



Software Advantage for Workstations International Discount Agreement

Customer name and address:

IBM Office address:

Enterprise number:

Check the appropriate box:

Agreement number:

Agreement Revised Agreement

Associated exhibit type:

Effective Date:

Under this IBM Software Advantage for Workstations - International Discount Agreement (called the "Agreement"), IBM provides discounts for Eligible Programs and Upgrade Protection based on your initial and subsequent acquisitions of those products. This Agreement is effective on the date it is agreed-to by IBM ("Effective Date"). This Agreement remains in effect for a period ending 24 months from 1) the Effective Date, if the Effective Date is on the first day of the month, or 2) the first day of the month following the Effective Date, if the Effective Date is other than the first day of the month.

Supplement Number	Suggested Retail Price (SRP)	Discount Percent
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(attach additional pages if required)

Total	\$	%
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Programs acquired under this offering are governed by the terms of the IBM International Program License Agreement (IPLA) in effect between Members and the local IBM country organization. "Members" are you and the organizations you own by more than 50%, and such other companies or entities as IBM determines. You agree to provide IBM with a list of your Members and keep IBM informed of changes as they occur.

The terms of this Agreement apply 1) in countries where IBM markets its eligible Programs and Upgrade Protection directly and 2) to eligible Programs and Upgrade Protection available in the country of procurement. The discounts provided are based on your representation that procurements under this offering are for use by Members and not intended for resale, rent, lease or transfer to third parties.

You may choose to fulfill part (or all) of your acquisitions through a reseller (as identified in the referenced Supplement). If you do so, prices and payment terms will be under the reseller's agreement with you.

This Agreement and its applicable Transaction Documents (program listings, supplements, exhibits, invoices and proofs of entitlement) are the complete agreement regarding this transaction and replace any prior oral or written communications between you and IBM. You accept the additional terms in a Transaction Document by using a Program or making any payment for it. If there is a conflict among terms, those of a Transaction Document will prevail.

By signing below, each of us agrees to the terms of this Agreement. Once signed, unless prohibited by local law or specified otherwise, any reproduction of this Agreement or a Transaction Document made by reliable means (for example, photocopy or facsimile) is considered an original.

Agreed to:

Customer name:

Agreed to:

IBM Lead Company

By _____
Authorized signature

By _____
Authorized signature

Name (type or print):

Name (type or print):

Date:

Date:

After signing, please return a copy of this Agreement to the "IBM Office address" shown above.

1. **Eligible Programs:** The Programs that qualify for these discount terms are listed in IBM's generally available Eligible Product List. Additions to the Eligible Product List are eligible as they are announced. With your acquisition of an Eligible Program, you acquire the right to copy the Program's associated user documentation. If IBM withdraws any eligible Program from marketing, you agree that upon the effective date of the withdrawal, you will not increase your level of use, (e.g., by making more copies of that Program or increasing the number of users or resources) without IBM's prior written consent.

2. **Upgrade Protection:** You may obtain upgrade-security protection (called "Upgrade Protection") for eligible Programs you acquire under this offering and for those already installed. An upgrade consists of either a new version, new release, or other enhancement, as IBM determines. IBM will assign a part number to each upgrade path, e.g., a version-to-version upgrade. After your acquisition of Upgrade Protection for an eligible Program, you are entitled, at no charge, to all upgrades subsequently announced for that Program during the Agreement period. IBM will provide you with a single copy, including media and documentation, of each eligible upgrade. IBM does not guarantee that upgrades will be announced.

When you acquire Upgrade Protection for a Program that has an eligible cross-platform counterpart Program (i.e., the Program provides the same function but runs on a different operating system) and you subsequently replace such Program with its cross-platform counterpart Program, you may exchange your Upgrade Protection for the Program for that of the cross-platform counterpart Program, as we specify in the Exhibit.

In addition, when you are licensed for the most current version of an Eligible Program and you have Upgrade Protection for that Program, the licenses for that Program may be exchanged for an equal number of licenses for the counterpart Program, as well as exchanging Upgrade Protection for that of the counterpart Program.

3. **Fulfillment Source:** You may fulfill your acquisitions either directly from IBM or from a reseller. You specify your fulfillment source on a Supplement. A separate Supplement must be prepared for each fulfillment source. You may designate up to two fulfillment sources per country, unless you and IBM agree otherwise. Once designated, you may change these sources only upon agreement from IBM.

4. **Discounts:** At the beginning of the Agreement period, using a separate Supplement for each Fulfillment Source, you identify your initial acquisitions of Eligible Programs and Upgrade Protection. Based on the aggregate Suggested Retail Price (SRP) value of the Eligible Programs and Upgrade Protection, plus additional credit under the terms found in the sections on Preloaded Programs and Succeeding Agreements, as applicable, your discount percent will be as indicated on the Exhibit Discount Schedule. You may add Eligible Programs or Upgrade Protection during the Agreement period. If these additions place you at a higher discount level, the Agreement may be revised and the higher discount level will apply to subsequent acquisitions. The higher discount level will not apply to Programs or Upgrade Protection acquired prior to the Effective Date of the revised Agreement.

