



# International Passport Advantage Agreement

---

## Part 1 - General Terms

Under this IBM International Passport Advantage Agreement (“Agreement”), IBM provides the Passport Advantage customer a way to obtain authorizations to use, update, and support selected Programs at volume pricing.

The Customer Originating Company and IBM Originating Company agree to coordinate the administration of this Agreement within their respective Enterprises. When used in this Agreement, “IBM” means the IBM Enterprise company that is providing Eligible Products, and “you” means the customer Enterprise company that is ordering them, subject to the Agreement. The Customer Originating Company is the legal entity within your Enterprise of which the entity that identifies itself as the “Originating Site” on an IBM International Passport Advantage Enrollment Form is a part. The IBM Originating Company is the legal entity within International Business Machines Corporation’s Enterprise that accepts the Customer Originating Company’s orders. This Agreement is entered into with the understanding that each of us is bound by its terms. Both of us agree to distribute copies of the Agreement to our respective participating Enterprise companies. “Enterprise” is defined in **2. Enterprise** below.

Products eligible under this Agreement (“Eligible Products”) include commercially available IBM Programs, certain Programs that are subject to a third-party end user license agreement (“Non-IBM Programs”), Support for specified Non-IBM Programs and IBM Programs licensed under the terms of the IBM License for Non-Warranted Programs (“Selected Support”), authorizations to increase your use of a Program, IBM Trade-ups, Competitive Trade-ups, IBM Annual Software Subscription and Support Renewals, IBM Software Subscription and Support Reinstatement, Third Party Annual Software Subscription and Support Renewals, Third Party Software Subscription and Support Reinstatement, and Selected Support renewals.

The Customer Originating Company accepts the terms of this Agreement without modification, and each of its participating Enterprise companies accepts this Agreement without modification, by submitting an IBM International Passport Advantage Enrollment Form to IBM or the reseller(s) from whom they have chosen to obtain Eligible Products (“your reseller(s)”), as applicable. This Agreement is effective on the date IBM accepts your initial order for Eligible Products (“Effective Date”) and remains in effect until the Customer Originating Company or the IBM Originating Company terminates it in accordance with **11. Agreement Termination**.

This Agreement, any applicable attachments, and any associated documents, i.e., Enrollment Form, Proofs of Entitlement and invoices (called “Associated Documents”), are the complete agreement regarding these transactions, and replace any prior oral or written communications between us concerning Passport Advantage. If there is a conflict among terms in the various documents, those of an attachment prevail over this Agreement and those of an Associated Document prevail over both of those documents. The terms of the sections of the IBM International Program License Agreement (“IPLA”) entitled “Limitation of Liability,” “General,” and “Governing Law, Jurisdiction, and Arbitration,” including their applicable Country-unique Terms, are also part of this Agreement and are incorporated by reference into this Agreement with the following changes:

- a. The term “Program” is replaced by the term “Eligible Product.”
- b. If not otherwise stated in the Limitation of Liability section of the IPLA, the amount of any other actual direct damages up to the charges for the Program that is the subject of the claim for a fixed term license is 12 months’ charges.
- c. The statement, “All of our rights, duties, and obligations are subject to the courts of the country in which You acquired the Program license” is replaced by the statement, “The rights, duties, and obligations of each of us are valid only in the country in which the transaction is performed or, if IBM agrees, the country where the Eligible Product is placed in productive use,” except that all licenses are valid as specifically granted.
- d. The phrase “the laws of the country in which You acquired the Program license” in the Governing Law subsection is replaced by “the laws of the country in which the transaction is performed.”

A copy of the IPLA in its entirety, either in a booklet or on a CD, is provided in the Passport Advantage Welcome Package. It is also available from IBM or its resellers and on the Internet at [ibm.com/software/sla](http://ibm.com/software/sla).

Once this Agreement is accepted, 1) unless prohibited by applicable law or specified otherwise, any reproduction of it or an Associated Document made by reliable means (for example, photocopy or facsimile) is considered an original and 2) all Eligible Products ordered under this Agreement are subject to it.

If IBM withdraws an Eligible Product from marketing, you will no longer be able to obtain it under this Agreement. If IBM withdraws a Program or a version of a Program from marketing, you may not increase its level of use, beyond the authorizations already acquired, on or after the effective date of withdrawal without IBM's prior written consent, which IBM will not unreasonably withhold.

The "Anniversary" is the first day of the month that follows the anniversary of the Effective Date, unless the Effective Date is the first day of a month, in which event the anniversary of the Effective Date is the Anniversary.

A "Program" is the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, 3) audio-visual content (such as images, text, recordings, or pictures), 4) related licensed materials, and 5) license use documents or keys, and documentation.

A "Term" is the period that begins either on the date IBM accepts your initial order (in the case of the initial Term) or on the Anniversary (in the case of subsequent Terms), and ends on the day immediately prior to the next Anniversary.

## **1. Eligible Products**

Eligible Products are for use within your Enterprise only and may not be resold, rented, leased, or transferred to third parties. Any attempt to do so in violation of these provisions is void. In addition, such Eligible Products may not be used to provide commercial hosting or other commercial information technology services to third parties. If, as a result of your moving an Eligible Product across a border, any authority imposes a duty, tax, levy or fee (including withholding taxes, fees, customs or other duties for the import and export of any such Eligible Product), then you agree that you are responsible for, and will pay, any such duty, taxes, levy or other fees. This excludes those taxes based on IBM's net income.

