International Passport Advantage Express Agreement

IBM

This IBM International Passport Advantage Express Agreement ("Agreement"), including any applicable Attachments, Terms of Use, and Transaction Documents governs this transaction in which Customer acquires certain Eligible Products from IBM or a reseller. It is the complete agreement regarding this transaction by which Customer acquires Eligible Product(s), and replaces any prior oral or written agreements, communications, representations, statements, understandings, warranties, promises, covenants, commitments, or undertakings between Customer and IBM concerning Passport Advantage Express.

If there is a conflict among the terms of this Agreement, Attachments, Terms of Use, and Transaction Documents, those of an Attachment prevail over those of this Agreement, those of Terms of Use prevail over those of an Attachment and this Agreement, and the terms of a Transaction Document prevail over those of this Agreement, the Terms of Use, and an Attachment.

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

1. General

1.1 Agreement Structure

This Agreement is organized in six Parts:

Part 1 – General includes terms regarding Agreement Structure, Attachments and Transaction Documents, Definitions, Acceptance of Terms, Delivery, Payment, Taxes, Eligible Products, IBM Business Partners and Resellers, Intellectual Property Protection, Limitation of Liability, General Principles of Our Relationship, Agreement Termination, Compliance Verification, and Geographic Scope and Governing Law.

Part 2 – Warranties includes terms regarding Warranty for IBM Programs, Warranty for IBM Software Subscription and Support and Selected Support, Warranty for IBM Machine Components of IBM Appliances, Warranty for IBM SaaS, and Extent of Warranty.

Part 3 – Programs and Subscription and Support includes terms regarding IBM Programs, Programs in a Virtualization Environment, Fixed Term Licensing, CEO Product Categories, and Software Subscription and Support and Selected Support.

Part 4 – Appliances includes terms regarding Virtual Appliance, Appliances Comprising Both Program and Machine Components, Program Components and Machine Components.

Part 5 – IBM SaaS includes terms regarding Ownership, Customer's Right to Use, Subscription to IBM SaaS, IBM SaaS Technical Support, Content, and Termination of IBM SaaS.

Part 6 – Country-unique Terms.

1.2 Attachments and Transaction Documents

Additional terms for Eligible Products are in documents called "Attachments" and "Transaction Documents" provided by IBM. Depending upon their country of use, Attachments may have different names. In general, Attachments and Transaction Documents (such as a supplement, schedule, invoice, exhibit, or addendum) contain specific details and terms related to this transaction. Customer may receive one or more Transaction Documents for a single transaction. Attachments and Transaction Documents are part of this Agreement only for those transactions to which they apply. Each transaction is separate and independent from other transactions.

1.3 Definitions

Anniversary – 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.

Appliance – an Eligible Product, designed for a particular function and not for general purpose computing tasks, that may be a Program (in the case of a "Virtual Appliance") or composed of a Program Component, a Machine Component, and any Machine Code Component that IBM may provide to Customer.

Audit Reports – a set of reports available in the IBM License Metric Tool ("ILMT"), or by another method acceptable to IBM as specified at

http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html . These reports provide the Processor Value Unit ("PVU") license requirements based on the Virtualization Capacity available to the Eligible Sub-Capacity Product.

CEO User – an individual to whom a machine has been assigned that is capable of copying, using, or extending the use of Programs in a CEO Product Category.

Content – information, software, and data, including, without limitation, any Personal Data, hypertext markup language files, scripts, programs, recordings, sound, music, graphics, images, applets, or servlets that are created, provided, uploaded, or transferred by Customer and any user authorized by Customer.

Customer – the customer Enterprise company that is ordering Eligible Products.

Customer-set-up Machine Component – an IBM Machine Component that Customer is responsible for installing according to instructions provided with it.

Date of Installation –

a. for a Customer-set-up Machine Component, the date on Customer's purchase invoice or sales receipt for the Appliance is the Date of Installation, unless IBM or Customer's IBM reseller informs Customer otherwise.

b. for an IBM Machine Component that IBM is responsible for installing, the business day after the day IBM installs it or, if Customer defers installation, makes it available to Customer for subsequent installation by IBM;

Effective Date – the date IBM accepts Customer's order for Eligible Products, either directly from Customer or from Customer's reseller.

Eligible Operating System Technology – an operating system for which Sub-Capacity Licensing is available and specified at http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html .

Eligible Processor Technology – a processor technology for which Sub-Capacity Licensing is available and specified at http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html .

Eligible Products – commercially available IBM Programs, Non-IBM Programs, Selected Support, authorizations to increase Customer's use of a Program, IBM Trade-ups, Competitive Trade-ups, Annual IBM Software Subscription and Support Renewals, IBM Software Subscription and Support Reinstatement, Annual Third Party Software Subscription and Support Renewals, Third Party Software Subscription and Support Reinstatement, Selected Support renewals, IBM SaaS, and Appliances.

Eligible Sub-Capacity Product – a Product for which Sub-Capacity Licensing is available and specified at http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html .

Eligible Virtualization Environment – a server or a group of servers cooperating as a single computing entity that contain an Eligible Processor Technology, an Eligible Operating System Technology, and an Eligible Virtualization Technology.

Eligible Virtualization Technology – a virtualization technology for which Sub-Capacity Licensing is available and specified at http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html . An Eligible Virtualization Technology is capable of restricting processor capacity to a subset of the total physical capacity, sometimes referred to as partition, LPAR, or virtual machine.

Engineering Change – an update to modify certain aspects of the design of an installed Machine Component, including without limitation the design of a certain Machine Component part(s) or Machine Code Component.

Enterprise – any legal entity that, by more than 50%, owns, is owned by, or is under common ownership with Customer's "Site" of record.

Fixed Term – a definite period of time specified by IBM in a Transaction Document, for example, in a Program's PoE.

Full Capacity – The total number of physical processor cores activated and available for use on a server.

IBM – the IBM Enterprise company that is providing Eligible Products.

IBM Business Partner – an organization with which IBM has signed agreements to promote, market, and, in some instances, support certain Eligible Products.

IBM Machine Component – a Machine Component bearing an IBM logo.

IBM Program – a Program acquired under this Agreement and subject to the IPLA, including its LI.

IBM Software as a Service ("IBM SaaS") – offerings IBM makes available to Customer remotely through the Internet providing access to (i) functionality of Programs, (ii) infrastructure, and (iii) technical support. IBM SaaS is not a Program but may require Customer to download enabling software in order to use it. IBM SaaS is an Eligible Product.

IBM SaaS User – one who accesses IBM SaaS using a user account identification and password associated with Customer's IBM SaaS account and provided by Customer.

IBM Software Subscription and Support – software subscription and support provided for IBM Programs licensed under the IPLA. See **3.5.1 IBM Software Subscription and Support** for further description.

IPLA – IBM's International Program License Agreement. The IPLA is included with each IBM Program in the Program's directory, in a library identified as "License," a booklet, or on a CD. It is also available on the Internet at http://www.ibm.com/software/sla and from IBM and its resellers.

License Information ("LI") – a document that provides information and any additional terms specific to a Program. The Program's LI is available at http://www.ibm.com/software/sla/. The LI can also be found in the Program's directory, by the use of a system command, or as a booklet included with the Program.

Machine Code Component – microcode, basic input/output system code (called "BIOS"), utility programs, device drivers, diagnostics, and any other code (all subject to any exclusions in the license provided with it) delivered with an IBM Machine Component for the purpose of enabling the Machine Component's function, as stated in its Specifications.

Machine Component – a hardware device, features, conversions, Upgrades, elements, or accessories, or any combination of them. The term "Machine Component" includes an IBM Machine Component and any non-IBM Machine Component (including other equipment) that IBM may provide to Customer.

Non-IBM Program – a Program that is governed by the terms of the third party end user license agreement that accompanies it. IBM is not a party to the third party end user license agreement and assumes no obligations under it.

Personal Data – any information that can be used to identify a specific individual, such as name, email address, home address, or phone number that is provided to IBM to store, process, or transfer on Customer's behalf.

Processor Chip – Electronic circuitry containing one or more Processor Cores that plugs into a Processor Socket.

Processor Core – A physical functional unit within a computing device that interprets and executes program instructions and consists of at least one instruction control unit and one or more arithmetic and logic units. A multi-core technology allows two or more Processor Cores to be active on a single Processor Chip. A System z Integrated Facility for Linux (IFL) engine is considered a single Processor Core.

Processor Socket – Electronic circuitry that accepts a Processor Chip.

Processor Value Unit ("PVU") – A metric used by IBM to assign a value to a Processor Core. The Processor Value Unit licensing model is described at http://www.ibm.com/software/lotus/passportadvantage/pvu_licensing_for_customers.html .

Program – 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.

Program Component – an IBM Program or Non-IBM Program that is preinstalled on a Machine Component.

Proof of Entitlement ("PoE") – the document in which IBM specifies an Eligible Product's level of authorized use. This PoE, supported by Customer's matching paid invoice or receipt, is evidence of Customer's level of authorized use.

Selected Program – a Non-IBM Program or an IBM Program licensed under the terms of the IBM License Agreement for Non-Warranted Programs.

Selected Support – Support for specified Selected Programs.

Service Provider – an entity that provides information technology services for end user customers, either directly or through a reseller.

Site – any defined entity, such as a physical location or organizational unit, e.g., a department, division, subsidiary or cost center that Customer provides to IBM or the reseller and for which IBM assigns a Passport Advantage Site Number.

Specifications – information specific to a Machine Component. IBM Machine Component Specifications are in a document entitled "Official Published Specifications."

Sub-Capacity Licensing – Licensing of Eligible Sub-Capacity Products based on Virtualization Capacity.

Subscription Period – the time during which IBM SaaS is made available to Customer as specified in the applicable Transaction Document.

Term – the period that begins either on the date IBM accepts Customer's 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.

Terms of Use ("ToU") – additional terms under which IBM makes IBM SaaS offerings available to Customer and viewed at http://www.ibm.com/software/sla/sladb.nsf/sla/tou/ .

Third Party Software Subscription and Support – software subscription and support provided under the third party's terms for Non-IBM Programs. See **3.5.1 Software Subscription and Support** for further description.

Upgrade – a change to a Machine Component to modify, add, remove, enable, or disable a certain Machine Component resource or function. Each such change can be accomplished through a Machine Component conversion, or through the conversion, addition, removal, or exchange of a Machine Component's feature(s), but only to the extent announced and supported by IBM for the Machine Component.

Virtualization Capacity – the highest peak processor capacity available to an Eligible Sub-Capacity Product when deployed on an Eligible Virtualization Environment in accordance with the rules specified at http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html .

1.4 Acceptance of Terms

The Customer accepts this Agreement without modification by acquiring the Eligible Product(s) from IBM or a reseller. Additional or different terms in any order or written communication from Customer are void. An Eligible Product becomes subject to this Agreement when IBM accepts Customer's order by i) sending Customer a Transaction Document, ii) making the Program or IBM SaaS available to Customer or, when applicable, shipping the Appliance, or iii) providing the support, service, or solution.

