Services described in this Order. "Required Consents" means any consents or approvals required to give IBM and its subcontractors the right or license to access, use and/or modify (including creating derivative works) the hardware, software, firmware and other products in CUSTOMER's use, without infringing the ownership or license rights (including patent and copyright) of the providers or owners of such products. CUSTOMER will indemnify, defend and hold IBM, IBM subcontractors and majority-owned subsidiaries, harmless from and against any and all claims, losses, liabilities and damages (including reasonable attorneys' fees and costs) arising from or in connection with any claims (including patent and copyright infringement) made against IBM, alleged to have occurred as a result of CUSTOMER's failure to provide any Required Consents to IBM. IBM will be relieved of the performance of any obligations that may be affected by CUSTOMER's failure to promptly provide any Required Consents to IBM.

4. Warranty

IBM warrants that the Services provided hereunder will be performed in a professional and workmanlike manner. Except for the express warranties set forth herein, all services and deliverables are performed and delivered "AS IS". IBM disclaims all other warranties, express or implied, including without limitation the implied warranties of merchantability and fitness for a particular purpose and non-infringement. The warranties specified this Section are in addition to any rights CUSTOMER may have under the Trade Practices Act 1974 or other legislation and are only limited to the extent permitted by the applicable legislation.

5. Limitation of Liability

EXCEPT FOR A VIOLATION OF SECTION 2, SECTION 5, OR SECTION 6, IBM'S AND CUSTOMER'S TOTAL LIABILITY FOR ANY CLAIMS OF ANY KIND RELATED TO THIS AGREEMENT, SHALL BE LIMITED TO DIRECT MONETARY DAMAGES ONLY AND SHALL NOT EXCEED THE TOTAL FEES PAID TO IBM BY CUSTOMER FOR THE PRODUCT OR SERVICE TO WHICH SUCH CLAIM RELATES. IN NO EVENT WILL



EITHER PARTY BE LIABLE FOR ANY PUNITIVE, SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL LOSSES OR DAMAGES.

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

6. Intellectual Property

All materials provided or delivered under this Order are Type II Materials ("Type II Materials"). Type II Materials are those materials in which IBM owns all right, title and interest (including ownership of copyright) exclusively. IBM hereby grants CUSTOMER a nonexclusive, paid up, internal-use-only license to use, execute, reproduce, perform and display the Type II Materials. Nothing contained in this Order will restrict IBM in the use of the general techniques and skills of computer operation, system design and programming acquired in the performance of Services hereunder.

7. Confidential Information

"Confidential Information" includes, but is not limited to, trade secrets, discoveries, concepts, know-how, software, methodologies, techniques, designs, specifications, drawings, data, computer programs, business activities and processes, customer lists, reports and other technical and business information marked or designated to be "confidential". Neither party shall use or disclose any Confidential Information of the other party except as expressly permitted herein. A party receiving Confidential Information from the other shall use a reasonable degree of care to protect that Confidential Information from any unauthorized disclosure, including ensuring that its employees, agents and contractors have agreed in writing not to disclose Confidential Information. Upon receipt of a request from the disclosing party the receiving party shall promptly return to the disclosing party all materials containing any Confidential Information of the disclosing party. The provisions of this section shall not apply to information that: (i) is rightfully known prior to receipt; or (ii) becomes public knowledge by acts other than those of the receiving party; (iii) is independently developed by the receiving party without a breach of obligations herein; or (iv) is rightfully received by the receiving party from a third party without restriction and without breach of this agreement. Notwithstanding the foregoing, nothing herein shall prevent a receiving party from disclosing all or part of the Confidential Information as required by a governmental agency or by order of a court, or when disclosure is otherwise required by law; provided, however, that prior to any such disclosure, the receiving party shall, if feasible: (a) promptly notify the disclosing party in writing of such requirement to disclose; and (b) cooperate fully with the disclosing party, at the expense of the disclosing party, in protecting against any such disclosure and/or obtaining a protective order.

8. Payment Terms

This project will be conducted on a fixed price basis. The fixed price for performing the Services will be as stated in the Order. This fixed price is inclusive of any travel and living expenses, other reasonable expenses incurred in connection with the Services, plus any applicable taxes. All invoices are due upon receipt and payable within 30 days. Payments will be in United States dollars. Any overdue amount will bear interest at the maximum rate allowed by law.

9. General

This Order is governed by the laws of the State or Territory in the Commonwealth of Australia in which the Services are performed.



This Order plus the Service Description is the complete and exclusive statement of the parties in relation to the subject matter hereof; sets forth all obligations of the parties in relation to the subject matter hereof; supersedes all prior or simultaneous written or oral proposals and understandings relating thereto, all of which are expressly excluded; takes precedence over any conflicting terms of any purchase order issued by CUSTOMER and can only be modified by a written amendment signed by both parties. Any purchase order issued shall be for administrative purposes only and any additional terms or terms conflicting with the terms of this Order are void.

This Order may be executed in one or more counterparts (including by facsimile), all of which shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been signed by each of the parties and delivered to the other parties.