Unless IBM specifies otherwise, it provides Non-IBM Programs and Third Party Software Subscription and Support (as defined in 1.3.1 Software Subscription and Support below) **WITHOUT WARRANTIES OF ANY KIND**. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to you.

### **1.1 IBM Programs**

#### **1.1.1 Proof of Entitlement:**

IBM specifies a Program's authorized use in a Proof of Entitlement (called "PoE"). Examples of the measure of the level of authorized use include, but are not limited to, the number of copies, processors, or users. This PoE, supported by your matching paid invoice or receipt, is evidence of your level of authorized use. During the period this Agreement remains in effect, and for two years thereafter, IBM has the right to verify your compliance with this Agreement on your premises during your normal business hours and in a manner that minimizes disruption to your business. IBM may use an independent auditor for this with your prior approval, which you will not unreasonably withhold.

#### **1.1.2 Versions and Platforms:**

You may use Programs and their associated user documentation in any commercially available national language version up to the level of use authorized in the PoE. You are authorized to use the Program(s) that you obtain under this Agreement on any platform or operating system for which IBM currently makes Program code available under Passport Advantage unless the Program is designated as platform or operating system specific at the time you obtain it.

#### **1.1.3 IBM Trade-ups:**

Licenses for certain Programs that replace qualifying IBM Programs may be obtained for a reduced charge. You agree to terminate your use of the replaced IBM Programs when you install the replacement Programs.

#### **1.1.4 Competitive Trade-ups:**

Licenses for certain Programs that replace qualifying Non-IBM Programs (see **1.2. Non-IBM Programs** below) may be obtained for a reduced charge. You agree to terminate your use of the replaced Non-IBM Programs when you install the replacement Programs.

#### **1.1.5 License:**

IBM Programs obtained under this Agreement are governed by the terms of the IPLA. If there is a conflict between the terms of this Agreement and those of the IPLA, including its License Information document ("LI"), the terms of this Agreement prevail. The IPLA and its LIs are available on the Internet at [ibm.com/software/sla](http://ibm.com/software/sla).

## 1.2 Non-IBM Programs

### License

The licensing of a Non-IBM Program obtained under this Agreement is governed by the terms of the third party end user license agreement that accompanies it. If there is a conflict between the terms of this Agreement and those of the third party end user license agreement, the terms of this Agreement prevail. IBM is not a party to the third party end user license agreement and assumes no obligations under it.

## 1.3 Software Subscription and Support and Selected Support

### 1.3.1 Software Subscription and Support

IBM provides software subscription and support (“IBM Software Subscription and Support”) with each IBM Program licensed under the IPLA. Software Subscription and Support is a single offering not available as separate components. IBM does not provide IBM Software Subscription and Support for Non-IBM Programs or for Programs that are licensed under the IBM License Agreement for Non-Warranted Programs (together “Selected Programs”). Third parties may provide software subscription and support (“Third Party Software Subscription and Support”) with Non-IBM Program licenses under the third parties’ terms. For purposes of this Agreement, “software subscription and support” means both IBM Software Subscription and Support and Third Party Software Subscription and Support.

IBM Software Subscription and Support begins on the date of acquisition and ends on the last day of the corresponding month in the following year, unless the date of acquisition is the first day of the month, in which case coverage ends on the last day of the month, 12 months from the date of acquisition.

While IBM Software Subscription and Support is in effect for an IBM Program license:

- a. IBM will make available to you and authorize you to use the most current commercially available version, release, or update, should any be made available.
- b. IBM provides you assistance for your 1) routine, short duration installation and usage (how-to) questions; and 2) code-related questions (“Support”). Such Support for a particular version or release of a Program is available only until IBM or the third party, as applicable, withdraws Support for that Program’s version or release. When Support is withdrawn, you must upgrade to a supported version or release of the Program in order to continue to receive Support. The IBM “Software Support Lifecycle” policy is available at <http://www-306.ibm.com/software/info/supportlifecycle/>.
- c. IBM provides assistance via telephone and, if available, electronic access, only to your information systems (IS) technical support personnel during the normal business hours (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 Handbook for details at [ibm.com/software/support](http://ibm.com/software/support).
- d. IBM may request that you allow it to remotely access your system to assist you in isolating the software problem cause. You remain responsible for adequately protecting your system and all data contained in it whenever IBM remotely accesses it with your permission.

IBM Software Subscription and Support does not include assistance for 1) the design and development of applications, 2) your use of IBM Programs in other than their specified operating environment or 3) failures caused by products for which IBM is not responsible under this Agreement.

### 1.3.2 Selected Support

Selected Programs eligible for Selected Support are listed at [www.ibm.com/lotus/PASupportedSupportPrograms](http://www.ibm.com/lotus/PASupportedSupportPrograms).

Selected Support begins on the date of acquisition and ends on the last day of the corresponding month in the following year, unless the date of acquisition is the first day of the month, in which case coverage ends on the last day of the month, 12 months from the date of acquisition.

While Selected Support is in effect for a Selected Program:

- a. IBM will make available to you Selected Program defect corrections, if any, that it develops.
- b. IBM provides you assistance for your 1) routine, short duration installation and usage (how-to) questions; and 2) code related questions. Selected Support for a particular version or release of a Program is available only until IBM withdraws Selected Support for that Program’s version, release, or modification. When such Selected Support is withdrawn, you must upgrade to a supported

version or release of the Program in order to continue to receive such support. The IBM "Software Support Lifecycle" policy does not apply to Selected Support.

