



International License Agreement for Evaluation of Programs

评估软件的国际许可协议

國際授權合約 - 程式評估

Mezinárodní licenční smlouva pro zkušební verze programů

Conditions Internationales d'Evaluation de Logiciels IBM

Internationale Nutzungsbedingungen für die Bewertung von Programmen

Accordo Internazionale di Licenza per la Valutazione di Programmi  
(ILAE)

プログラム評価のご使用条件

프로그램 평가에 관한 라이선스 계약(ILAE)

Międzynarodowa Umowa Licencyjna na Próbne Używanie Programów

Acordo Internacional de Licenciamento para Avaliação de Programas

Acuerdo Internacional de Licencias para la Evaluación de Programas

Programların Değerlendirilmesi İçin Uluslararası Lisans Sözleşmesi

# International License Agreement for Evaluation of Programs

## Part 1 - General Terms

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, OR USING THE PROGRAM YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS,

- DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, OR USE THE PROGRAM; AND
- PROMPTLY RETURN THE PROGRAM TO THE PARTY FROM WHOM YOU ACQUIRED IT. IF YOU DOWNLOADED THE PROGRAM, CONTACT THE PARTY FROM WHOM YOU ACQUIRED IT.

"IBM" is International Business Machines Corporation or one of its subsidiaries.

"License Information" ("LI") is a document that provides information specific to a Program. The Program's LI is available in a file in the Program's directory, by the use of a system command, or as a booklet which accompanies the Program. The LI may also be found at <http://www.ibm.com/software/sla/>.

"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.

"You" and "Your" refer either to an individual person or to a single legal entity.

**This Agreement includes Part 1 - General Terms, Part 2 - Country-unique Terms (if any), and License Information and is the complete agreement between You and IBM regarding the use of the Program. It replaces any prior oral or written communications between You and IBM concerning Your use of the Program. The terms of Part 2 and License Information may replace or modify those of Part 1.**

### 1. Entitlement

#### License

The Program is owned by IBM or an IBM supplier, and is copyrighted and licensed, not sold.

IBM grants You a nonexclusive license to use the Program when You lawfully acquire it.

You may 1) use the Program only for internal evaluation, testing, or demonstration purposes, on a trial or "try-and-buy" basis; and 2) make and install a reasonable number of copies, including a backup copy, of the Program to support such use. The terms of this license apply to each copy You make. You will reproduce all copyright notices and all other legends of ownership on each copy, or partial copy, of the Program.

**THE PROGRAM MAY CONTAIN A DISABLING DEVICE THAT WILL PREVENT IT FROM BEING USED AFTER THE EVALUATION PERIOD ENDS. YOU WILL NOT TAMPER WITH THIS DISABLING DEVICE OR THE PROGRAM. YOU SHOULD TAKE PRECAUTIONS TO AVOID ANY LOSS OF DATA THAT MIGHT RESULT WHEN THE PROGRAM CAN NO LONGER BE USED.**

You will 1) maintain a record of all copies of the Program and 2) ensure that anyone who uses the Program (accessed either locally or remotely) does so only for Your authorized use and complies with the terms of this Agreement.

You may not 1) use, copy, modify or distribute the Program except as provided in this Agreement; 2) reverse assemble, reverse compile, or otherwise translate the Program except as specifically permitted by law without the possibility of contractual waiver; or 3) sublicense, rent, or lease the Program.

The evaluation period begins when You agree to the terms of this Agreement and ends 1) as of the duration or date specified in the License Information, or 2) when the Program automatically disables itself. There is no charge for the use of the Program for the duration of the evaluation period. Unless IBM specifies in the License Information that You may retain the Program, You will destroy the Program and all copies made of it within ten days of the end of the evaluation period. If IBM specifies that You may retain the Program, and You elect to do so, the Program will be then subject to a different license agreement, that will be provided to You at that time. In addition, a charge may apply.

IBM may terminate Your license if You fail to comply with the terms of this Agreement. If IBM does so, You must destroy all copies of the Program.

## **2. No Warranty**

**SUBJECT TO ANY STATUTORY WARRANTIES WHICH CANNOT BE EXCLUDED, IBM MAKES NO WARRANTIES OR CONDITIONS EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, REGARDING THE PROGRAM OR TECHNICAL SUPPORT, IF ANY.**

The exclusion also applies to any of IBM's Program developers and suppliers.