Any Attachment or Transaction Document will be signed by both parties if requested by either party.

1.5 Delivery

Transportation charges, if applicable, will be specified in a Transaction Document. For Programs IBM provides to Customer in tangible form, IBM fulfills its shipping and delivery obligations upon delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by Customer and IBM.

1.6 Payment

a. When Customer acquires Eligible Products from a reseller, Customer pays reseller directly.

b. When Customer acquires Eligible Products from IBM, Customer agrees to pay as IBM specifies in its invoice or equivalent document, including any late payment fee; and

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.

1.7 Taxes

If, as a result of Customer moving, accessing, or using an Eligible Product across a border, any authority imposes a customs duty, tax, levy or fee (including withholding taxes for the import or export of any such Eligible Product), then Customer agrees that it is responsible for, and will pay, any such customs duty, tax, levy or fee. This excludes those taxes based on IBM's net income.

1.8 Eligible Products

IBM may add or withdraw Eligible Products at any time.

If IBM withdraws a Program or a version of a Program from marketing, Customer 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.

1.9 IBM Business Partners and Resellers

In addition to acquiring Eligible Products from IBM, Customer may acquire them from IBM Business Partners and resellers. Not all resellers, however, are authorized to resell all Eligible Products.

When Customer orders Eligible Products from Customer's IBM Business Partner(s) or reseller(s), IBM is not responsible for 1) their actions, 2) any additional obligations they have to Customer, or 3) any products or services that they supply to Customer under their agreements. When Customer acquires Eligible Products from an IBM Business Partner or reseller, the IBM Business Partner or reseller sets the charges and payment terms.

1.10 Intellectual Property Protection

For purposes of this Section 1.10, the term "Product" means an IBM Program, Machine Code Component, or IBM Machine Component.

1.10.1 Third Party Claims

If a third party asserts a claim against Customer that a Product infringes that party's patent or copyright, IBM will defend Customer against that claim at IBM's expense and pay all costs, damages, and attorney's fees that a court finally awards against Customer or that are included in a settlement approved in advance by IBM, provided that Customer:

a. promptly notifies IBM in writing of the claim;

b. allows IBM to control, and cooperate with IBM in, the defense and any related settlement negotiations; and

c. is and remains in compliance with the Product's license and other terms and Customer's obligations under Remedies below.

1.10.2 Remedies

If such a claim is made or appears likely to be made, Customer agrees to permit IBM, in IBM's discretion, to: i) enable Customer to continue to use the Product; ii) modify it; or iii) replace it with one that is at least functionally equivalent. If IBM determines that none of these alternatives is reasonably available, Customer agrees to immediately discontinue use of the Product and return it and all copies to IBM on IBM's written request. IBM will then give Customer a credit equal to the amount Customer paid for the returned Product (if the Product is IBM SaaS or subject to Fixed Term charges, up to twelve months' charges).

1.10.3 Claims for Which IBM is Not Responsible

IBM has no obligation regarding any claim arising from or related to any of the following:

a. anything provided by Customer or a third party on Customer's behalf that is incorporated into a Product or IBM's compliance with any designs, specifications, or instructions provided by Customer or a third party on Customer's behalf;

b. modification of a Product by Customer or a third party on Customer's behalf;

c. a Product's use other than in accordance with its applicable licenses and restrictions or use of a non-current version or release of a Product, when a claim could have been avoided or the risk of a claim reduced by using the current version or release;

d. the combination, operation, or use of the Product with any program, hardware device, data, apparatus, method, or process;

e. the distribution, operation, or use of the Product outside Customer's Enterprise or for the benefit of any third party; or

f. Separately Licensed Code, if any, as identified in the LI for the Product.

The LI for the Product or other documents may permit Customer to copy, modify, or redistribute all or portions of the Product without paying additional licensing fees to IBM. The indemnification obligation under this Agreement only applies to copies of the Product provided to Customer by IBM and additional copies expressly authorized in a PoE. IBM has no obligation for claims relating to copies of the Product

neither provided by IBM nor specifically authorized by a POE, even if permitted by the LI for the Product or other documents.

This Intellectual Property Protection section states IBM's entire obligation and Customer's exclusive remedy regarding any third party intellectual property claims. This Intellectual Property section does not obligate in any manner any third-party supplier of code (including Separately Licensed Code) included with or part of the Product.

1.11   Limitation of Liability

The limitations and exclusions in this **Section 1.11** (**Limitation of Liability**) apply to the full extent they are not prohibited by applicable law without the possibility of contractual waiver.

1.11.1 Items for Which IBM May Be Liable

Circumstances may arise where, because of a default on IBM's part or other liability, Customer is entitled to recover damages from IBM. Regardless of the basis on which Customer is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM's entire liability for all claims in the aggregate arising from or related to each Eligible Product or otherwise arising under this Agreement will not exceed the amount of any actual direct damages up to the greater of U.S. $100,000 (or equivalent in local currency) or the charges (if the Eligible Product is IBM SaaS or is subject to Fixed Term charges, up to 12 months' charges) Customer paid for the Eligible Product that is the subject of the claim.

This limit also applies to any of IBM's Eligible Product developers and suppliers. It is the maximum for which IBM and its Eligible Product developers and suppliers are collectively responsible. Damages for bodily injury (including death) and damage to real property and tangible personal property for which IBM is legally liable are not subject to a cap on the amount of damages.

1.11.2 Items for Which IBM Is Not Liable

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

a.   **LOSS OF, OR DAMAGE TO, DATA;**

b.   **SPECIAL, INCIDENTAL, EXEMPLARY, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR**

c.   **LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**

1.12   General Principles of Our Relationship

1.12.1 Notices and Communications

To the extent permissible under applicable law, the parties consent to the use of electronic means and facsimile transmissions to send and receive communications in connection with our business relationship arising out of this Agreement, and such communications are 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.

1.12.2 Assignment and Resale

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other. Any attempt to assign without consent is void. The assignment of this Agreement, in whole or in part, within the Enterprise of which either party 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 without obtaining Customer's 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.

Customer agrees that Eligible Products are for use within Customer's 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.

1.12.3 Compliance with Laws

IBM will comply with laws applicable to IBM generally as a provider of information technology products and services. IBM is not responsible for determining the requirements of laws applicable to Customer's business, including those relating to Eligible Products that Customer acquires under this Agreement, or that IBM's provision of or Customer's receipt of particular Eligible Products under this Agreement meets

the requirements of such laws. Notwithstanding anything in this Agreement to the contrary, neither party is obligated to take any action that would violate law applicable to that party.

Each party agrees to comply with all applicable export and import laws and regulations including without limitation United States embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users.

1.12.4 Dispute Resolution

Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation, i) neither party will bring a legal action, regardless of form, arising out of or related to this Agreement or any transaction under it more than two years after the cause of action arose; and ii) after such time limit, any such claim and all respective rights related to the claim lapse.

1.12.5 Other Principles of Our Relationship

a. Neither party grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent.

b. The exchange of any confidential information will be made under a separate, signed confidentiality agreement. However, to the extent confidential information is exchanged in connection with any Eligible Product under this Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this Agreement.

c. This Agreement and any transaction under it do not create an agency, joint venture, or partnership between Customer and IBM. Each party is free to enter into similar agreements with others to develop, acquire, or provide competitive products and services.

d. Customer authorizes International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors, IBM Business Partners, and resellers) to store and use Customer's business contact information wherever they do business, in connection with IBM Eligible Products or in furtherance of IBM's business relationship with Customer.

e. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is IBM responsible for any third party claims against Customer except as described in section 1.10 (Intellectual Property Protection) above or permitted in Section 1.11 (Limitation of Liability) above for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable to that third party.

f. Customer is responsible for selecting the Eligible Products that meet its needs and for the results obtained from the use of the Eligible Products, including Customer's decision to implement any recommendation concerning Customer's business practices and operations.

g. Eligible Products may not be used to provide commercial hosting or other commercial information technology services to third parties.

h. Where approval, acceptance, consent, or similar action by either party is required under this Agreement, such action will not be unreasonably delayed or withheld.

i. Neither party is responsible for failure to fulfill any non-monetary obligations due to events beyond its control.

j. Customer agrees that their use of IBM SaaS will comply with the IBM acceptable use policy at http://www.ibm.com/services/us/imc/html/aup.html and applicable data protection laws.

k. As reasonably required by IBM to fulfill its obligations under this Agreement, Customer agrees to provide IBM with sufficient and safe access (including remote access) to Customer's facilities, systems, information, personnel, and resources, all at no charge to IBM. IBM is not responsible for any delay in performing or failure to perform caused by Customer's delay in providing such access or performing other Customer responsibilities under this Agreement.

l. In entering into this Agreement, including each Attachment, ToU, and Transaction Document, neither party is relying on any representation that is not specified in this Agreement, including without limitation any representations concerning: i) performance or function of any Eligible Product, other than as expressly warranted in this Agreement; ii) the experiences or recommendations of other parties; or iii) any results or savings that Customer may achieve.

1.13   Agreement Termination

IBM may terminate this Agreement at any time, with or without cause, immediately and without notice, after the initial software subscription and support term or IBM SaaS Subscription Period has expired. If Customer renewed either IBM Software Subscription and Support for any IBM Programs or IBM SaaS prior to the notice of termination, IBM, at its sole discretion, may either continue to provide IBM Software Subscription and Support to Customer for those Programs or those IBM SaaS offerings for the remainder of the current term or give Customer a prorated refund. If Customer 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 Customer for that Non-IBM Program license for the remainder of the current term. If the third party does not do so, Customer may obtain a prorated refund.

Customer will be considered to have terminated this Agreement if it does not 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 that by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees.

1.14   Compliance Verification

For purposes of this **Section 1.14** (**Compliance Verification**), "Passport Advantage Terms" means 1) this Agreement and applicable Attachments, Transaction Documents, and Terms of Use provided by IBM, and 2) IBM software policies that may be found at the IBM Software Policy website (http://www.ibm.com/softwarepolicies/), including but not limited to those policies concerning backup, sub-capacity pricing, and migration.

The rights and obligations set forth in this **Section 1.14** remain in effect during the period the Eligible Product is in the possession or control of Customer, and for two years thereafter.

1.14.1   Verification Process

Customer agrees to create, retain, and provide to IBM and its auditors accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that Customer's use of all Eligible Products is in compliance with the Passport Advantage Terms, including, without limitation, all of IBM's applicable licensing and pricing qualification terms. Customer is responsible for 1) ensuring that it does not exceed its authorized use, and 2) remaining in compliance with Passport Advantage Terms.