- c. IBM may provide you with assistance in designing and developing applications based on your subscription level.
- d. IBM may provide assistance via telephone and electronic access, depending on your location and the subscription level you acquire. Such assistance is provided only to your information systems (IS) technical support personnel during the normal business hours (published prime shift hours) of your IBM support center. Consult the IBM Software Support Handbook for details applicable to Selected Support at [ibm.com/software/support](http://ibm.com/software/support).
- e. IBM may request that you allow it to remotely access your system to assist you in isolating the software problem cause. You remain responsible for adequately protecting your system and all data contained in it whenever IBM remotely accesses it with your permission.

**IBM WARRANTS THAT IT PROVIDES IBM SOFTWARE SUBSCRIPTION AND SUPPORT AND SELECTED SUPPORT USING REASONABLE CARE AND SKILL. THIS WARRANTY IS YOUR EXCLUSIVE WARRANTY AND REPLACES 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.**

IBM does not provide licenses under this Agreement for Selected Programs.

### **1.3.3 Automatic Annual Renewal of Software Subscription and Support and Selected Support**

You may renew your expiring software subscription and support or Selected Support by written authorization to renew (e.g., order form, order letter, purchase order), prior to the expiration date, in accordance with the terms of this Agreement.

**IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE, EXPIRING SOFTWARE SUBSCRIPTION AND SUPPORT AND SELECTED SUPPORT ARE AUTOMATICALLY RENEWED TO THE NEXT ANNIVERSARY UNDER THE AGREEMENT TERMS AND AT THE THEN CURRENT RENEWAL CHARGES UNLESS, PRIOR TO THE EXPIRATION DATE, IBM RECEIVES, EITHER DIRECTLY FROM YOU OR THROUGH YOUR RESELLER, AS APPLICABLE, YOUR WRITTEN NOTIFICATION THAT YOU DO NOT WANT TO RENEW. YOU AGREE TO PAY SUCH RENEWAL CHARGES.**

Software subscription and support or Selected Support obtained or renewed on the Anniversary is renewable for an additional coverage period of 12 full months.

Software subscription and support or Selected Support obtained on a date other than the Anniversary is renewable at the next Anniversary for an additional coverage period of less than 12 full months for a prorated charge, thereby extending the coverage to the following Anniversary.

If you choose not to renew software subscription and support coverage for certain or all of your Program licenses and, at a later date, wish to again obtain coverage for any of those Program licenses, you must obtain IBM Software Subscription and Support Reinstatement or Third Party Software Subscription and Support Reinstatement, as applicable.

### **1.3.4 Withdrawal of software subscription and support or Selected Support for a particular Program**

If IBM or the third party, as applicable, withdraws software subscription and support or Selected Support for a particular Program, you understand that

- a. IBM will not make software subscription and support renewal or Selected Support renewal available for that Program; and
- b. if you renewed IBM Software Subscription and Support for that IBM Program license or Selected Support for a Selected Program license prior to the notice of withdrawal, IBM, at its sole discretion, will either continue to provide IBM Software Subscription and Support or Selected Support to you for that Program license until the end of the then current coverage period or you may obtain a prorated refund. If you renewed Third Party Software Subscription and Support for that Non-IBM Program prior to the notice, the third party will continue to provide Third Party Software Subscription and Support to you for that Non-IBM Program license until the end of the then current coverage period. Otherwise, you may obtain a prorated refund.

## 1.4 Fixed Term Licensing

As an option, IBM licenses certain Programs for a “Fixed Term.” “Fixed Term” means that the duration of the license is the limited term so designated by IBM in the Program’s PoE, beginning on the date that your order is accepted by IBM; on the calendar day following the expiration of a prior Fixed Term; or on the calendar day following the Anniversary date, as applicable.

Software Subscription and Support is included with each Fixed Term license and is in effect until the Fixed Term expires.

### 1.4.1 Automatic Renewal of Fixed Term Licenses

You may renew your expiring Fixed Term License by written authorization to renew (e.g., order form, order letter, purchase order), prior to the expiration date, in accordance with the terms of this Agreement.

**IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE, EXPIRING FIXED TERM LICENSES ARE AUTOMATICALLY RENEWED FOR THE SAME DURATION AS THE EXPIRING TERM UNDER THE AGREEMENT TERMS AND AT THE THEN CURRENT RENEWAL CHARGES FOR SUCH PROGRAM LICENSES UNLESS, PRIOR TO THE EXPIRATION DATE, IBM RECEIVES, EITHER DIRECTLY FROM YOU OR THROUGH YOUR RESELLER, AS APPLICABLE, YOUR WRITTEN NOTIFICATION THAT YOU DO NOT WANT TO RENEW. YOU AGREE TO PAY SUCH RENEWAL CHARGES.**

If you choose not to renew the Fixed Term License, you agree to discontinue use of the Program on the expiration date.

If, after the expiration date, you choose to resume use of the Program, you must pay charges associated with an initial Fixed Term License rather than a Fixed Term License renewal.

### 1.4.2 Anniversary Coordination

For Fixed Terms of six months or more only, initial or subsequent Fixed Terms entered into on a date other than the Anniversary may be renewed at the next Anniversary for an additional period, at a prorated renewal charge, in order to extend the Fixed Term to the following Anniversary.