Manufacturers, suppliers, or publishers of non-IBM Programs may provide their own warranties.

IBM does not provide technical support, unless IBM specifies otherwise.

## **3. Limitation of Liability**

Circumstances may arise where, because of a default on IBM's part or other liability, You are entitled to recover damages from IBM. In each such instance, regardless of the basis on which You may be entitled to claim damages from IBM, (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM is liable for no more than 1) damages for bodily injury (including death) and damage to real property and tangible personal property and 2) the amount of any other actual direct damages up to the charges for the Program that is the subject of the claim.

This limitation of liability also applies to IBM's Program developers and suppliers. It is the maximum for which they and IBM are collectively responsible.

**UNDER NO CIRCUMSTANCES IS IBM, ITS PROGRAM DEVELOPERS OR SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:**

- 1. LOSS OF, OR DAMAGE TO, DATA;**
- 2. SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR**
- 3. LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**

**SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.**

## **4. General**

1. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

2. In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.
3. You may not export the Program.
4. You agree to allow IBM to store and use Your contact information, including names, phone numbers, and e-mail addresses, anywhere they do business. Such information will be processed and used in connection with our business relationship, and may be provided to contractors, Business Partners, and assignees of IBM for uses consistent with their collective business activities, including communicating with You (for example, for processing orders, for promotions, and for market research).
5. Neither You nor IBM will bring a legal action under this Agreement more than two years after the cause of action arose unless otherwise provided by local law without the possibility of contractual waiver or limitation.
6. Neither You nor IBM is responsible for failure to fulfill any obligations due to causes beyond its control.
7. This Agreement will not create any right or cause of action for any third party, nor will IBM be responsible for any third party claims against You except, as permitted by the Limitation of Liability section above, for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable.

## 5. Governing Law, Jurisdiction, and Arbitration

### Governing Law

Both You and IBM consent to the application of the laws of the country in which You acquired the Program license to govern, interpret, and enforce all of Your and IBM's rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

The United Nations Convention on Contracts for the International Sale of Goods does not apply.

### Jurisdiction

All of our rights, duties, and obligations are subject to the courts of the country in which You acquired the Program license.

## Part 2 - Country-unique Terms

### AMERICAS

**ARGENTINA: Governing Law, Jurisdiction, and Arbitration (Section 5):** *The following exception is added to this section:*

Any litigation arising from this Agreement will be settled exclusively by the Ordinary Commercial Court of the city of Buenos Aires.

**BRAZIL: Governing Law, Jurisdiction, and Arbitration (Section 5):** *The following exception is added to this section:*

Any litigation arising from this Agreement will be settled exclusively by the court of Rio de Janeiro, RJ.

**CANADA: Limitation of Liability (Section 3):** *The following replaces item 1 in the first paragraph of this section:*

1) damages for bodily injury (including death) and physical harm to real property and tangible personal property caused by IBM's negligence; and

**General (Section 4):** *The following replaces the terms in item 7:*

7. This Agreement will not create any right or cause of action for any third party, nor will IBM be responsible for any third party claims against You except as permitted by the Limitation of Liability section above for bodily injury (including death) or physical harm to real or tangible personal property caused by IBM's negligence for which IBM is legally liable.

**Governing Law, Jurisdiction, and Arbitration (Section 5):** *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws in the Province of Ontario

**PERU: Limitation of Liability (Section 3):** *The following is added at the end of this section:*

In accordance with Article 1328 of the Peruvian Civil Code, the limitations and exclusions specified in this section will not apply to damages caused by IBM's willful misconduct ("dolo") or gross negligence ("culpa inexcusable").

**UNITED STATES OF AMERICA: General (Section 4):** *The following is added to this section:*

U.S. Government Users Restricted Rights - Use, duplication or disclosure restricted by the GSA ADP Schedule Contract with the IBM Corporation.

**Governing Law, Jurisdiction, and Arbitration (Section 5):** *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of the State of New York, United States of America

## **ASIA PACIFIC**

**AUSTRALIA: No Warranty (Section 2):** *The following is added:*

Although IBM specifies that there are no warranties, You may have certain rights under the Trade Practices Act 1974 or other legislation and are only limited to the extent permitted by the applicable legislation.

**Limitation of Liability (Section 3):** *The following is added:*

Where IBM is in breach of a condition or warranty implied by the Trade Practices Act 1974, IBM's liability is limited to the repair or replacement of the goods, or the supply of equivalent goods. Where that condition or warranty relates to 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.