Upon reasonable notice, IBM may verify Customer's compliance with Passport Advantage Terms at all Sites and for all environments in which Customer uses (for any purpose) Eligible Products subject to Passport Advantage Terms. Such verification will be conducted in a manner that minimizes disruption to Customer's business, and may be conducted on Customer's premises, during normal business hours. IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

1.14.2   Resolution

IBM will notify Customer in writing if any such verification indicates that Customer has used any Eligible Product in excess of its authorized use or is otherwise not in compliance with the Passport Advantage Terms. Customer agrees to promptly pay directly to IBM the charges that IBM specifies in an invoice for 1) any such excess use, 2) software subscription and support for such excess use for the lesser of the duration of such excess use or two years, and 3) any additional charges and other liabilities determined as a result of such verification.

1.15   Geographic Scope and Governing Law

1.15.1   Geographic Scope

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

1.15.2   Governing Law

The rights, duties, and obligations of each party 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.

Both parties agree to the application of the laws of the country in which the transaction is performed to govern, interpret, and enforce all of Customer's and IBM's respective 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.

If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

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

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

2. Warranties

Unless IBM specifies otherwise, the following warranties apply only in the country of acquisition.

2.1 Warranty for IBM Programs

The warranty for an IBM Program is stated in its license agreement.

2.2 Warranty for IBM Software Subscription and Support and Selected Support

IBM warrants that it provides IBM Software Subscription and Support and Selected Support using reasonable care and skill.

2.3 Warranty for IBM Machine Components of IBM Appliances

IBM warrants that each IBM Machine Component is free from defects in materials and workmanship and conforms to its Specifications.

The warranty period for an IBM Machine Component is a fixed period commencing on its Date of Installation (also called "Warranty Start Date") and specified in a Transaction Document. During the warranty period, IBM provides repair and exchange service for the IBM Machine Component, without charge, under the type of service IBM designates in a Transaction Document for the IBM Machine Component. If an IBM Machine Component does not function as warranted during the warranty period and IBM is unable to either i) make it do so or ii) replace it with one that is at least functionally equivalent, Customer may return it to the party from whom Customer acquired it for a refund.

For an IBM Machine Component that IBM is responsible to install, if Customer elects to install the IBM Machine Component itself or have a third party install the IBM Machine Component, IBM may inspect the IBM Machine Component at Customer's expense before providing warranty service on the IBM Machine Component. If the IBM Machine Component is not in an acceptable condition for warranty service, as solely determined by IBM, Customer may request that IBM restore it to an acceptable condition for warranty service or Customer may withdraw its request for warranty service. IBM, at its sole discretion, will determine if restoration is possible. Restoration is provided as a billable service.

If the IBM Machine Component does not function as warranted during the warranty period, refer to the service documentation that shipped with the IBM Machine Component for support assistance and problem determination procedures.

If Customer is unable to resolve the problem with the service documentation, contact IBM or the reseller to obtain warranty service. Contact information for IBM is provided in the "Warranty Information" that ships with IBM Machine Component. If Customer does not register the IBM Machine Component with IBM, Customer may be required to present proof of purchase as evidence of Customer's entitlement to warranty service.

2.4 Warranty for IBM SaaS

The warranty for IBM SaaS is stated in the Terms of Use.

2.5 Extent of Warranty

THESE WARRANTIES ARE CUSTOMER'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT.

The warranties stated in Section 2.3 will not apply to the extent that there has been misuse (including, but not limited to, use of any Machine Component capacity or capability, other than that authorized by IBM in

writing), accident, modification, unsuitable physical or operating environment, operation in other than the specified operating environment, improper maintenance by Customer or a third party, or failure or damage caused by a product for which IBM is not responsible. The warranty for IBM Machine Components is voided by removal or alteration of Machine Components or parts identification labels.

Items Not Covered by Warranty

IBM does not warrant uninterrupted or error-free operation of an Eligible Product or that IBM will correct all defects.

IBM will identify IBM Eligible Products that it does not warrant.

Unless otherwise specified in an Attachment or Transaction Document, IBM provides non-IBM Eligible Products, **WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND**. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to Customer.

3.   Programs and Subscription and Support

3.1   IBM Programs

IBM Programs acquired under this Agreement are governed by the terms of the IPLA.

3.1.1   Versions and Platforms:

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

3.1.2   IBM Trade-ups:

Licenses for certain Programs that replace qualifying IBM Programs may be acquired for a reduced charge. Customer agrees to terminate Customer's use of the replaced IBM Programs when Customer installs the replacement Programs.

3.1.3   Competitive Trade-ups:

Licenses for certain Programs that replace qualifying Non-IBM Programs may be acquired for a reduced charge. Customer agrees to terminate Customer's use of the replaced Non-IBM Programs when Customer installs the replacement Programs.

3.2   Programs in a Virtualization Environment

3.2.1   Authorizations

a.   A PoE must be acquired for the total number of PVUs associated with the Virtualization Capacity available to an Eligible Sub-Capacity Product.

b.   Prior to an increase in an Eligible Sub-Capacity Product's Virtualization Capacity, Customer must first acquire sufficient additional authorizations, including IBM Software Subscription and Support, if applicable, to cover that increase.

c.   IBM does not give credits or refunds for charges already due or paid if an Eligible Product's use falls below the authorized level of use.

3.2.2   IBM's Responsibilities

IBM will make available and authorize Customer to use:

a.   the ILMT at no charge, when ordered by Customer or Customer's IBM Reseller. IBM provides the ILMT to Customer for Customer's compliance with these Sub-Capacity Licensing terms; and

b.   the information center included with the ILMT to aid Customer's compliance with these Sub-Capacity Licensing terms.

Customer may make copies of the ILMT and information center for Customer's compliance with these Sub-Capacity Licensing terms.

3.2.3   Customer's Responsibilities under Sub-Capacity Licensing Terms

Customer agrees to:

a.   install and configure the most current version of ILMT in accordance with the ILMT information center, within 90 days of Customer's first Eligible Sub-Capacity Product deployment on an Eligible

Virtualization Environment, to enable Customer to collect Virtualization Capacity data by Eligible Sub-Capacity Product and generate Audit Reports in accordance with these Sub-Capacity Licensing terms. Exceptions to this requirement are:

(1)   when ILMT does not yet provide support for the Eligible Virtualization Environment

(2)   if Customer's Enterprise has fewer than 1,000 employees and contractors, Customer is not a Service Provider, and Customer has not contracted with a Service Provider to manage Customer's Eligible Virtualization Environment

(3)   if the total physical capacity of Customer's Enterprise servers with an Eligible Virtualization Environment, measured on a Full Capacity basis, but licensed using sub-capacity terms is less than 1,000 PVUs.

(4)   when Customer's servers with Eligible Sub-Capacity Products are licensed to the Full Capacity of the servers

For these exceptions, use of ILMT, while recommended, is not required for Sub-Capacity Licensing. In lieu of ILMT, Customer is required to manually manage and track Customer's Eligible Virtualization Environment, and manually prepare Audit Reports documenting the Virtualization Capacity by Eligible Sub-Capacity Product for Customer's Eligible Virtualization Environment during each calendar or fiscal quarter. These Audit Reports must contain the information listed in the example Audit Report available at http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html . These Audit Reports must be prepared as frequently as is required to maintain a history of increases to Virtualization Capacity, but not less often than once per quarter, and must be maintained for at least two years to demonstrate ongoing compliance with these Sub-Capacity Licensing terms;

b.   promptly install new versions, releases, modifications, or code corrections ("fixes") of the ILMT that IBM makes available. Customer must subscribe to Tivoli Support notifications via http://www.ibm.com/support/mynotifications in order to be notified when these become available;

c.   not alter, modify, omit, delete, or otherwise misrepresent by any means, directly or indirectly, the:

(1) ILMT audit records;

(2) ILMT, except for changes provided by IBM; or

(3) Audit Reports that Customer submits to IBM.

d.   generate, using ILMT or manually, Audit Reports at least each calendar or fiscal quarter and retain for a period of not less than two years the Audit Reports and make these reports available to IBM upon notice as specified in Section 1.14. Failure to generate Audit Reports or make Audit Reports available to IBM will result in charging for Eligible Sub-Capacity Products under Full Capacity terms;

e.   assign a person in Customer's organization with authority to manage and promptly resolve any questions on Audit Reports or inconsistencies between Audit Report contents, license entitlement, or ILMT configuration;

f.   promptly place an order with IBM or Customer's IBM reseller if Audit Reports reflect Eligible Sub-Capacity Product use in excess of Customer's authorized level. IBM Software Subscription and Support coverage will be determined to begin at the time Customer exceeded Customer's authorized level.

3.2.4   Additional Terms

Product deployments that are not able to meet these Sub-Capacity Licensing requirements must be licensed using Full Capacity terms.

3.3   Fixed Term Licensing

Fixed Term Licenses have a term that begins on the date that Customer's order is accepted by IBM or the calendar day following the expiration of a prior Fixed Term.

3.3.1   Automatic Renewal of Fixed Term Licenses

Customer may renew Customer's 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 TERMS OF THIS AGREEMENT AND AT THE THEN CURRENT RENEWAL CHARGES FOR SUCH PROGRAM LICENSES UNLESS, PRIOR TO THE EXPIRATION DATE, IBM RECEIVES, EITHER DIRECTLY FROM CUSTOMER OR THROUGH CUSTOMER'S RESELLER, AS APPLICABLE, CUSTOMER'S WRITTEN NOTIFICATION THAT CUSTOMER DOES NOT WANT TO RENEW. CUSTOMER AGREES TO PAY SUCH RENEWAL CHARGES.

If Customer chooses not to renew the Fixed Term License, Customer agrees to discontinue use of the Program on the expiration date.

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

3.3.2 Withdrawal of Fixed Term License for a particular Program

If IBM withdraws Fixed Term licensing for a particular IBM Program, Customer understands that

a. Customer may not renew the Fixed Term License for that IBM Program; and

b. if Customer renewed the Fixed Term License for that IBM Program prior to the notice of withdrawal, Customer may either (a) continue to use the Program under the Fixed Term License terms until the end of the then current Fixed Term or (b) obtain a prorated refund.

3.4 CEO Product Categories

"CEO Product Categories" (groupings of Eligible Products) are acquired on a per-user basis. Customer must acquire Customer's first CEO Product Category ("Primary Product Category") for all CEO Users within Customer's Enterprise and for not less than the number of CEO Users specified in the CEO Product Categories Table at http://www.ibm.com/software/passportadvantage .

Customer may acquire additional CEO Product Categories if Customer meets the minimum number of CEO Users requirement specified in the CEO Product Category in the CEO Product Categories Table at http://www.ibm.com/software/passportadvantage . However, Customer need not acquire additional CEO Product Categories for all CEO Users within Customer's Enterprise.

A CEO User may use any or all of the Programs included in a chosen CEO Product Category. But all IBM Programs that are used for client access must be acquired 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 at any time. If IBM deletes an Eligible Product from a CEO Product Category, Customer may continue to use the deleted Eligible Product but Customer may not exceed the number of CEO Users enrolled prior to the deletion.

Increasing the number of CEO Users

In the event Customer increases the number of CEO Users, Customer must acquire an authorization to use the CEO Product Category for each new CEO User.