### 1.4.3 Withdrawal of Fixed Term License for a particular Program

If IBM or the third party, as applicable, withdraws Fixed Term licensing for a particular Program, you understand that:

- a. you may not renew the Fixed Term License for that Program; and
- b. if you renewed the Fixed Term License for a Program prior to the notice of withdrawal, you will, at IBM’s or the third party’s sole discretion, either (a) continue to use the Program under the Fixed Term licensing terms until the end of the then current Fixed Term or (b) obtain a prorated refund.

## 2. Enterprise

An Enterprise includes any legal entity that, by more than 50%, owns, is owned by, or is under common ownership with the Originating Company. The Originating Company is the legal entity that is authorized to execute and administer this Agreement on behalf of an Enterprise. The Originating Company need not be a “company” and may be the entire Enterprise.

## 3. Site

“Site” means any defined entity, such as a physical location or organizational unit, e.g., a department, division, subsidiary or cost center, of your Enterprise.

The Originating Company Site is defined as the “Originating Site.”

Any Site that subsequently enrolls under this Agreement is defined as an “Additional Site.”

In addition to acquiring Eligible Products from IBM, the Originating Site and the Additional Sites may each select a primary reseller from whom they will obtain Eligible Products. A Site may choose to replace its primary reseller at any time upon giving IBM one month’s written notice.

IBM provides the primary reseller for each Site with access to complete information concerning the Site’s software subscription and support renewals, including software subscription and support renewals for entitlements not originally obtained for the Site from that primary reseller.

The Customer Originating Company is responsible for all Sites’ compliance with the terms of this Agreement.

## 4. Obtaining Eligible Products

To obtain additional authorizations to use Programs under Passport Advantage you must have already obtained the Program code.

IBM's "money-back guarantee" only applies the first time you license the IBM Program. If an IBM Program license is for a fixed term that is subject to renewal, you may obtain a refund only if you return the Program and its PoE within the first 30 days of its initial term.

Under Passport Advantage, each Eligible Product, including CEO Product Categories, is assigned Suggested Volume Price ("SVP") points.

"CEO Product Categories" (groupings of Eligible Products) are obtained on a per-user basis. You must obtain your first CEO Product Category ("Primary Product Category") for all Users within your Enterprise and for not less than the number of Users specified in the CEO Product Categories Table at [ibm.com/software/passportadvantage](http://ibm.com/software/passportadvantage). A "User" is an individual to whom a machine capable of copying, using, or extending the use of Programs has been assigned.

You may obtain additional CEO Product Categories if you meet the minimum number of Users requirement specified in the CEO Product Category in the CEO Product Categories Table at [ibm.com/software/passportadvantage](http://ibm.com/software/passportadvantage). However, you need not obtain additional CEO Product Categories for all Users within your Enterprise.

A User may use any or all of the Programs included in a chosen CEO Product Category. However, all IBM Programs that are used for client access must be obtained from the same CEO Product Category as the server Program they access.

### **CEO Product Categories: Additions and Deletions**

IBM may add Eligible Products to or delete Eligible Products from any CEO Product Category. If IBM deletes an Eligible Product from a CEO Product Category, you may continue to use the deleted Eligible Product but you may not exceed the number of Users enrolled prior to the deletion.

### **Increasing the number of Users**

In the event you increase the number of Users, you must obtain an authorization to use the CEO Product Category for each new User.

### **Decreasing the number of Users**

You will notify IBM in writing prior to your next Anniversary in the event your total number of Users decreases. Decreases may result from a reorganization, restructuring, or sale of one or more of your Sites. A reduction in the number of Users of a temporary or seasonal nature does not qualify as a decrease. Following a decrease in the number of Users, a lower SVP Level may result. If the level of authorized use of a CEO Product Category drops below the minimum number of Users applicable to that CEO Category, you may not renew IBM Software Subscription and Support on a CEO Product Category basis.

## 5. Relationship SVP Level

The initial Relationship SVP ("RSVP") Level is established by the point value of the initial order. The initial order must be for a minimum of 500 points. If you obtain additional Eligible Products during a Term, you may attain higher RSVP Levels. The higher RSVP Level applies only when you obtain additional Eligible Products after the higher level is attained, except where the point value of an individual order by itself exceeds the point requirement for a higher SVP level. In such case, the higher SVP level applies to the order.

At the first and each subsequent Anniversary, the RSVP Level is set, based on the Eligible Products you have obtained during the previous Term. If, in a subsequent Term, the point value of the Eligible Products you obtain during that Term is less than the point value necessary to maintain the current RSVP Level, then at the next Anniversary the RSVP Level will be reduced to reflect the level at which you are currently obtaining Eligible Products but not by more than one RSVP Level.

**Relationship SVP Level Table:**

RSVP Level	BL	D	E	F	G	H
Points	<500	500	1,000	2,500	5,000	10,000

**6. Resellers**

When you order Eligible Products from your IBM reseller(s), IBM is not responsible for 1) their actions, 2) any additional obligations they have to you, or 3) any products or services that they supply to you under their agreements. When you obtain Eligible Products from a reseller, the reseller sets the charges and payment terms.

**7. Payment**

- a. When you obtain Eligible Products from your IBM reseller(s), you pay your reseller directly.
- b. When you obtain Eligible Products from IBM,
  - (1) you agree to pay as IBM specifies in its invoice or equivalent document, including any late payment fee; and
  - (2) if any authority imposes a duty, tax, levy or fee (excluding those based on IBM's net income) upon Eligible Products, then you agree to pay that amount as IBM specifies or supply exemption documentation.
- c. The amount payable for a Program license may either be a one-time charge or a charge for a fixed term, depending on the type of license.