**Governing Law, Jurisdiction, and Arbitration (Section 5):** *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of the State or Territory in which You acquired the Program license

**CAMBODIA, LAOS, and VIETNAM: Governing Law, Jurisdiction, and Arbitration (Section 5):** *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of the State of New York, United States of America

*The following is added to this section:*

### **Arbitration**

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Singapore in accordance with the Arbitration Rules of

Singapore International Arbitration Center ("SIAC Rules") then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the SIAC. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

**HONG KONG S.A.R. and MACAU S.A.R. of China: Governing Law, Jurisdiction, and Arbitration (Section 5):** *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of Hong Kong Special Administrative Region of China

**INDIA: Limitation of Liability (Section 3):** *The following replaces the terms of items 1 and 2 of the first paragraph:*

1) liability for bodily injury (including death) or damage to real property and tangible personal property will be limited to that caused by IBM's negligence; and 2) as to any other actual damage arising in any situation involving nonperformance by IBM pursuant to, or in any way related to the subject of this Agreement, IBM's liability will be limited to the charge paid by You for the individual Program that is the subject of the claim.

**General (Section 4):** *The following replaces the terms of item 5:*

If no suit or other legal action is brought, within three years after the cause of action arose, in respect of any claim that either party may have against the other, the rights of the concerned party in respect of such claim will be forfeited and the other party will stand released from its obligations in respect of such claim.

**Governing Law, Jurisdiction, and Arbitration (Section 5):** *The following is added to this section:*

#### **Arbitration**

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Bangalore, India in accordance with the laws of India then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Bar Council of India. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

**JAPAN: General (Section 4):** *The following is inserted after item 5:*

Any doubts concerning this Agreement will be initially resolved between us in good faith and in accordance with the principle of mutual trust.

**MALAYSIA: Limitation of Liability (Section 3):** *The word "SPECIAL" in item 2 of the third paragraph is deleted:*

**NEW ZEALAND: No Warranty (Section 2):** *The following is added:*

Although IBM specifies that there are no warranties, You may have certain rights under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited. The Consumer Guarantees Act 1993 will not apply in respect of any goods which IBM provides, if You require the goods for the purposes of a business as defined in that Act.

**Limitation of Liability (Section 3):** *The following is added:*

Where Programs are not acquired for the purposes of a business as defined in the Consumer Guarantees Act 1993, the limitations in this Section are subject to the limitations in that Act.

**PEOPLE'S REPUBLIC OF CHINA: Governing Law, Jurisdiction, and Arbitration (Section 5):** *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of the State of New York, United States of America (except when local law requires otherwise)

**PHILIPPINES: Limitation of Liability (Section 3):** *The following replaces the terms of item 2 of the third paragraph:*

2. special (including nominal and exemplary damages), moral, incidental, or indirect damages or for any economic consequential damages; or

**Governing Law, Jurisdiction, and Arbitration (Section 5):** *The following is added to this section:*

#### **Arbitration**

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Metro Manila, Philippines in accordance with the laws of the Philippines then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Philippine Dispute Resolution Center, Inc. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

**SINGAPORE: Limitation of Liability (Section 3):** *The words "SPECIAL" and "ECONOMIC" are deleted from item 2 of the third paragraph.*

**General (Section 4):** *The following replaces the terms of item 7:*

Subject to the rights provided to IBM's suppliers and Program developers as provided in Section 4 above (Limitation of Liability), a person who is not a party to this Agreement shall have no right under the Contracts (Right of Third Parties) Act to enforce any of its terms.

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

**No Warranty (Section 2):** *In the European Union, the following is added at the beginning of this section:*

In the European Union, consumers have legal rights under applicable national legislation governing the sale of consumer goods. Such rights are not affected by the provisions of this Section 3.

**Limitation of Liability (Section 3):** *In Austria, Denmark, Finland, Greece, Italy, Netherlands, Norway, Portugal, Spain, Sweden and Switzerland, the following replaces the terms of this section in its entirety:*

Except as otherwise provided by mandatory law:

1. IBM's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this agreement or due to any other cause related to this agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if IBM is at fault) or of such cause, for a maximum amount equal to the charges You paid for the Program.

The above limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which IBM is legally liable.