Decreasing the number of CEO Users

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

3.5 Software Subscription and Support and Selected Support

3.5.1 Software Subscription and Support

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

b. 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 prior month in the following year.

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

(1) IBM will make available to Customer IBM Program defect corrections, restrictions, and bypasses, if any, that it develops.

(2) IBM will make available to Customer and authorize Customer to use the most current commercially available version, release, or update, should any be made available.

(3) IBM provides Customer assistance for Customer's i) routine, short duration installation and usage (how-to) questions; and ii) code-related questions (together "Support"). Such Support for a particular version or release of an IBM Program is available only until IBM or the third party, as applicable, withdraws Support for that IBM Program's version or release. When Support is withdrawn, Customer must upgrade to a supported version or release of the IBM Program in order to continue to receive Support. The IBM "Software Support Lifecycle" policy is available at http://www.ibm.com/software/info/supportlifecycle/ .

(4) IBM provides Support via electronic access and, if available, telephone, only to Customer's information systems (IS) technical support personnel during the normal business hours (published prime shift hours) of Customer's IBM support center. (This assistance is not available to Customer's 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 http://www.ibm.com/software/support .

(5) IBM may request that Customer allow it to remotely access Customer's system to assist Customer in isolating the software problem cause. Customer remains responsible for adequately protecting Customer's system and all data contained in it whenever IBM remotely accesses it with Customer's permission.

d. IBM Software Subscription and Support does not include assistance for 1) the design and development of applications, 2) Customer's 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.

FOR THE AUTHORIZED USE OF EACH IBM PROGRAM INSTALLED AND IN SERVICE AT A CUSTOMER'S SITE, CUSTOMER HAS THE OPTION TO MAINTAIN IBM SOFTWARE SUBSCRIPTION AND SUPPORT FOR EITHER (a) ALL OF THE AUTHORIZED USE OR (b) NONE OF THE AUTHORIZED USE.

THERE IS NO OPTION FOR MAINTAINING IBM SOFTWARE SUBSCRIPTION AND SUPPORT COVERAGE FOR ONLY A PORTION OF AUTHORIZED USE INSTALLED AND IN SERVICE FOR AN IBM PROGRAM AT A CUSTOMER SITE.

CUSTOMER SHALL NOT USE ANY OF THE IBM SOFTWARE SUBSCRIPTION AND SUPPORT BENEFITS SPECIFIED IN SUBSECTION C OF THIS SECTION 3.5.1, INCLUDING THE APPLICATION OR USE OF ANY FIXES, UPDATES, OR UPGRADES, FOR IBM PROGRAMS FOR WHICH CUSTOMER HAS NOT FULLY PAID IBM SOFTWARE SUBSCRIPTION AND SUPPORT. IF CUSTOMER USES ANY OF THESE BENEFITS FOR WHICH IT HAS NOT FULLY PAID, THEN CUSTOMER AGREES TO ACQUIRE IBM SOFTWARE SUBSCRIPTION AND SUPPORT REINSTATEMENT SUFFICIENT TO COVER ALL SUCH UNAUTHORIZED USE OF SUCH BENEFITS AT THEN CURRENT APPLICABLE IBM PRICES.

3.5.2 Selected Support

Selected Programs eligible for Selected Support are listed at http://www.ibm.com/lotus/PASelectedSupportPrograms .

Selected Support begins on the date that IBM accepts Customer's order for such support and ends on the last day of the corresponding month in the following year, unless IBM accepts Customer's order on the first day of a calendar month, in which case coverage ends on the last day of the immediately preceding calendar month in the following year.

While Selected Support is in effect for a Selected Program:

a. IBM will make available to Customer Selected Program defect corrections, if any, that it develops.

b.   IBM provides Customer assistance for Customer's 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, Customer 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 Customer with assistance in designing and developing applications based on Customer's subscription level.

d.   IBM may provide assistance via electronic access and, if available, telephone, depending on Customer's location and the subscription level Customer acquires. Such assistance is provided only to Customer's information systems (IS) technical support personnel during the normal business hours (published prime shift hours) of Customer's IBM support center. Consult the IBM Software Support Handbook for details applicable to Selected Support at http://www.ibm.com/software/support .

e.   IBM may request that Customer allow it to remotely access Customer's system to assist Customer in isolating the software problem cause. Customer remains responsible for adequately protecting Customer's system and all data contained in it whenever IBM remotely accesses it with Customer's permission.

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

3.5.3   Customer Data and Databases

To assist Customer in isolating the cause of a problem with a Program under either IBM Software Subscription and Support or Selected Support, IBM may request that Customer 1) allow IBM to remotely access Customer's system or 2) send Customer information or system data to IBM. IBM uses information about errors and problems to improve its products and services, and assist with its provision of related support offerings. For these purposes, IBM may use IBM entities and subcontractors (including in one or more countries other than the one in which Customer is located), and Customer authorizes IBM to do so.

Customer remains responsible for 1) any data and the content of any database Customer makes available to IBM, 2) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally-identifiable data), and 3) backup and recovery of any database and any stored data. Customer will not send or provide IBM access to any personally-identifiable information, whether in data or any other form, and will be responsible for reasonable costs and other amounts that IBM may incur relating to any such information mistakenly provided to IBM or the loss or disclosure of such information by IBM, including those arising out of any third party claims.

3.5.4   Automatic Annual Renewal of Software Subscription and Support and Selected Support

Customer may renew Customer's 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 TERMS OF THIS AGREEMENT AND AT THE THEN CURRENT RENEWAL CHARGES UNLESS, PRIOR TO THE EXPIRATION DATE, IBM RECEIVES, EITHER DIRECTLY FROM CUSTOMER OR THROUGH CUSTOMER'S RESELLER, AS APPLICABLE, CUSTOMER'S WRITTEN NOTIFICATION THAT CUSTOMER DOES NOT WANT TO RENEW. CUSTOMER AGREES TO PAY SUCH RENEWAL CHARGES.

To reinstate any expired software subscription and support coverage, Customer must acquire IBM Software Subscription and Support Reinstatement or Third Party Software Subscription and Support Reinstatement, as applicable.

3.5.5   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, Customer understands that

a.   IBM will not make software subscription and support renewal or Selected Support renewal available for that Program; and

b.   if Customer 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 may either

continue to provide IBM Software Subscription and Support or Selected Support to Customer for that Program license until the end of the then current term or Customer may obtain a prorated refund. If Customer renewed Third Party Software Subscription and Support for that Non-IBM Program prior to the notice, the third party may continue to provide Third Party Software Subscription and Support to Customer for that Non-IBM Program license until the end of the then current term. If the third party does not do so, Customer may obtain a prorated refund.

4. Appliances

4.1 Virtual Appliance

Customer is licensed to use the Program(s) pursuant to the terms of this Agreement.

4.2 Appliances Comprising Both Program and Machine Components

IBM provides Appliances comprising both Program Components and Machine Components as a single product. Customer shall not use either such component independently of the Appliance of which it is a part for any purpose.

4.3 Program Components

Customer is licensed to use the Program Component(s) pursuant to the terms of this Agreement, but only on the Machine Component supplied by IBM or an authorized reseller or any replacement of a Machine Component provided to Customer by IBM or an authorized reseller. Customer may not transfer its license to use the Program Component(s) to another Enterprise.

4.4 Machine Components

4.4.1 Production Status

Each IBM Machine Component is manufactured from parts that may be new or used. In some cases, an IBM Machine Component may not be new and may have been previously installed. Regardless, IBM's applicable warranty terms described in Part 2.3 apply.

4.4.2 Title and Risk of Loss

When Customer acquires a Machine Component directly from IBM, IBM transfers title to a Machine Component to Customer or, if applicable, Customer's lessor, upon payment of all the amounts due. For a feature, conversion, or another type of upgrade acquired for a Machine Component, IBM reserves transfer of title until IBM receives payment of all the amounts due and, as applicable, all removed parts, which become IBM's property.

For each Machine Component, IBM bears the risk of loss or damage up to the time it is delivered to the IBM-designated carrier for shipment to Customer or Customer's designated location. Thereafter, Customer assumes the risk. Each Machine Component will be covered by insurance, arranged and paid for by IBM for Customer, covering the period until it is delivered to Customer or Customer's designated location. For any loss or damage, Customer must i) report the loss or damage in writing to IBM within 10 business days of delivery and ii) follow the applicable claim procedure.

4.4.3 Installation

a. Machine Component Installation

    (1) Customer agrees to provide an environment meeting the requirements for the Machine Component as specified in its published documentation.

    (2) Customer is responsible for installing a Customer-set-up Machine Component and a non-IBM Machine Component according to instructions provided by IBM or the Machine Component's manufacturer.

    (3) For a Machine Component that IBM is responsible for installing, IBM has standard installation procedures. IBM will successfully complete these procedures before it considers a Machine Component (other than a Machine Component for which Customer defers installation or a Customer-set-up Machine Component) installed. For an IBM Machine Component that IBM is responsible to install, if the IBM Machine Component is not made available for IBM to install within six months from shipment, installation will be subject to an installation charge.

b. Upgrades and Engineering Changes

    (1) IBM sells Upgrades for installation on Machine Components, and, in certain instances, only for installation on a designated, serial-numbered Machine Component. Within 30 days of the

shipment of an Upgrade, Customer agrees to install the Upgrade or, if IBM is responsible for the installation, to allow IBM to install the Upgrade. Certain Upgrade orders may be terminated at IBM's discretion if not made available for IBM to install within 30 days of shipment, in which case Customer must return the Upgrade at Customer's expense. In all cases, if the Upgrade is not made available for IBM to install within six months from the date IBM ships the Upgrade, installation will be subject to an installation charge.

  (2) Customer agrees to allow IBM to install mandatory Engineering Changes (such as those required for safety) on a Machine Component within 30 days of IBM's notice to Customer unless otherwise agreed to by the parties.

Many Upgrades and Engineering Changes require the removal of parts and the transfer of ownership and possession of the removed parts to IBM. Customer is responsible for the return of all removed parts to IBM upon installation of the Upgrade or Engineering Change. As applicable, Customer represents that Customer has permission from the owner and any lien holders to i) install Upgrades and Engineering Changes and ii) transfer ownership and possession of removed parts to IBM. Customer further represents that all removed parts are genuine, unaltered, and in good working order. A part that replaces a removed part will assume the warranty or maintenance service status of the replaced part.

4.4.4 Machine Code Component

A Machine Code Component is licensed under the terms and restrictions of the Machine Code license agreement (e.g., IBM License Agreement for Machine Code, IBM Agreement for Licensed Internal Code, or an equivalent) provided with the Machine Code Component. Customer acceptance of the terms of this Agreement includes acceptance of IBM's Machine Code license agreements, current versions of which are available at the following URL:

http://www.ibm.com/servers/support/machine_warranties/support_by_product.html or by contacting an IBM representative. Machine Code license agreements may be amended by IBM from time to time. Such amended license terms will apply only to Machine Code Component that is supplied after such amended terms become effective.