**8. Mutual Responsibilities**

Both of us agree that, under this Agreement:

- a. 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; and
- b. each of us may communicate with the other by electronic means and such communication is acceptable as a signed writing to the extent permissible under applicable law. Both of us agree that for all electronic communications, 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.
- c. IBM grants you only the licenses and rights specified. No other licenses or rights (including licenses or rights under patents) are granted.

**9. Assignment**

You may not assign this Agreement in whole or in part, without IBM's prior written consent. Any attempt to do so is void. IBM will not unreasonably withhold this consent.

The assignment of this Agreement, in whole or in part, within the Enterprise of which either of us is a part or to a successor organization by merger or acquisition does not require the consent of the other. IBM is also permitted to assign its rights to payments under this Agreement without obtaining your consent. It is not considered an assignment for IBM to divest a portion of its business in a manner that similarly affects all of its customers.

**10. Changes to the Agreement Terms**

IBM may change the terms of this Agreement by giving the Customer Originating Company three months' written notice by letter or e-mail. Such change applies as of the date IBM specifies in the notice. You agree that you have consented to any such change if you do not notify IBM in writing, prior to the effective date specified in IBM's written notice, that you disagree with the change. IBM may add or withdraw Eligible Products or change an Eligible Product's SVP or point value at any time. Otherwise, for a change to be valid, both the Customer Originating Company and the IBM Originating Company must sign it. Additional or different terms in any order or written communication from you are void.

## **11. Agreement Termination**

The Customer Originating Company may terminate this Agreement without cause on one month's written notice.

The IBM Originating Company may terminate this Agreement on three months' written notice. If you obtained or renewed IBM Software Subscription and Support for any IBM Programs prior to the notice of termination, IBM, at its sole discretion, will either continue to provide IBM Software Subscription and Support to you for those Programs until the end of the then current coverage period or give you a prorated refund. If you obtained or renewed Third Party Software Subscription and Support for any Non-IBM Programs prior to the notice of termination, the third party may continue to provide Third Party Software Subscription and Support to you for that Non-IBM Program license until the end of the then current coverage period. If the third party licensor does not do so, you may obtain a prorated refund.

The Customer Originating Company will be considered to have terminated this Agreement if neither it nor any of its participating Enterprise companies have placed orders for Eligible Products for 24 consecutive months nor have software subscription and support in effect.

Either of us may terminate this Agreement if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time to comply.

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

## **12. Geographic Scope**

The terms of this Agreement apply in countries where 1) IBM markets its Eligible Products directly or 2) its Eligible Products have been announced as otherwise available.

## Part 2 - Country-unique Terms

The terms of this Agreement apply for all countries except that the following terms are country amendments that replace or modify terms in Part 1 for the identified country.

### AMERICAS

**ANGUILLA, ANTIGUA/BARBUDA, ARUBA, BARBADOS, BERMUDA, BRITISH VIRGIN ISLANDS, CAYMAN ISLANDS, DOMINICA, GRENADA, GUYANA, ST. KITTS, ST. LUCIA, ST. MAARTEN, ST. VINCENT, TORTOLA, BELIZE, BOLIVIA, COSTA RICA, DOMINICAN REPUBLIC, EL SALVADOR, HAITI, HONDURAS, GUATEMALA, NICARAGUA, PANAMA, PARAGUAY, BRAZIL, MEXICO, URUGUAY, CHILE, ARGENTINA, ECUADOR, COLOMBIA, PERU, VENEZUELA, BAHAMAS, JAMAICA, NETHERLANDS ANTILLES, SURINAME, TRINIDAD & TOBAGO, TURKS & CAICOS ISLANDS, AND MONTserrat.**

#### 1. Eligible Products

*The following replaces the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 1.3.3 Automatic Annual Renewal of Software Subscription and Support and Selected Support:*

IBM will renew, for an additional payment, expiring software subscription and support for all of your Program licenses and Selected Support for all of your Selected Program licenses to the next Anniversary if IBM or your reseller receives (1) your order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current coverage period or (2) your payment within 30 days of your receipt of the software subscription and support or Selected Support, as applicable, invoice for the next coverage period.

*The following replaces the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 1.4.1 Automatic Renewal of Fixed Term Licenses:*

IBM will renew, for an additional payment, expiring Fixed Term Licenses for all of your Program licenses for the same duration as the expiring term if IBM or your reseller receives (1) your order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current term or (2) your payment within 30 days of your receipt of the Fixed Term License invoice for the next term.

### ARGENTINA, CHILE, COLOMBIA, ECUADOR, MEXICO, PERU, VENEZUELA, URUGUAY

#### 7. Payment

*The following replaces 7b(1) :*

Amounts are due upon receipt of invoice and payable as IBM specifies in an Associated Document. The currency for payment of amounts due is US dollars or the equivalent in local currency as follows:

1. As long as the country operates in a free currency exchange market, you and IBM agree that IBM will accept payment in the applicable country national currency calculated at the country official exchange rate published by the bank specified in an Associated Document on the date payment is made.
2. If the government of a country establishes any restriction or limitation on its free currency exchange markets, you agree to make payments to IBM in US dollars to a bank account in New York, NY, USA, designated by IBM in the Associated Document, provided that such payment is not illegal under country law. If such method of payment is forbidden by country law, you agree to pay the amount indicated in the Associated Document in country national currency, calculated at the official exchange rate which is in use for the remittance of dividends and net earnings to foreign investors outside the country.