5. **Preloaded Programs:** IBM will give you credit equal to the equivalent single-unit SRP for eligible operating-system Programs preloaded on workstations in determining your Software Advantage discount. These preloaded Programs are specified in the Exhibit. The credit will be counted only once for each eligible preload. The equivalent SRP for preloaded Programs you acquire during, and three months prior to, the Agreement period will be included. The value of a preloaded Program is 100% of its equivalent single-unit right-to-copy price in effect at the start of this Agreement. You agree to provide documentation (such as an invoice) to substantiate your acquisitions.

6. **Reporting Requirements:** Initial Agreement acquisitions and those subsequently added as part of a revision to the Agreement, are included on a Supplement. You will report to IBM, in a format IBM specifies, additional acquisitions that are not part of a revision to the Agreement. You must provide this information to IBM by the tenth day of the following month. If your fulfillment is through a reseller, the reseller will provide this report to IBM on your behalf. Based on the report, IBM will provide a proof of entitlement which will confirm to you the Programs and Upgrade Protection for which you are authorized. This proof of entitlement and your matching invoice or receipt are your authorization for continued use of the Programs and for Upgrade Protection. If this confirmation does not equal your invoice or receipt, you agree to assist us in resolving any differences. During the agreement period and for two years thereafter, IBM has the right to audit your compliance with these terms on your premises during your normal business hours. IBM may use an independent auditor for this.

7. **Prices:** For all acquisitions included on a Supplement, the price for an Eligible Program or for Upgrade Protection is the single-unit price in effect on the Effective Date of the Agreement or revised Agreement, as applicable. The price for additional acquisitions of Programs and Upgrade Protection that are reported to IBM, will be based on the lowest price in effect during the month of acquisition.

Upgrade Protection added under an existing Agreement, for a Program already installed or acquired, will be charged at full price. The charge for Upgrade Protection added concurrently for a newly acquired Program, will be prorated over the remaining full quarters following the month of acquisition.

8. **Payment and Taxes:** IBM invoices Eligible Programs and Upgrade Protection, acquired at the beginning of an Agreement or revised Agreement, based on your Supplement. Otherwise, IBM invoices Eligible Programs and Upgrade Protection based on your monthly report.

If IBM is your fulfillment source, you agree to pay as IBM specifies in its invoice. If any authority imposes a duty, tax, levy or fee (excluding those based on IBM's net income) on the Programs or Upgrade Protection supplied by IBM under this Agreement, you agree to pay that amount as IBM specifies or supply appropriate exemption documentation.

9. **Succeeding Agreements:** At the end of an Agreement period, you may enter into a new Agreement. When the Effective Date of the new Agreement precedes or immediately follows the ending date of the prior Agreement, without a lapse in coverage, you will be eligible to apply a portion of your prior Agreement spending as a credit in establishing your new Agreement discount level. The credit will be included on a Supplement and be added to your initial acquisitions to establish your earned discount percent as specified on the Exhibit.

10. **Limitation of Liability:** Circumstances may arise where, because of a default on our part or other liability, you are entitled to recover damages from us. 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 greater of a) U.S. \$100,000 (or equivalent in local currency) or b) the charges for the Program or Upgrade Protection which is the subject of the claim.

IBM IS NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS OR SAVINGS), EVEN IF IBM, OR ITS AUTHORIZED SUPPLIER, HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. 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. IBM IS NOT BE LIABLE FOR 1) LOSS OF, OR DAMAGE TO, YOUR RECORDS OR DATA OR 2) ANY DAMAGES CLAIMED BY YOU BASED ON ANY THIRD PARTY CLAIM.

This limitation of liability also applies to any developer of a Program supplied to IBM. It is the maximum for which we are collectively responsible.

11. General Terms: Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

Both you and IBM agree that, under this Agreement, all information exchanged is nonconfidential. If either of us requires the exchange of confidential information, it will be made under a signed confidentiality agreement.

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.

Neither you nor IBM is responsible for failure to fulfill any obligations due to causes beyond its control.

You may not assign, or otherwise transfer, this Agreement or your rights under it, or delegate your obligations, without prior written consent. Any attempt to do so is void.

Each of us agrees to allow the other reasonable opportunity to comply before it claims that the other has not met its obligations.

IBM may change the terms of this Agreement by giving you three months' written notice. IBM may change an Exhibit on written notice. Such change applies as of the date IBM specifies in the notice. Otherwise, for a change to be valid, both you and IBM must sign it. Additional or different terms in any order or written communication from you are void.