A Machine Code Component is licensed only for use to enable a Machine Component to function in accordance with its Specifications and only for the capacity and capability for which Customer has acquired IBM's written authorization. Customer agrees to use the Machine Code Component only as specified in this Agreement and as may be further authorized or restricted in its applicable license agreement. Without limiting additional restrictions in the applicable license, Customer may not

a. otherwise copy, display, transfer, adapt, modify, or distribute (electronically or otherwise) the Machine Code Component, except as IBM may authorize in the Machine Component's user documentation or in writing to Customer;

b. reverse assemble, reverse compile, otherwise translate, or reverse engineer the Machine Code Component unless expressly permitted by applicable law without the possibility of contractual waiver;

c. sublicense or assign the license for the Machine Code Component; or

d. lease the Machine Code Component or any copy of it.

International Business Machines Corporation, one of its subsidiaries, or a third party owns the Machine Code Component including all copyrights in the Machine Code Component and all copies of the Machine Code Component (this includes the original Machine Code Component, copies of the original Machine Code Component, and copies made from copies). The Machine Code Component is copyrighted and licensed (not sold).

Title will not be transferred when IBM supplies features, conversions, or upgrades that consist solely of Machine Code Component.

The capacity of certain Machine Components may be limited by technological measures in the Machine Code Component. Customer agrees to IBM's implementation of such technological measures to limit Machine Component capacity.

4.4.5 Delivery

Delivery dates for Appliances with Machine Components are estimates unless otherwise specifically agreed in a Transaction Document. Transportation charges, if applicable, will be specified in a Transaction Document.

5. IBM SaaS

Customer agrees that IBM is not providing it with access to the Internet in order to use IBM SaaS and that Customer remains responsible for Internet access.

Customer acknowledges that International Business Machines Corporation and its subsidiaries (1) do not control the transfer of data over telecommunications facilities, including the Internet, and (2) in a public Internet environment cannot commit to particular confidentiality obligations.

The exchange of any confidential information made under a separate, signed confidentiality agreement, pursuant to 1.12.5b of this Agreement, does not apply to Content. IBM assumes no confidentiality obligations regarding Content, notwithstanding the terms of any separate confidentiality agreement between Customer and IBM.

5.1 Ownership

IBM and its suppliers own IBM SaaS. Customer agrees that title to, ownership of and all rights in and to patents, copyrights, trademarks, and all other intellectual property rights in IBM SaaS, and any copy or part of IBM SaaS will remain with IBM and its suppliers. IBM may subcontract IBM SaaS, or any part of it, including technical support, to subcontractors selected by IBM.

5.2 Customer's Right to Use

Customer may use an IBM SaaS offering in accordance with its Terms of Use, up to the specified level of use authorized in the Proof of Entitlement, on condition that:

a. Customer accepts the Terms of Use of the IBM SaaS offering;

b. Customer ensures that anyone who uses the IBM SaaS offering does so only on Customer's behalf and complies with the terms of this Agreement and the applicable Terms of Use; and

c. Customer does not

   (1) use, copy, modify, or make the IBM SaaS offering available, in whole or on part, to third parties except as expressly permitted in this Agreement and the applicable Terms of Use;

   (2) reverse assemble, reverse compile, otherwise translate, or reverse engineer the IBM SaaS offering, unless expressly permitted by applicable law without the possibility of contractual waiver;

   (3) use any of the IBM SaaS offering's components, files, modules, audio-visual content, or related licensed materials separately from that of the IBM SaaS offering;

   (4) rent, sublicense, or lease the IBM SaaS offering;

   (5) create Internet "links" to or from the IBM SaaS offering; or

   (6) "frame" or "mirror" any content forming part of an IBM SaaS offering, other than on Customer's own intranets in connection with Customer's authorized use of the IBM SaaS offering.

5.3 Subscription to IBM SaaS

5.3.1 Terms for a Specific IBM SaaS Offering

The terms of a specific IBM SaaS offering are provided in its Terms of Use and may include without limitation definitions, description of subscription and services, charge metrics, and restrictions.

5.3.2 IBM SaaS Subscription Period

An IBM SaaS Subscription Period begins on the date that IBM notifies Customer that Customer has access to the subscribed offering. The end date of a Subscription Period as specified in a Transaction Document is the last day of a month.

During an IBM SaaS Subscription Period, Customer may increase Customer's subscribed level of an IBM SaaS offering.

Customer may not decrease Customer's subscribed level of an IBM SaaS offering during a Subscription Period but may decrease in a subsequent Subscription Period.

5.3.3 IBM SaaS Subscription Period Renewal

Customer may renew an IBM SaaS offering at the end of a Subscription Period, unless otherwise specified in the offering's Terms of Use. Some IBM SaaS offerings, as specified in the IBM SaaS offering's Terms of Use or Transaction Document, automatically renew at the end of the Subscription

Period unless, prior to the end of the Subscription Period, IBM receives, either directly or through Customer's reseller, as applicable, Customer's written notification not to renew.

5.4 IBM SaaS Technical Support

During an IBM SaaS Subscription Period:

a. IBM provides assistance, as specified in the ToU, for Customer's offering-specific, task-oriented questions regarding the use of IBM SaaS; and

b. IBM SaaS technical support is available only for the currently supported versions of IBM SaaS, client operating systems, Internet browsers, and software. IBM technical support is available during the normal business hours (published prime shift hours) of the IBM SaaS support center. Consult the Terms of Use for details applicable to a specific IBM SaaS offering.

5.5 Content

IBM provides only services for Content. IBM is not the publisher of Content transmitted within IBM SaaS.

Customer has sole responsibility for the following:

a. ensuring the adequacy of any IBM SaaS elements to satisfy any Customer requirements:

b. all Content including, without limitation, its selection, creation, design, licensing, installation, accuracy, maintenance, testing, backup and support;

c. having all necessary authorizations to allow IBM and its subcontractors to host, cache, record, copy, and display Content, and Customer represents that it has and will keep in effect during its use of IBM SaaS all such authorizations and approvals necessary to grant IBM and its subcontractors these rights, and that such rights are provided at no charge to IBM. Customer retains all right, title, and interest in and to its Content; and

d. the selection and implementation of procedures and controls regarding access, security, encryption, use, transmission, and backup and recovery of Content.

Customer grants to IBM and its subcontractors a nonexclusive, irrevocable, worldwide, royalty-free, fully-paid, transferable license to host, cache, record, copy, and display Content, solely for the purpose of making IBM SaaS available.

5.6 Termination of IBM SaaS

IBM may withdraw the IBM SaaS in its entirety on 12 months' written notice to all then current Customers by letter or e-mail.

Notwithstanding anything to the contrary in this Agreement, if IBM terminates Customer's access to the IBM SaaS due to Customer's breach of any of the applicable terms of this Agreement, IBM is not obligated to issue a refund or credit for any unused portion of IBM SaaS.

6. Country-unique Terms

For transactions performed in the countries specified below, the following terms replace or modify the referenced terms in Parts 1 through 5. All terms in Parts 1 through 5 that are not changed by these amendments remain unchanged and in effect. This part 6 is organized as follows:

● Section 6.1 contains multiple country amendments to section 1.15 (Geographic Scope and Governing Law);

● Section 6.2 contains the Americas country amendments to other Agreement terms;

● Section 6.3 contains the Asia Pacific country amendments to other Agreement terms; and

● Section 6.4 contains the Europe, Middle East, and Africa country amendments to other Agreement terms.

6.1 Multiple country amendments to section 1.15 (Geographic Scope and Governing Law)

6.1.1 Geographic Scope

EUROPE, MIDDLE EAST, AND AFRICA

*In South Africa, Namibia, Lesotho, and Swaziland, the following paragraph pertains to geographic scope and replaces the first paragraph in section **1.15.2 Governing Law**:*

The rights, duties, and obligations of each party are valid only in South Africa, Namibia, Lesotho, and Swaziland, unless otherwise stated in a Transaction Document, except that all licenses are valid as specifically granted.

6.1.2 Governing Law

*In the second paragraph of section **1.15.2 Governing Law***, *the phrase, "the laws of the country in which the transaction is performed" is replaced with the following:*

AMERICAS

a. in **Canada**: the laws in the Province of Ontario;

b. in **Mexico**: the federal laws of the Republic of Mexico;

c. in the **United States**, **Anguilla**, **Antigua/Barbuda**, **Aruba**, **British Virgin Islands**, **Cayman Islands**, **Dominica**, **Grenada**, **Guyana**, **Saint Kitts and Nevis**, **Saint Lucia**, **Saint Maarten**, and **Saint Vincent and the Grenadines**: the laws of the State of New York, United States;

d. in **Venezuela**: the laws of the Bolivarian Republic of Venezuela;

ASIA PACIFIC

e. in **Cambodia** and **Laos**: the laws of the State of New York, United States;

f. in **Australia**: the laws of the State or Territory in which the transaction is performed;

g. in **Hong Kong SAR** and **Macau SAR**: the laws of Hong Kong Special Administrative Region ("SAR");

h. in **Taiwan**: the laws of Taiwan;

EUROPE, MIDDLE EAST, AND AFRICA

i. in **Albania**, **Armenia**, **Azerbaijan**, **Belarus**, **Bosnia-Herzegovina**, **Bulgaria**, **Croatia**, **Former Yugoslav Republic of Macedonia**, **Georgia**, **Hungary**, **Kazakhstan**, **Kyrgyzstan**, **Moldova**, **Montenegro**, **Poland**, **Romania**, **Russia**, **Serbia**, **Slovakia**, **Tajikistan**, **Turkmenistan**, **Ukraine**, and **Uzbekistan**: the laws of Austria;

j. in **Algeria**, **Andorra**, **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 and Futuna**: the laws of France;

k. in **Estonia**, **Latvia**, and **Lithuania**: the laws of Finland;

l. in **Angola**, **Bahrain**, **Botswana**, **Burundi**, **Egypt**, **Eritrea**, **Ethiopia**, **Ghana**, **Jordan**, **Kenya**, **Kuwait**, **Liberia**, **Malawi**, **Malta**, **Mozambique**, **Nigeria**, **Oman**, **Pakistan**, **Qatar**, **Rwanda**, **Sao Tome and Principe**, **Saudi Arabia**, **Sierra Leone**, **Somalia**, **Tanzania**, **Uganda**, **United Arab Emirates**, the **United Kingdom**, **West Bank/Gaza**, **Yemen**, **Zambia**, and **Zimbabwe**: the laws of England; and

m. in **South Africa**, **Namibia**, **Lesotho** and **Swaziland**: the laws of the Republic of South Africa.