You agree to pay accordingly, including any late payment fee. The late payment fee is calculated and payable in US dollars at two percent (or the maximum rate allowed by local law if such is less than two percent) of the delinquent amount due per each thirty day period during which any delinquent balance remains unpaid.

### BRAZIL

#### 7. Payment

*The following replaces 7b(1) :*

Amounts due are expressed in local currency.

Amounts are due upon receipt of invoice and payable in local currency as IBM specifies in an Associated Document. You agree to pay accordingly, including any late payment fee. Delinquent amounts are subject to monetary correction based on the inflation index called the "General Price Index" calculated by Getulio Vargas Foundation (IGP-M/FGV), plus interest at the rate of one percent per month, both calculated "pro rata die." The late payment fee is calculated against the resultant delinquent amount at the following rates:

1. two percent of the delinquent amount due per the first thirty day period during which any delinquent balance remains unpaid, plus
2. ten percent for each successive thirty day period during which any delinquent balance remains unpaid.

## **8. Mutual Responsibilities**

*The following replaces 8b:*

- b. each of us may communicate with the other by electronic means and such communication is acceptable as a signed writing. 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;

## **10. Changes to the Agreement Terms**

*The following replaces the fourth sentence in this section:*

IBM may add or withdraw Eligible Products at any time. IBM may increase SVP with notice. IBM's ability to increase such charges, rates and minimums will be subject to the requirements of Brazilian law.

## **MEXICO**

### **10. Changes to the Agreement Terms**

*The following is added after the third sentence:*

For those Eligible Products priced in Mexican currency, IBM may increase SVP by giving you fifteen days' written notice.

## **UNITED STATES OF AMERICA**

### **1. Eligible Products**

The following sentence is added at the end of the paragraph that begins "**IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE**" in 1.3.3 Automatic Annual Renewal of Software Subscription and Support and Selected Support:

**YOU MAY TERMINATE SOFTWARE SUBSCRIPTION AND SUPPORT FOR A PROGRAM OR SELECTED SUPPORT FOR A SELECTED PROGRAM LICENSE AT ANY TIME AFTER THE FIRST ANNIVERSARY ON ONE MONTH'S WRITTEN NOTICE, EITHER DIRECTLY TO IBM OR THROUGH YOUR IBM RESELLER, AS APPLICABLE, IF IBM HAS NOT RECEIVED YOUR WRITTEN AUTHORIZATION (e.g., order form, order letter, purchase order) TO RENEW YOUR EXPIRING SOFTWARE SUBSCRIPTION AND SUPPORT OR SELECTED SUPPORT. IN SUCH EVENT, YOU MAY OBTAIN A PRORATED REFUND.**

The following sentence is added at the end of the paragraph that begins "**IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE**" in 1.4.1 Automatic Renewal of Fixed Term Licenses:

**YOU MAY TERMINATE A PROGRAM'S FIXED TERM LICENSE AT ANY TIME AFTER ITS INITIAL TERM ON ONE MONTH'S WRITTEN NOTICE, EITHER DIRECTLY TO IBM OR THROUGH YOUR IBM RESELLER, AS APPLICABLE, IF IBM HAS NOT RECEIVED YOUR WRITTEN AUTHORIZATION (e.g., order form, order letter, purchase order) TO RENEW YOUR EXPIRING FIXED TERM LICENSE. IN SUCH EVENT, YOU MAY OBTAIN A PRORATED REFUND.**

## **ASIA PACIFIC**

### **AUSTRALIA**

#### **7. Payment**

*The following paragraph is added after 7b:*

All charges or other amounts payable under this Agreement are specified to include applicable goods and services tax ("GST").

*The following paragraph replaces 7b(2) in its entirety:*

If any government or authority imposes a duty, tax (other than income tax), levy, or fee, on the Agreement or on the Eligible Product itself, that is not otherwise provided for in the amount payable, you agree to pay it when IBM invoices you. If the rate of GST changes, IBM may adjust the charge or other amount payable to take into account that change from the date the change becomes effective.

**CAMBODIA, LAOS, PEOPLE'S REPUBLIC OF CHINA, VIETNAM, BANGLADESH, BHUTAN, NEPAL, BRUNEI, FIJI HONG KONG, INDIA, INDONESIA, JAPAN, REPUBLIC OF KOREA, MACAO, MALAYSIA, MALDIVES, MONGOLIA, BURMA (aka MYANMAR), PAPUA NEW GUINEA, PHILIPPINES, SAMOA, SOLOMON ISLANDS, SRI LANKA, TAIWAN, THAILAND, CHRISTMAS ISLANDS, COCOS (KEELING) ISLANDS, COOK ISLANDS, EAST TIMOR, HEARD & MCDONALD ISLANDS, KIRIBATI, NAURU, NIUE, NORFOLK ISLAND, TOKELAU, TONGA, AND TUVALU**

## **1. Eligible Products**

*The following replaces the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 1.3.3 Automatic Annual Renewal of Software Subscription and Support and Selected Support:*

IBM will renew, for an additional payment, expiring software subscription and support for all of your Program licenses or Selected Support for all of your Selected Program licenses to the next Anniversary if IBM or your reseller receives (1) your order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current coverage period or (2) your payment within 30 days of your receipt of the software subscription and support or Selected Support, as applicable, invoice for the next coverage period.