You may terminate this Agreement, without cause, on one month's written notice. Either you or IBM 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. Upon termination, you agree to report to us and immediately pay us all amounts due for acquisitions not yet reported. 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.

The laws of the country in which this transaction is performed govern this Agreement. The United Nations Convention on Contracts for the International Sale of Goods does not apply.

12. Country Unique Terms: *The terms of this section may replace or modify those of any previous section.*

AUSTRALIA: Limitation of Liability (Section 10): The following paragraph is added to this Section:

Where IBM is in breach of a condition or warranty implied by the Trade Practices Act 1974, IBM's liability is limited to: (a) where IBM supplied services, the cost of having the services supplied again; or (b) where IBM supplied goods, 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.

General Terms (Section 11): The following replaces the first sentence in the last paragraph:

The laws of the State or Territory in which the transaction is performed govern this Agreement.

CANADA: General Terms (Section 11): The following replaces the first sentence in the last paragraph:

The laws in the Province of Ontario govern this Agreement.

CENTRAL EUROPE & RUSSIA: General Terms (Section 11): The following paragraphs replaces the first sentence in the last paragraph:

This Agreement is governed by the laws of Austria. In case of conflict with any international conventions, Austrian substantive law will prevail. All disputes arising out of this Agreement or related to its violation, termination, nullity will be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Centre 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. 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.

We may, however, institute proceedings in a competent court in the country of installation.

EGYPT: Limitation of Liability (Section 10): The following replaces item 2:

2. as to any other actual direct damages, our liability will be limited to the total amount you paid for the Product that is the subject of the claim.

ESTONIA, LATVIA, LITHUANIA: General Terms (Section 11): The following paragraph replaces the first sentence in the last paragraph:

Finnish law will apply. All disputes arising in connection with the Agreement will be finally settled in arbitration. Each party will appoint one arbitrator and they will jointly appoint the chairman. If they cannot agree on the chairman, then the chairman will be appointed by the Central Chamber of Commerce in Helsinki. In the arbitration the Finnish law on arbitration will be adhered to. The arbitrators will come together in Helsinki.

FRANCE: Limitation of Liability (Section 10): The following replaces the second sentence in the first paragraph:

In such instances, regardless of the basis on which you are entitled to claim damages from us, we are 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 greater of a) U.S. \$100,000 (or equivalent in local currency) or b) the charges for the Program or Upgrade Protection which is the subject of the claim.

GERMANY: Limitation of Liability (Section 10): In item 2, replace "U.S. \$100,000" with "DM 1,000,000."

The following sentence is added to the end of the first paragraph of item 2:

Our liability under this item is limited to the violation of essential contractual terms in cases of ordinary negligence.

The following paragraph is added to this Section:

The limitations and exclusions specified in the Agreement will not apply to damages caused by IBM with fraud or gross negligence, and for express warranty.

INDIA: Limitation of Liability (Section 10): The following replaces items 1 and 2:

1. liability for bodily injury (including death) or damage to real property and tangible personal property will be limited to that caused by our negligence; and

2. as to any other actual damage arising in any situation involving nonperformance by us pursuant to, or in any way related to the subject of this Agreement, our liability will be limited to the charge paid by you for the individual Product that is the subject of the claim.

IRELAND: Limitation of Liability (Section 10): The following replaces items 1 and 2:

1. death or personal injury or physical damage to your real property solely caused by our negligence; and

2. the amount of any other actual direct damages, up to the greater of Irish Pounds 75,000 in respect of Products or 125 percent of the charges for the Product that is the subject of the claim or which otherwise gives rise to the claim.

The following paragraph is added at the end of this Section:

Our entire liability and your sole remedy, whether in contract or in tort, in respect of any default will be limited to damages.

NEW ZEALAND: Limitation of Liability (Section 10): The following paragraph should be added to this Section:

Where Products 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: Payment and Taxes (Section 8): The following paragraph is added to this Section:

All banking charges incurred in the People's Republic of China will be borne by you and those incurred outside the People's Republic of China will be borne by us.

General Terms (Section 11): The following replaces the first sentence in the last paragraph:

The laws of the State of New York govern this Agreement. Any dispute concerning this Agreement may be settled by arbitration. The arbitration will take place in Stockholm, Sweden, under the auspices of the International Arbitration Center in English in accordance with the rules then in effect under the United Nations Commission on International Trade Law (UNCITRAL). The arbitration award will be final and binding on both parties and both parties will act accordingly. The arbitration fee will be borne by the losing party.

UNITED KINGDOM: Limitation of Liability (Section 10): The following replaces the second paragraph of this Section:

This limitation will not apply to claims for death or personal injury or physical damage to your tangible property caused by the negligence of IBM or to any breach of IBM's obligations implied by Section 12 of the Sales of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

UNITED STATES OF AMERICA: General Terms (Section 11): The following replaces the first sentence in the last paragraph:

This Agreement is governed by the laws of the State of New York.