2. **UNDER NO CIRCUMSTANCES IS IBM, OR ANY OF ITS PROGRAM DEVELOPERS, LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**
3. The limitation and exclusion of liability herein agreed applies not only to the activities performed by IBM but also to the activities performed by its suppliers and Program developers, and represents the maximum amount for which IBM as well as its suppliers and Program developers, are collectively responsible.

**Limitation of Liability (Section 3):** *In France and Belgium, the following replaces the terms of this section in its entirety:*

Except as otherwise provided by mandatory law:

1. IBM's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if IBM is at fault), for a maximum amount equal to the charges You paid for the Program that has caused the damages.

The above limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which IBM is legally liable.

2. **UNDER NO CIRCUMSTANCES IS IBM, OR ANY OF ITS PROGRAM DEVELOPERS, LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**



3. The limitation and exclusion of liability herein agreed applies not only to the activities performed by IBM but also to the activities performed by its suppliers and Program developers, and represents the maximum amount for which IBM as well as its suppliers and Program developers, are collectively responsible

## Governing Law, Jurisdiction, and Arbitration (Section 5)

### Governing Law

The phrase "the laws of the country in which You acquired the Program license" is replaced by:

1) "the laws of Austria" in **Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldavia, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia**; 2) "the laws of France" in **Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis & Futuna**; 3) "the laws of Finland" in **Estonia, Latvia, and Lithuania**; 4) "the laws of England" in **Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe**; and 5) "the laws of South Africa" in **South Africa, Namibia, Lesotho and Swaziland**.

### Jurisdiction

*The following exceptions are added to this section:*

1) **In Austria** the choice of jurisdiction for all disputes arising out of this Agreement and relating thereto, including its existence, will be the competent court of law in Vienna, Austria (Inner-City); 2) **in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, West Bank/Gaza, Yemen, Zambia, and Zimbabwe** all disputes arising out of this Agreement or related to its execution, including summary proceedings, will be submitted to the exclusive jurisdiction of the English courts; 3) **in Belgium and Luxembourg**, for all disputes arising out of this Agreement or related to its interpretation or its execution, only the law and the courts of the capital of the country in which Your registered office and/or commercial office is located are competent; 4) **in France, Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis & Futuna** all disputes arising out of this Agreement or related to its violation or execution, including summary proceedings, will be settled exclusively by the Commercial Court of Paris; 5) **in Russia**, all disputes arising out of or in relation to the interpretation, the violation, the termination, the nullity of the execution of this Agreement shall be settled by Arbitration Court of Moscow; 6) **in South Africa, Namibia, Lesotho and Swaziland**, both of us agree to submit all disputes relating to this Agreement to the jurisdiction of the High Court in Johannesburg; 7) **in Turkey** all disputes arising out of or in connection with this Agreement shall be resolved by the Istanbul Central (Sultanahmet) Courts and Execution Directorates of Istanbul, the Republic of Turkey; 8) in each of the following specified countries, any legal claim arising out of this Agreement will be brought before, and settled exclusively by, the competent court of a) Athens for **Greece**, b) Tel Aviv-Jaffa for **Israel**, c) Milan for **Italy**, d) Lisbon for **Portugal**, and e) Madrid for **Spain**; and 9) **in the United Kingdom**, both of us agree to submit all disputes relating to this Agreement to the jurisdiction of the English courts.

## Arbitration

**In Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldavia, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia** all disputes arising out of this Agreement or related to its violation, termination or nullity will be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Center of the Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with these rules. The arbitration will be held in Vienna, Austria, and the official language of the proceedings will be English. The decision of the arbitrators will be final and binding upon both parties. Therefore, pursuant to paragraph 598 (2) of the Austrian Code of Civil Procedure, the parties expressly waive the application of paragraph 595 (1) figure 7 of the Code. IBM may, however, institute proceedings in a competent court in the country of installation.

**In Estonia, Latvia and Lithuania** all disputes arising in connection with this Agreement will be finally settled in arbitration that will be held in Helsinki, Finland in accordance with the arbitration laws of Finland then in effect. Each party will appoint one arbitrator. The arbitrators will then jointly appoint the chairman. If arbitrators cannot agree on the chairman, then the Central Chamber of Commerce in Helsinki will appoint the chairman.

**AUSTRIA: General (Section 4):** *The following is added to item 4:*

For purposes of this clause, contact information will also include information about You as a legal entity, for example revenue data and other transactional information.