*The following replaces the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 1.4.1 Automatic Renewal of Fixed Term Licenses:*

IBM will renew, for an additional payment, expiring Fixed Term Licenses for all of your Program licenses for the same duration as the expiring term if IBM or your reseller receives (1) your order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current term or (2) your payment within 30 days of your receipt of the Fixed Term License invoice for the next term.

## **INDONESIA**

### **11. Agreement Termination**

*The following paragraph is added just prior to the last paragraph:*

We both waive in this regard, the provision of article 1266 of the Indonesian Civil Code to the extent the article provision requires such court decree for the termination of an agreement creating mutual obligations.

## **JAPAN**

### **2. Site**

*The following paragraph is added after the fifth paragraph of this section*

In the event IBM receives personal information in conjunction with the performance of this Agreement, IBM agrees to handle such personal information in accordance with the attachment entitled Provisions for Handling Personal Information or Memorandum of Understanding on Handling Personal Information signed separately by the parties.

### **7. Payment**

*Add the following sentence:*

You agree to pay within 30 days from our invoice date.

### **11. Agreement Termination**

*The following paragraph is added to this section:*

When all or a substantial portion of either party's assets, credits or business are so changed as to make continued performance of that party's obligations impracticable or impossible, the other party may terminate this Agreement with prior written notice.

## **EUROPE, MIDDLE EAST, AFRICA (EMEA)**

### **EMEA-WIDE**

#### **7. Payment**

*The following replaces 7b(1) for the following countries except as noted:*

Amounts are due and payable upon receipt of invoice. You agree to pay accordingly, including any late payment charges.

If payment is not made within 30 days from the date of invoice, (or in the case of quarterly advance billing of recurring charges, within 60 days from the date of invoice), you may be subject to late payment charges.

The late payment charges are calculated as follows:

#### **Belgium and Luxembourg:**

*Replace the first sentence in the second paragraph of the above EMEA-wide text with the following:*

Any amounts not paid within the terms stated on the IBM invoice will be subject to a late payment fee that will be equal to 1% per period of 30 days, based on the outstanding balance VAT included, until paid in full. Late payment fees due will have to be paid at the end of each period of 30 days.

#### **Denmark and Sweden:**

Interest according to the Late Payment Interest Act apportioned to the number of days of delay.

#### **Estonia, Latvia and Lithuania:**

2% per month apportioned to the number of days of delay.

#### **Finland:**

Interest according to the Act on interest rate apportioned to the number of days of delay.

#### **France:**

In compliance with the law of May 15th, 2001 any late payment fee is payable the day following the payment date specified on the invoice without any need for a reminder and its rate is equal to the European Central Bank rate for its most recent refinancing operation plus 7 points.

#### **Germany:**

Late payment fees will be calculated according to the German statutory rate.

*In the second paragraph of the above EMEA-wide text replace both usages of "date of invoice" with the following:*

due date

#### **Greece:**

*The following replaces the above EMEA-wide text:*

Amounts are due and payable upon receipt of invoice. If payment is not made within 30 days from the date of invoice, you may be subject to late payment fees.

The late payment fees will be calculated, per day of actual delay, from the due date of the invoice, based on the maximum rate of late payment fee allowed by law.

#### **Italy:**

*Replace the final paragraph of the above EMEA-wide text with the following:*

The late payment charges will be calculated, per day of actual delay, based on the prime rate published by the Italian Banking Association ABI in effect on the last day of the month the payment has been received by IBM, increased by three points.

In case of no payment or partial payment and following a formal credit claim procedure or trial IBM might initiate, the late payment fee will be calculated from the due date of the invoice based on the prime rate published by the Italian Banking Association ABI in effect on the last day of the month the payment was due, increased by three points. IBM can transfer the credit to a factoring company; if we do so we will advise you in writing.

#### **Netherlands:**

*The following replaces the second and third sentences of the EMEA-wide text:*

If payment is not made within 30 days from the date of invoice, you will be in default without the necessity of a default notice. In such case you will be subject to late payment fees of 1% per month.

**Norway:**

Interest according to the Late Payment Interest Act apportioned to the number of days of delay.

**South Africa, Namibia, Lesotho, Swaziland:**

Such charges shall accrue daily from the date payment must have been received by IBM, and will be equal to 2% (two percent) above the ruling prime rate (of a bank designated by IBM) on any outstanding payment.

**Spain:**

Such fees will be calculated applying 1% of the charges per month to the number of days of delay.

**UK and Ireland:**

Such charges will be calculated at a monthly rate of 2% of the invoice amount, or as permitted by applicable law.

**UK, Ireland, South Africa, Namibia, Lesotho, Swaziland:**

*Add the following:*

IBM's rights relating to late payment charges shall be in addition to any other right that IBM may have in the event that you fail to make any payment due to IBM under this Agreement.

IBM reserves the right to require payment in advance of delivery or other security for payment.

