

International Passport Advantage Agreement

Attachment for Fixed Term Use

The terms of this Attachment for Fixed Term Use (“Attachment”) and the governing Terms of Use for each Fixed Term Use offering are in addition to those of the IBM International Passport Advantage Agreement or IBM International Passport Advantage Express Agreement as applicable (“Agreement”), and govern the transaction when IBM provides access to and use of software functionality to you as a Service. For orders subject to the IBM International Passport Advantage Agreement, the Customer Originating Company and each of the participating Enterprise Companies accepts the terms of this Attachment without modification by clicking on the “I agree” button. For users ordering under the IBM International Passport Advantage Express Agreement, once you have agreed to this Attachment, it is valid for all orders you enter under the terms of the Attachment unless terminated by either party.

1. Definitions

Content – information, software, and data that you provide, including, without limitation, any hypertext markup language files, scripts, programs, recordings, sound, music, graphics, images, applets or servlets that you or your Users create, install, upload or transfer in connection with your use of the Service.

Software – Programs, enabling code, client software and plug-ins, and all associated documentation provided to you by IBM to facilitate access to and use of the Service. Your use of underlying Software is solely for the purpose of accessing and using the Service. If Software is to be licensed, it will be under a separate agreement, e.g. the International Program License Agreement.

Service – access to Software and infrastructure over the Internet, and technical support as described in Section 3, that is governed by this Attachment. Service includes your right to (i) access Software (in object code and executable code format only), and (ii) use such Software solely for the purpose of accessing and using the Service. The Service is governed by the Terms of Use.

Term – period specified in the PoE as the “Software Subscription and Support Coverage Dates”. The Term begins on the date that your order is accepted by IBM; on the calendar day following the expiration of a prior Term; or on the calendar day following the Anniversary Date, as applicable.

Terms of Use – sets forth the terms under which IBM will provide you with access to and use of the Service, i.e. the “Fixed Term Use” offering. The Terms of Use combine with the Agreement and Attachment to govern your use of the Service (the “Fixed Term Use” offering) and can be found by following the “Terms of Use” link at the bottom of the web Site associated with the Service.

Users – entities or individuals that access or use the Service.

2. Ownership

IBM and its suppliers own the Service and the underlying Software. You agree that title to, ownership of and all rights in and to patents, copyrights, trademarks, and all other intellectual property rights in the Service, and any copy or part of the Service will remain with IBM and its suppliers. IBM may subcontract the Service, or any part thereof, including technical support, to subcontractors selected by IBM.

3. Technical Support

a. IBM may provide the following technical support during the Term:

- (1) assistance for your routine, short duration usage (how-to) questions. Technical support is available only for the currently supported versions of the Service, client operating systems, Internet browsers, and Software.
- (2) assistance for code, defect, Service delivery and performance related questions. Technical support is available during the normal business hours (published prime shift hours) of the IBM Software as a Service (“SaaS”) support center. Consult the Terms of Use for details applicable to the Service.

4. Automatic Renewal of Fixed Term Use

The terms of the first two paragraphs of Automatic Annual Renewal of Software Subscription and Support and Selected Support (Software Subscription and Support may also be referred to as Software Maintenance) of the Agreement, including any applicable Country-unique Terms, apply to this section

except that for purposes of this section the words “software subscription and support” or “Selected Support” are replaced by the words “Fixed Term Use”.

YOU MAY TERMINATE THE SERVICE 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 FIXED TERM USE. IN SUCH EVENT, YOU MAY OBTAIN A PRORATED REFUND.

4.1 Anniversary Coordination

For Passport Advantage customers entering into this agreement for Terms of six months or more, initial or subsequent Terms entered into on a date other than the Anniversary may be renewed at the next Anniversary for an additional period, at a pro-rated renewal charge, in order to extend the Term to the following Anniversary. For customers acquiring this offering under the terms of Passport Advantage Express, this section does not apply.

5. Content

You are solely responsible for:

- a. all Content including, without limitation, its selection, creation, design, licensing, installation, accuracy, maintenance, testing, backup and support, including any rights, licenses and/or consents necessary for IBM to perform its obligations under this Attachment;
- b. all copyright, patent and trademark clearances in all applicable jurisdictions and usage agreements for any and all Content; and
- c. the selection of controls on the access to and use of Content.

6. Service Subscription Changes

You may increase but may not decrease your level of Service subscription during the Term. You may decrease your level of Service subscription by ordering a lower level for a subsequent Term.

7. Indemnification by You

- a. You agree to defend, indemnify, and hold harmless IBM and its Affiliates and their officers, directors, employees, consultants, agents, and suppliers from and against any and all third party claims, liabilities, damages, and/or costs (including, but not limited to, fees, costs and other expenses of attorneys and expert witnesses) arising out of or related to:
 - (1) your use of the Service or underlying Software;
 - (2) any violation of this Attachment or applicable law by you; or
 - (3) actual or alleged infringement by you, or any person accessing the Service using your password or access key, of any intellectual property or privacy or other right of any third party; or
 - (4) any unauthorized use of the Service or underlying Software.
- b. For indemnification under this Section 7, IBM will:
 - (1) promptly notify you in writing of the claim; and
 - (2) allow you to control, and will cooperate with you in, the defense and any related settlement negotiations.

8. Representations and Warranties

- a. You represent and warrant that your use of the Service and all Content will comply with the Acceptable Use Policy.
- b. IBM represents and warrants that it provides the Service using reasonable care and skill. IBM does not warrant uninterrupted or error-free operation of any Service or that IBM will correct all defects.

THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES OF TITLE AND NON-INFRINGEMENT. THESE WARRANTIES GIVE YOU SPECIFIC LEGAL RIGHTS. YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM

STATE TO STATE OR JURISDICTION TO JURISDICTION. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THAT PERIOD. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

9. Data Protection

You authorize International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors and IBM Business Partners) to store and use your business contact information, including names, phone numbers, and e-mail addresses, wherever they do business, in connection with IBM Programs and Services or in furtherance of IBM's business relationship with customers.

10. Termination

Either of us may terminate this Attachment 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. Notwithstanding anything to the contrary in this Attachment, if IBM terminates your access to the Service due to your breach of any of the applicable terms of the Agreement or this Attachment, IBM is not obligated to issue a refund or credit for any unused portion of the Service. IBM may withdraw the Service in its entirety on 12 months' written notice to all then current Users by letter or e-mail. Any terms of this Agreement which by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to both of our respective successors and assignees.

The complete agreement between the parties consists of the Agreement, this Attachment for Fixed Term Use and the applicable Terms of Use. If there is a conflict among the terms of this Attachment for Fixed Term Use and the Terms of Use, the Terms of Use prevail. In entering into this agreement, neither party is relying on any representation not specified in this agreement, including without limitation any representations concerning: i) performance or function of the Service, other than as expressly warranted in Section 8, ii) the experiences or recommendations of other parties; or iii) results or savings you may achieve.