**GERMANY: Limitation of Liability (Section 3):** *The following paragraph is added to this Section:*

The limitations and exclusions specified in this Section will not apply to damages caused by IBM intentionally or by gross negligence.

**General (Section 4):** *The following replaces the terms of item 5:*

Any claims resulting from this Agreement are subject to a statute of limitation of three years.

**HUNGARY: Limitation of Liability (Section 3):** *The following is added at the end of this section:*

The limitation and exclusion specified herein shall not apply to liability for a breach of contract damaging life, physical well-being, or health that has been caused intentionally, by gross negligence, or by a criminal act.

The parties accept the limitations of liability as valid provisions and state that the Section 314.(2) of the Hungarian Civil Code applies as the acquisition price as well as other advantages arising out of the present Agreement balance this limitation of liability.

**IRELAND: No Warranty (Section 2):** *The following is added to this section:*

Except as expressly provided in these terms and conditions, or section 12 of the Sale of Goods Act 1893 (as amended by the Sale of Goods and Supply of Services Act 1980 ("the 1980 Act")), all conditions and warranties (express or implied, statutory or otherwise) are hereby excluded including, without limitation, any warranties implied by the Sale of Goods Act 1893 as amended by the 1980 Act (including, for the avoidance of doubt, section 39 of the 1980 Act).

**Limitation of Liability (Section 3):** *The following replaces the terms of this section in its entirety:*

For the purposes of this section, a "Default" means any act, statement, omission, or negligence on the part of IBM in connection with, or in relation to, the subject matter of an Agreement in respect of which IBM is legally liable to You whether in contract or tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default occurring on the date of occurrence of the last such Default.

Circumstances may arise where, because of a Default, You are entitled to recover damages from IBM. This section sets out the extent of IBM's liability and Your sole remedy.

1. IBM will accept unlimited liability for (a) death or personal injury caused by the negligence of IBM, and (b) subject always to the **Items for Which IBM is Not Liable** below, for physical damage to Your tangible property resulting from the negligence of IBM.
2. Except as provided in item 1 above, IBM's entire liability for actual damages for any one Default will not in any event exceed the greater of 1) €125,000, or 2) 125% of the amount You paid for the Program directly relating to the Default. These limits also apply to any of IBM's suppliers and Program developers. They state the maximum for which IBM and such suppliers and Program developers are collectively responsible.

#### **Items for Which IBM is Not Liable**

Save with respect to any liability referred to in item 1 above, under no circumstances is IBM or any of its suppliers or Program developers liable for any of the following, even if IBM or they were informed of the possibility of such losses:

1. loss of, or damage to, data;
2. special, indirect, or consequential loss; or
3. loss of profits, business, revenue, goodwill, or anticipated savings.

**ITALY: General (Section 4):** *The following is added to this section:*

IBM and Customer (hereinafter, individually, "Party") shall comply with all the obligations of the applicable provisions of law and/or regulation on personal data protection. Each of the Parties will indemnify and keep the other Party harmless from any damage, claim, cost or expense incurred by the latter, directly and or indirectly, as a consequence of an infringement of the other Party of the mentioned provisions of law and/or regulations.

**SLOVAKIA: Limitation of Liability (Section 3):** *The following is added to the end of the last paragraph:*

The limitations apply to the extent they are not prohibited under §§ 373-386 of the Slovak Commercial Code.

**General (Section 4):** *The terms of item 5 are replaced with the following:*

**THE PARTIES AGREE THAT, AS DEFINED BY APPLICABLE LOCAL LAW, ANY LEGAL OR OTHER ACTION RELATED TO A BREACH OF THIS AGREEMENT MUST BE COMMENCED NO LATER THAN FOUR YEARS FROM THE DATE ON WHICH THE CAUSE OF ACTION AROSE.**

**SWITZERLAND: General (Section 4):** *The following is added to item 4:*

For purposes of this clause, contact information will also include information about You as a legal entity, for example revenue data and other transactional information.

**UNITED KINGDOM: No Warranty (Section 2):** *The following replaces the first sentence in the first paragraph of this section:*

**SUBJECT TO ANY STATUTORY WARRANTIES WHICH CANNOT BE EXCLUDED, IBM MAKES NO WARRANTY OR CONDITION EITHER EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) THE IMPLIED WARRANTIES OF SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, REGARDING THE PROGRAM.**

**Limitation of Liability (Section 3):** *The following replaces the terms of this section in its entirety:*

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