6.1.3 Jurisdiction

The following paragraph pertains to jurisdiction and is added to section 1.15 as it applies for the countries identified in bold print below:

All rights, duties, and obligations under this Agreement are subject to the courts of the country in which the transaction is performed except that in the countries identified below, all disputes arising out of or related to this Agreement, including summary proceedings, will be brought before and subject to the exclusive jurisdiction of the following courts of competent jurisdiction:

AMERICAS

a. in **Argentina**: the Ordinary Commercial Court of the city of Buenos Aires,

b. in **Brazil**: the court of Rio de Janeiro, RJ;

c. in **Chile**: the Civil Courts of Justice of Santiago;

d. in **Colombia**: the judges and courts of general jurisdiction of Bogota, Colombia;

e. in **Ecuador**: the civil judges of Quito for executory or summary proceedings (as applicable);

f.   in **Mexico**: the courts located in Mexico City, Federal District;

g.   in **Peru**: the judges and tribunals of the judicial district of Lima, Cercado;

h.   in **Uruguay**: the courts of the city of Montevideo;

i.   in **Venezuela**: the courts of the metropolitan area of the city of Caracas;

EUROPE, MIDDLE EAST, AND AFRICA

j.   in **Austria**: the court of law in Vienna, Austria (Inner-City);

k.   in **Algeria**, **Andorra**, **Benin**, **Burkina Faso**, **Cameroon**, **Cape Verde**, **Central African Republic**, **Chad**, **Comoros**, **Congo Republic**, **Djibouti**, **Democratic Republic of Congo**, **Equatorial Guinea**, **France**, **French Guiana**, **French Polynesia**, **Gabon**, **Gambia**, **Guinea**, **Guinea-Bissau**, **Ivory Coast**, **Lebanon**, **Madagascar**, **Mali**, **Mauritania**, **Mauritius**, **Mayotte**, **Monaco**, **Morocco**, **New Caledonia**, **Niger**, **Reunion**, **Senegal**, **Seychelles**, **Togo**, **Tunisia**, **Vanuatu**, and **Wallis and Futuna**: the Commercial Court of Paris;

l.   in **Angola**, **Bahrain**, **Botswana**, **Burundi**, **Egypt**, **Eritrea**, **Ethiopia**, **Ghana**, **Jordan**, **Kenya**, **Kuwait**, **Liberia**, **Malawi**, **Malta**, **Mozambique**, **Nigeria**, **Oman**, **Pakistan**, **Qatar**, **Rwanda**, **Sao Tome and Principe**, **Saudi Arabia**, **Sierra Leone**, **Somalia**, **Tanzania**, **Uganda**, **United Arab Emirates**, the **United Kingdom**, **West Bank/Gaza**, **Yemen**, **Zambia**, and **Zimbabwe**: the English courts;

m.   in **South Africa**, **Namibia**, **Lesotho** and **Swaziland**: the High Court in Johannesburg;

n.   in **Greece**: the competent court of Athens;

o.   in **Israel**: the courts of Tel Aviv-Jaffa;

p.   in **Italy**: the courts of Milan;

q.   in **Portugal**: the courts of Lisbon;

r.   in **Spain**: the courts of Madrid; and

s.   in **Turkey**: the Istanbul Central Courts and Execution Directorates of Istanbul, the Republic of Turkey.

6.1.4   Arbitration

*The following terms pertain to arbitration and are added to section **1.15** as they apply for the countries identified in bold print below. The provisions of these paragraphs apply to the extent permitted by applicable governing law and rules of procedure:*

ASIA PACIFIC

a.   in Cambodia, India, Laos, Philippines, and Vietnam: Disputes arising out of or in connection with this Agreement will be finally settled by arbitration, which will be held in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Center ("SIAC Rules") then in effect. The arbitration award will be final and binding for the parties without appeal and will be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators will be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties will appoint a third arbitrator who will act as chairman of the proceedings. Vacancies in the post of chairman will be filled by the president of the SIAC. Other vacancies will be filled by the respective nominating party. Proceedings will 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 will be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings will 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.

b.   in the People's Republic of China: In the event of a dispute, in case no settlement can be reached, the disputes will be submitted to China International Economic and Trade Arbitration Commission for arbitration according to the then effective rules of the said Arbitration Commission. The arbitration will take place in Beijing and be conducted in Chinese. The arbitration award will be final and binding on

both parties. During the course of arbitration, this Agreement will continue to be performed except for the part that the parties are disputing and which is undergoing arbitration.

c. in Indonesia: Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation, i) neither party will bring a legal action, regardless of form, arising out of or related to this Agreement or any transaction under it more than two years after the cause of action arose; and ii) after such time limit, any legal action arising out of this Agreement or any transaction under it and all respective rights related to any such action lapse.

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration that shall be held in Jakarta, Indonesia in accordance with the rules of Board of the Indonesian National Board of Arbitration (Badan Arbitrase Nasional Indonesia or "BANI") 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 chairman of the BANI. 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 and/or Indonesian language.

EUROPE, MIDDLE EAST, AND AFRICA

d. in Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan: 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; and

e. 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.

6.2   AMERICAS COUNTRY AMENDMENTS

BELIZE, COSTA RICA, DOMINICAN REPUBLIC, EL SALVADOR, HAITI, HONDURAS, GUATEMALA, NICARAGUA, AND PANAMA

3.5.4 Automatic Annual Renewal of Software Subscription and Support and Selected Support

*The following replaces the paragraph that begins "**IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE**":*

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

3.3.1 Automatic Renewal of Fixed Term Licenses

*The following replaces the paragraph that begins "**IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE**":*

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

ALL AMERICAS (EXCEPT BRAZIL, CANADA, MEXICO, AND THE UNITED STATES)

The following terms apply to all Americas countries (except Brazil, Canada and the United States), unless a specific country term states otherwise.

1.6 Payment

The following replaces 1.6b:

Amounts are due upon receipt of invoice and payable as IBM specifies in a Transaction 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, Customer 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 a Transaction 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, Customer agrees to make payments to IBM in US dollars to a bank account in New York, NY, USA, designated by IBM in the Transaction Document, provided that such payment is not illegal under country law. If such method of payment is forbidden by country law, Customer agrees to pay the amount indicated in the Transaction Document in country national currency, calculated at the official exchange rate that is in use for the remittance of dividends and net earnings to foreign investors outside the country.

Customer agrees 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.

LATIN AMERICA

The following term applies to all countries in Latin America, except for Argentina and Brazil.

1.4 Acceptance of Terms

The following replaces the first sentence:

Customer accepts the terms in Attachments and Transaction Documents by signing them.

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

3.3.1 Automatic Renewal of Fixed Term Licenses and 3.5.4 Automatic Annual Renewal of IBM Software Subscription and Support and Selected Support

Does not apply for Public Bodies who are subject to the applicable Public Sector Procurement Legislation.

BRAZIL AND COLOMBIA

1.13 Agreement Termination

The following is added after the fourth paragraph:

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

ARGENTINA

1.4 Acceptance of Terms

The following replaces the second sentence:

A Product or Service becomes subject to this Agreement when IBM accepts Customer's order by signing a Transaction Document.

1.7 Taxes

If a transaction is subject to a stamp tax, both Customer and IBM will each pay 50% of such tax.

BRAZIL

1.4 Acceptance of Terms

The following replaces the second paragraph in this section:

An Eligible Product becomes subject to this Agreement when IBM accepts Customer's order by signing a Transaction Document.

1.6 Payment

The following replaces 1.6b:

Amounts due are expressed in local currency.

Amounts are due upon receipt of invoice and payable in local currency as IBM specifies in a Transaction Document. Customer agrees 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.

1.12.1 Notices and Communications

The following replaces 1.12.1:

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;

1.8 Eligible Products

The following replaces the first sentence in the second paragraph in this section:

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

3.3.1 Automatic Renewal of Fixed Term Licenses and 3.5.4 Automatic Annual Renewal of IBM Software Subscription and Support and Selected Support

The following is added after the second paragraphs of both sections:

The transaction document will describe the process of the written communication to Customer containing the applicable price and other information for the renewal period.

3.5.4 Automatic Annual Renewal of IBM Software Subscription and Support and Selected Support

The following is added to this section

Automatic Annual Renewal of IBM Software Subscription and Support and Selected Support: Portuguese version of the Support Handbook will be provided upon written request.

COLOMBIA

1.7 Taxes

Customer and IBM accepts to pay, each one, fifty percent (50%) of legalization costs of the Proposal.

MEXICO

1.6 Payment

The following replaces 1.6b:

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

The payment must be made in United States Dollars or the equivalent in local currency at the exchange rate published by the "Banco de México" in the Diario Oficial de la Federacion correspondent to the payment date of the invoice.

Customer agrees 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.

PERU

1.11 Limitation of Liability

The following is added to the end of this section:

Except as expressly required by law without the possibility of contractual waiver, Customer and IBM intend that the limitation of liability in this Limitation of Liability section applies to damages caused by all types of claims and causes of action. If any limitation on or exclusion from liability in this section is held by a court of competent jurisdiction to be unenforceable with respect to a particular claim or cause of action, the parties intend that it nonetheless apply to the maximum extent permitted by applicable law to all other claims and causes of action. 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").

NORTH AMERICA

CANADA

1.11 Limitation of Liability

1.11.1 Items for which IBM May be Liable

The following replaces the last sentence in this section 1.11.1:

Damages for bodily injury (including death) and physical harm to real property and tangible personal property caused by IBM's negligence for which IBM is legally liable are not subject to a cap on the amount of damages.

1.4 General Principles of Our Relationship

1.12.3 Compliance with Laws

The following replaces the one-sentence paragraph at the end of this section:

Each party will comply with applicable export and import laws and regulations, including those that apply to goods of US origin and those that restrict or prohibit or limit export for certain uses or to certain users.

1.12.5 Other Principles of Our Relationship

The following replaces item 1.12.5e:

No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is IBM responsible for any third party claims against Customer except as described in section 1.10 (Intellectual Property Protection) above or 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 to that third party.

The following subsection is added:

1.14.6 Data Privacy

For purposes of this section, "Personal Data" refers to information relating to an identified or identifiable individual made available by one of the parties, its personnel, or any other individual to the other in connection with this Agreement. The following provisions apply in the event that one party makes Personal Data available to the other:

a. **General**

(1) Each party is responsible for complying with any obligations applying to it under applicable Canadian data privacy laws and regulations ("Laws").

(2) Neither party will request Personal Data beyond what is necessary to fulfill the purpose(s) for which it is requested. The purpose(s) for requesting Personal Data must be reasonable. Each party will agree in advance as to the type of Personal Data that is required to be made available.

b. Security Safeguards

(1) Each party acknowledges that it is solely responsible for determining and communicating to the other the appropriate technological, physical, and organizational security measures required to protect Personal Data.

(2) Each party will ensure that Personal Data is protected in accordance with the security safeguards communicated and agreed to by the other.

(3) Each party will ensure that any third party to whom Personal Data is transferred is bound by the applicable terms of this section.

(4) Additional or different services required to comply with the Laws will be deemed a request for new services.

c. Use

Each party agrees that Personal Data will only be used, accessed, managed, transferred, disclosed to third parties, or otherwise processed to fulfill the purpose(s) for which it was made available.

d. Access Requests

(1) Each party agrees to reasonably cooperate with the other in connection with requests to access or amend Personal Data.