**ALBANIA, ARMENIA, AZERBAIJAN, BELARUS, BOSNIA-HERZEGOVINA, BULGARIA, CROATIA, GEORGIA, HUNGARY, KAZAKHSTAN, KYRGYZSTAN, MACEDONIA, MOLDOVA, MONTENEGRO, POLAND, ROMANIA, RUSSIA, SERBIA, SLOVAKIA, SLOVENIA, TAJIKISTAN, TURKMENISTAN, UKRAINE, UZBEKISTAN, JORDAN, KENYA, LEBANON, LIBERIA, PAKISTAN, SIERRA LEONE, SOMALIA, WEST BANK/GAZA, YEMEN, BAHRAIN , KUWAIT, OMAN, QATAR, SAUDI ARABIA, UNITED ARAB EMIRATES**

**1. Eligible Products**

*The following replaces the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 1.3.3 Automatic Annual Renewal of Software Subscription and Support and Selected Support:*

IBM will renew, for an additional payment, expiring software subscription and support for all of your Program licenses or Selected Support for all of your Selected Program licenses to the next Anniversary if IBM or your reseller receives (1) your order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current coverage period or (2) your payment within 30 days of your receipt of the software subscription and support or Selected Support, as applicable, invoice for the next coverage period.

*The following replaces the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 1.4.1 Automatic Renewal of Fixed Term Licenses:*

IBM will renew, for an additional payment, expiring Fixed Term Licenses for all of your Program licenses for the same duration as the expiring term if IBM or your reseller receives (1) your order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current term or (2) your payment within 30 days of your receipt of the Fixed Term License invoice for the next term.

**AUSTRIA and GERMANY**

**1. Eligible Products**

*The second paragraph is deleted.*

*The following is added at the end of, and as part of, 1.2. Non-IBM Programs:*

Warranty:

- (1) Warranty is provided for a period of twelve months, beginning at the date of delivery. Consumers are at least entitled to claim warranty defects within the limitation period provided by law.
- (1) IBM warrants that each non-IBM Program, when used in the specified operating environment, relates to its functions and conforms to its specifications. In case a non-IBM Program is

delivered without specifications, IBM only warrants that the non-IBM Program information correctly describes the non-IBM Program, and that the non-IBM Program can be used according to the non-IBM Program information.

- (2) IBM does not warrant uninterrupted or error-free operation of the non-IBM Program or that IBM will correct all program defects. The Customer is responsible for the results of the use of a non-IBM Program.
- (3) At IBM's discretion, warranty may also be provided by the Licensor himself.
- (4) In the event that IBM is unable to remedy a warranty defect within a reasonable period of time - even after an appropriate grace period - the Customer may in respect of this defect (at his discretion) demand a reduction of price, or rescission of contract. In case of minor defects or deviations, the Customer shall not be entitled to demand a rescission of the contract.
- (5) In addition, the limitation of liability provision will apply.
- (6) However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranty to you.

## **AUSTRIA**

### **7. Payment**

*Replace the above EMEA-wide text in 7b(1) with the following:*

Payment in full is due and payable without deduction upon receipt of invoice. You agree to pay accordingly, including any late payment fees. If the invoice amount is not received on IBM's account within 30 days, upon due date, IBM may charge late payment fees at the rate indicated in the Associated Document.

## **AUSTRIA, DENMARK, ESTONIA, FINLAND, LATVIA, LITHUANIA, NORWAY, SWEDEN:**

### **7. Payment**

*The following is omitted in 7b(2):*

(excluding those based on IBM's net income)

## **BELGIUM, FRANCE, UK, IRELAND, SOUTH AFRICA, NAMIBIA, LESOTHO, SWAZILAND:**

### **7. Payment**

*Delete 7b(2).*

## **EGYPT**

### **8. Mutual Responsibilities**

*Delete 8b.*

## **FRANCE**

### **10. Changes to the Agreement Terms**

*The following is added to this section:*

If you disagree with the change, you may terminate the transaction by notifying IBM, in writing, within fifteen days after the date of IBM's notification to you of the change.

All notices will be sent to the other party by registered letter.

### **11. Agreement Termination**

*The following is added after the fourth paragraph:*

All notices will be sent to the other party by registered letter.

## **NETHERLANDS**

### **7. Payment**

*Add the following paragraphs to 7b(1):*

We may apply your payment to your other outstanding invoices.

Our rights relating to late payment charges shall be in addition to any other right that we may have in the event that you fail to make any payment due to us under this Agreement.

We reserve the right to also base our decision on the conclusion of an agreement with you on your solvency and to require payment in advance of delivery or other security for payment.

Your obligation to pay is unconditional and shall not be subject to any abatement, reduction, set-off, defense, counter-claim interruption, deferment or recoupment.

*Replace 7b(2) with the following:*

You agree to pay all taxes and duties, regardless of their qualification, unless specified otherwise on the invoice.

## **SOUTH AFRICA, NAMIBIA, LESOTHO, SWAZILAND**

### **7. Payment**

*Add the following additional sentence:*

When you make payment by cheque, payment is deemed to have been made only when your cheque has been received by IBM and our relevant account has been credited by IBM's authorised bankers.

## **SWITZERLAND**

### **1. Eligible Products**

*The following is added to 1.2. Non-IBM Programs:*

No liability of whatever sort is accepted or warranty granted by IBM.

### **8. Mutual Responsibilities**

*Delete 8b.*

## **TURKEY**

### **7. Payment**

*The following replaces 7b(1)*

Amounts are due and payable upon receipt of invoice. You agree to pay accordingly, including any late payment charges.

If payment is not made within 30 days from the date of invoice, you may be subject to late payment charges.

*Add the following to the end of this section:*

You are responsible for all banking charges (including, but not limited to, LC charges, commissions, stamps, and extensions) incurred within and outside of Turkey.