(2) Each party agrees to reimburse the other for any reasonable charges incurred in providing each other assistance.

(3) Each party agrees to amend Personal Data only upon receiving instructions to do so from the other party or its personnel.

e. Retention

Each party will promptly return to the other or destroy all Personal Data that is no longer necessary to fulfill the purpose(s) for which it was made available, unless otherwise instructed by the other or its personnel or required by law.

f. Public Bodies Who Are Subject to Public Sector Privacy Legislation

For Customers who are public bodies subject to public sector privacy legislation, this section 1.14.6 applies only to Personal Data made available to Customer in connection with this Agreement, and the obligations in this section apply only to Customer, except that: 1) section b(1) applies only to IBM; 2) sections a(1) and d(1) apply to both parties; and 3) section d(2) and the last sentence in a(2) do not apply.

UNITED STATES OF AMERICA

1.7 Taxes

The following is added at the end of this section

For Programs delivered electronically in the United States for which Customer claims a state sales and use tax exemption, Customer agrees not to receive any tangible personal property (e.g., media and publications) associated with the electronic program.

1.12 General Principles of Our Relationship

1.12.4 Dispute Resolution

The following is added to the end of this section:

Each party waives any right to a jury trial in any proceeding arising out of or related to this Agreement.

1.12.5 Other Principles of Our Relationship

The following is added as 1.12.5.m:

U.S. Government Users Restricted Rights - Use, duplication or disclosure is restricted by the GSA IT Schedule 70 Contract with the IBM Corporation.

3. Programs and Subscription and Support

*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 3.5.4 Automatic Annual Renewal of Software Subscription and Support and Selected Support:*

CUSTOMER 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 CUSTOMER'S IBM RESELLER, AS APPLICABLE, IF IBM HAS NOT RECEIVED CUSTOMER'S WRITTEN AUTHORIZATION (e.g., order form, order letter, purchase order) TO RENEW CUSTOMER'S EXPIRING SOFTWARE SUBSCRIPTION AND SUPPORT OR SELECTED SUPPORT. IN SUCH EVENT, CUSTOMER 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 **3.3.1 Automatic Renewal of Fixed Term Licenses**:*

CUSTOMER 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 CUSTOMER'S IBM RESELLER, AS APPLICABLE, IF IBM HAS NOT RECEIVED CUSTOMER'S WRITTEN AUTHORIZATION (e.g., order form, order letter, purchase order) TO RENEW CUSTOMER'S EXPIRING FIXED TERM LICENSE. IN SUCH EVENT, CUSTOMER MAY OBTAIN A PRORATED REFUND.

2.3   Extent of Warranty

The following is added as the first paragraph:

If a Machine is subject to federal or state consumer warranty laws, IBM's statement of limited warranty included with the Machine applies in place of these Machine warranties.

4.4 Machine Components

4.4.2 Title and Risk of Loss

The following replaces the first paragraph:

When IBM accepts Customer's order, IBM agrees to sell Customer the Machine Component described in a Transaction Document. IBM transfers title to Customer or, if applicable, Customer's lessor when the Machine Component is shipped to Customer or its designated location. However, IBM reserves a purchase money security interest in the Machine Component until IBM receives the amounts due. For a feature, conversion, or upgrade involving the removal of parts that become IBM's property, IBM reserves a security interest until IBM receives payment of all the amounts due and the removed parts. Customer authorizes IBM to file appropriate documents to permit IBM to perfect its security interest.

6.3   ASIA PACIFIC COUNTRY AMENDMENTS

AUSTRALIA

1.3   Definitions - Definition of "Personal Data"

The definition is amended and replaced with the following:

"Personal Data – any information that can be used to identify a specific individual such as name, email address, home address or phone number that is provided to IBM to store, process or transfer and includes Personal Information as defined by the Privacy Act 1988 (Cth)."

1.6 Payment

The following paragraph is added after 1.6c as 1.6d:

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

1.7 Taxes

The following paragraph replaces 1.7 in its entirety:

If any government or authority imposes a duty, tax (other than income tax), levy, or fee, on this Agreement or on the Eligible Product itself, that is not otherwise provided for in the amount payable, Customer agrees to pay it when IBM invoices Customer. 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.

1.10 Intellectual Property Protection

1.10.3 Claims for which IBM is Not Responsible

Subject to any rights Customer may have under the Competition and Consumer Act 2010, this Intellectual Property Protection section states IBM's entire obligation to Customer and Customer's exclusive remedy regarding any third party intellectual property claims.

1.11 Limitation of Liability

The following paragraph is included at the end of 1.11.1:

Where IBM is in breach of a guarantee implied by the Competition and Consumer Act 2010, IBM's liability is limited to, at IBM's discretion:

(a) for services:

(1) the supplying of the services again or

(2) the payment of the cost of having the services supplied again; and

(b) for goods:

(1) the repair or replacement of the goods or the supply of equivalent goods; or

(2) the payment of the cost of replacing the goods or having the goods repaired

Where a guarantee relates to the right to sell, quiet possession or clear title of a good under schedule 2 of the Competition and Consumer Act, or the goods or services are of a kind ordinarily acquired for personal, domestic, or household use or consumption, then none of the limitations in this section apply.

2.5 Extent of Warranty

The last sentence of the second paragraph ("The warranty for IBM Machine Components is voided by removal or alteration of Machine Components or parts identification labels") is deleted.

The following paragraph is added after the paragraph that begins "These warranties are customer's exclusive warranties.."

The warranties specified in this Section are in addition to any rights Customer may have under the Competition and Consumer Act 2010 or other legislation and are only limited to the extent permitted by the applicable legislation. The reference to warranties and conditions throughout this agreement includes a reference to guarantees for the purpose of the Competition and Consumer Act 2010.

The following paragraph replaces the paragraph that begins "Unless otherwise specified in an Attachment or Transaction Document.."

Unless otherwise specified in an Attachment or Transaction Document, IBM provides non-IBM Eligible Products, without warranties, conditions, or guarantees of any kind. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to Customer.

5.5 Content

The following paragraph is added after the paragraph that begins "IBM provides only services for Content.

To the extent IBM is collecting any Personal Data, Customer acknowledges that in disclosing the Personal Data to IBM, it has undertaken all steps necessary to comply with the disclosure and collection requirements of the National Privacy Principles contained in the Privacy Act 1988, Customer agrees and acknowledges that it has taken reasonable steps to disclose to the relevant individuals such information about IBM that is prescribed under National Privacy Principle 1.3 that Customer reasonably believes is necessary for Customer to comply with the National Privacy Principle.

NEW ZEALAND

1.3 Definitions - Definition of "Personal Data"

The definition is amended and replaced with the following:

"Personal Data – any information that can be used to identify a specific individual such as name, email address, home address or phone number that is provided to IBM to store, process or transfer and includes Personal Information as defined by the Privacy and Personal Information Protection Act."

1.6 Payment

The following paragraph is added after 1.6c as 1.6d:

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

1.7 Taxes

The following paragraph replaces 1.7 in its entirety:

If any government or authority imposes a duty, tax (other than income tax), levy, or fee, on this Agreement or on the Eligible Product itself, that is not otherwise provided for in the amount payable, Customer agrees to pay it when IBM invoices Customer. 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.

2.5 Extent of Warranty

The following paragraph is added after the paragraph that begins "These warranties are customer's exclusive warranties.."

The warranties specified in this section are in addition to any rights Customer may have under the Consumer Guarantee Act 1993 or other legislation that cannot be excluded or limited by law.

The following paragraph replaces the paragraph that begins "Unless otherwise specified in an Attachment or Transaction Document.."

Unless otherwise specified in an Attachment or Transaction Document, IBM provides non-IBM Eligible Products, without warranties, conditions, or guarantees of any kind. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to Customer.

BANGLADESH, BHUTAN, AND NEPAL3.5 Programs and Subscription and Support

*The following replaces the paragraph that begins "**IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE**" in **3.5.4 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 Customer's Program licenses or Selected Support for all of Customer's Selected Program licenses to the next Anniversary if IBM or Customer's reseller receives (1) Customer's order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current term or (2) Customer's payment within 30 days of Customer's receipt of the software subscription and support or Selected Support , as applicable, invoice for the next term.

*The following replaces the paragraph that begins "**IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE**" in **3.3.1 Automatic Renewal of Fixed Term Licenses**:*

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

HONG KONG SAR, MACAU SAR, AND TAIWAN

As applies to transactions initiated and performed in Taiwan and the Special Administration Regions "SARs" specified, phrases throughout this Agreement containing the word "country" (for example, "country of acquisition" and "country of installation") are replaced with the following:

1) In **Hong Kong SAR**: "Hong Kong SAR"

2) In **Macau SAR**: "Macau SAR," except under section 1.15.2 (Governing Law) above; and

3) In **Taiwan**: "Taiwan."

INDIA

1.12.4 Dispute Resolution

The following replaces the final sentence in 1.12.4:

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.

INDONESIA

1.13 Agreement Termination

The following paragraph is added:

Both parties waive the provisions of article 1266 of the Indonesian Civil Code to the extent the article requires such court decree for the termination of an agreement creating mutual obligations.

JAPAN

1.6 Payment

Add the following sentence:

Customer agrees to pay within 30 days from our invoice date.

1.12.4 Dispute Resolution

The following is inserted at the end of 1.12.4:

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

PEOPLE'S REPUBLIC OF CHINA

1.3 Definitions - Definition of "Date of Installation"

The following replaces the definition of Date of Installation:

Date of Installation —

a. for an IBM Machine Component IBM is responsible for installing, the business day after the day IBM installs it.

b. for a Customer-set-up (CSU) Machine Component, the earlier of i) the second business day after arrival at Customer's installation location or ii) two months after the date of delivery. When a CSU Machine Component is delivered for connection to a non-CSU Machine or Machine Component delivered by IBM, the Date of Installation of the CSU Machine Component will be the later of these two installation dates.

SINGAPORE

1.12.5 Other Principles of Our Relationship

The following replaces the terms of 1.12.5e:

Subject to the rights provided to IBM's Eligible Product developers and suppliers as provided in **1.11** above (Limitation of Liability), a person who is not a party to this Agreement will have no right under the Contracts (Right of Third Parties) Act to enforce any of its terms.

6.4   EUROPE, MIDDLE EAST, AFRICA COUNTRY AMENDMENTS

Amendments Applicable to Many Countries

EUROPE, MIDDLE EAST, AND AFRICA

The following term applies to all countries in Europe, the Middle East, and Africa, unless a specific country term states otherwise.

1.11.1 Items for which IBM May be Liable

In the first paragraph, the following replaces "U.S. $100,000":

EUR 500,000 (five hundred thousand euro)

EU MEMBER STATES AND ADDITIONAL COUNTRIES SPECIFIED

The following term applies to all EU Member States, Iceland, Liechtenstein, Norway, Switzerland, Turkey, and any other European country that has enacted local data privacy or protection legislation similar to the EU model.

1.12.5 Other Principles of Our Relationship

The following replaces 1.12.5d:

a. Definitions – For the purposes of 1.12.5d, the following additional definitions shall apply:

(1) Business Contact Information – business-related contact information disclosed by Customer to IBM, including names, job titles, business addresses, telephone numbers and email addresses of Customer's employees and contractors.

(2) Business Contact Personnel – Customer employees and contractors to whom the Business Contact Information relates. For Austria, Italy, and Switzerland, Business Contact Information also includes information about Customer and its contractors as legal entities (for example, Customer's revenue data and other transactional information).

(3) Data Protection Authority – the authority established by the Data Protection and Electronic Communications Legislation in the applicable country or, for non-EU countries, the authority responsible for supervising the protection of personal data in that country, or (for any of the foregoing) any duly appointed successor entity thereto.

(4) Data Protection & Electronic Communications Legislation – i) the applicable local legislation and regulations in force implementing the requirements of EU Directive 95/46/EC (on the protection of individuals with regard to the processing of personal data and on the free movement of such data) and of EU Directive 2002/58/EC (concerning the processing of personal data and the protection of privacy in the electronic communications sector); or ii) for non-EU countries, the legislation and/or regulations passed in the applicable country relating to the protection of personal data and the regulation of electronic communications involving personal data, including (for any of the foregoing) any statutory replacement or modification thereof.

(5) IBM Group – International Business Machines Corporation of Armonk, New York, USA, its subsidiaries, and their respective Business Partners and subcontractors.

b. Customer authorises IBM:

(1) to process and use Business Contact Information within IBM Group in support of Customer, including the provision of support services, and for the purpose of furthering the business relationship between Customer and IBM Group, including, without limitation, contacting Business Contact Personnel (by email or otherwise) and marketing IBM Group products and services (the "Specified Purpose"); and

(2) to disclose Business Contact Information to other members of IBM Group in pursuit of the Specified Purpose only.

c. IBM agrees that all Business Contact Information will be processed in accordance with the Data Protection & Electronic Communications Legislation and will be used only for the Specified Purpose.

d. To the extent required by the Data Protection & Electronic Communications Legislation, Customer represents that it has obtained (or will obtain) any consents from (and has issued (or will issue) any notices to the Business Contact Personnel as are necessary in order to enable IBM Group to process and use the Business Contact Information for the Specified Purpose.

e. Customer authorizes IBM to transfer Business Contact Information outside the European Economic Area, provided that the transfer is made on contractual terms approved by the Data Protection Authority or the transfer is otherwise permitted under the Data Protection & Electronic Communications Legislation.

The following terms are added as a new section 4.4.6 for Iceland, Norway, and all Member States of the European Union ("EU"), except Germany:

4.4.6 Disposal of Machines

As from the effective date in Customer's country of local laws and regulations implementing Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE), the following applies:

4.4.6.1 When any Machine supplied under this Agreement replaces a machine put on the market before August 13, 2005, then IBM will collect and dispose of such replaced machine, provided that IBM is required to do so by applicable law. IBM may charge for such collection and disposal, to the extent permitted by applicable law.

4.4.6.2 For all WEEE, Customer is responsible for making the WEEE available for collection from Customer's premises within 30 days after supply of the replacement Machine. Whenever IBM collects and disposes of Customer WEEE, based on a legal or contractual obligation, Customer agrees:

a. to securely erase from any WEEE all programs not provided by IBM with the original equipment and data, including without limitation, the following: i) information about identified or identifiable individuals or legal entities ("Personal Data"); and ii) Customer's confidential or proprietary information and other data If removing or deleting Personal Data is not possible, Customer agrees to transform such information (e.g., by making it anonymous) so that it no longer qualifies as Personal Data under applicable law;

b. to remove all funds, if any, from WEEE, returned to IBM;

c. that IBM is not responsible for saving or protecting any funds, programs not provided by IBM with the original equipment, or any data contained in a WEEE that Customer returns to IBM; and

d. that IBM may ship all or part of the WEEE or its software to other IBM or third party locations around the world to perform its responsibilities under this Agreement, and Customer authorizes IBM to do so.

WESTERN EUROPEAN COUNTRIES

2.3 Warranty for IBM Machine Components of IBM Appliances

The following paragraph is added after the second paragraph for all countries listed in the definition of Western Europe below:

> The warranty for IBM Machines acquired in Western Europe will be valid and applicable in all Western European countries provided the Machines have been announced and made available in such countries. For purposes of this paragraph, "Western Europe" means Andorra, Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom, Vatican State, and any country subsequently that subsequently joins the European Union, as from the date of accession.

EMEA-WIDE

1.6 Payment

The following replaces 1.6b for the following countries except as noted:

> Amounts are due and payable upon receipt of invoice. Customer agrees 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), Customer 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 article 441-6 of the Code of Commerce, a late payment fee is payable, without any need for IBM to issue a reminder, in respect of the period commencing on the day following the payment due date specified on IBM's invoice, and ending on the date when full payment of the

invoiced amount is made; such late payment fee shall be calculated on the basis of a rate equal to the European Central Bank's rate for its most recent refinancing operation, plus 10 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, Customer 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 IBM does so, it will advise Customer 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, Customer will be in default without the necessity of a default notice. In such case Customer 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 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 Customer fails 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.

BAHRAIN, KUWAIT, OMAN, QATAR, SAUDI ARABIA, AND UNITED ARAB EMIRATES

*The following replaces the paragraph that begins "**IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE**" in **3.5.4 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 Customer's Program licenses or Selected Support for all of Customer's Selected Program licenses to the next Anniversary if IBM or Customer's reseller receives (1) Customer's order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current term or (2) Customer's payment within 30 days of Customer's receipt of the software subscription and support or Selected Support, as applicable, invoice for the next term.

*The following replaces the paragraph that begins "**IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE**" in **3.3.1Automatic Renewal of Fixed Term Licenses**:*

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

AUSTRIA

1.6 Payment

Replace the above EMEA-wide text in 1.6b with the following:

Payment in full is due and payable without deduction upon receipt of invoice. Customer agrees 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 Transaction Document.

1.11 Limitation of Liability

The following sentence is added:

The following limitations and exclusions of IBM's liability do not apply for damages caused by gross negligence or willful misconduct.

1.11.1 Items for which IBM May Be Liable

The following replaces the first sentence:

Circumstances may arise where, because of a default by IBM in the performance of its obligations under this Agreement or other liability, Customer is entitled to recover damages from IBM.

In the second sentence of the first paragraph, delete entirely the parenthetical phrase "(including fundamental breach, negligence, misrepresentation, or other contract or tort claim)."

1.11.2 Items for which IBM Is Not Liable

The following replaces 1.11.2b:

indirect damages or consequential damages; or

2.5 Extent of Warranty

The following replaces the last paragraph

Warranty for non-IBM Eligible Products:

(a) 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.

(b) IBM warrants that each non-IBM Eligible Product, when used in the specified operating environment, relates to its functions and conforms to its specifications. In case a non-IBM Eligible Product is delivered without specifications, IBM only warrants that the non-IBM Eligible Product information correctly describes the non-IBM Eligible Product, and that the non-IBM Eligible Product can be used according to the non-IBM Eligible Product information.

(c) IBM does not warrant uninterrupted or error-free operation of a non-IBM Eligible Product or that IBM will correct all program defects. The Customer is responsible for the results

of the use of a non-IBM Eligible Product. IBM does not warrant uninterrupted or error-free operation of an Eligible Product or that IBM will correct all defects.

(d)   At IBM's discretion, warranty may also be provided by the third party provider himself.

(e)   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.

(f)   In addition, the limitation of liability provision will apply.

(g)   However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranty to Customer.

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

1.7 Taxes

Delete the last sentence:

This excludes those taxes based on IBM's net income.

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

1.7 Taxes

Delete 1.7.

EGYPT

1.12. General Principles of Our Relationship

Delete 1.12.1.

GERMANY

1.11. Limitation of Liability

The following replaces the Limitation of Liability section in its entirety:

a.   IBM will be liable without limit for 1) loss or damage caused by a breach of an express guarantee; 2) damages or losses resulting in bodily injury (including death); and 3) damages caused intentionally or by gross negligence.

b.   In the event of loss, damage and frustrated expenditures caused by slight negligence or in breach of essential contractual obligations, IBM will be liable, regardless of the basis on which Customer is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), per claim only up to the greater of 500,000 euro or the charges (if the Eligible Product is IBM SaaS or subject to Fixed Term charges, up to 12 months' charges) Customer paid for the Eligible Product that caused the loss or damage. A number of defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one default.

c.   In the event of loss, damage and frustrated expenditures caused by slight negligence, IBM will not be liable for indirect or consequential damages, even if IBM was informed about the possibility of such loss or damage.

d.   In case of delay on IBM's part: 1) IBM will pay to Customer an amount not exceeding the loss or damage caused by IBM's delay and 2) IBM will be liable only in respect of the resulting damages that Customer suffers, subject to the provisions of Items a and b above.

1.12.4. Dispute Resolution

The following replaces the third sentence of 1.12.4:

Any claims resulting from this Agreement are subject to a limitation period of three years, except as stated in Section 2 (Warranties) of this Agreement.

1.12.5 Other Principles of Relationship

The following replaces1.12.5e:

No right or cause of action for any third party is created by this Agreement, nor is IBM responsible for any third party claims against Customer, except (to the extent permitted in Section 1.11 (Limitation of Liability) for: i) bodily injury (including death); or ii) damage to real or tangible personal property for which (in either case) IBM is legally liable to that third party.

2.2 Warranty for IBM Software Subscription and Support and Selected Support

The following replaces 2.2

IBM warrants that Software Maintenance will be provided using reasonable care and skill, and according to its current description and the provisions of this Agreement.

The Customer agrees to provide timely written notice of any failure to comply with this warranty so that IBM can take corrective action.

IBM will remedy any defects covered by warranty, of which written notice has been given by Customer. If a defect is not remedied within a reasonable period of time, the Customer may in respect to such defect, provided that the value of the serviceability of the work is impaired, either request a reduction of price, or, rescind this Agreement. In case of minor defects or deviations, the Customer shall not be entitled to rescind this Agreement. In case the Customer should be entitled to liability claims because of a warranty defect, the Limitation of Liability section shall apply. However the Customer shall not be entitled to liability claims resulting from minor warranty defects.

2.3 Warranty for IBM Machine Components of IBM Appliances

The following replaces 2.3:

IBM warrants that each IBM Machine Component is free from defects at the time of delivery and conforms to its Specifications. The warranty period for a Machine Component commences on the Date of Installation, however at the earliest upon delivery. During the warranty period, IBM will remedy any warranty defects, through repair or exchange.

In the event that IBM is unable to remedy a warranty defect or defect correction fails within a reasonable period of time , the Customer may in respect of such defect, provided the value or the serviceability of the Machine Component is impaired, either request a reduction of price, or rescind this Agreement. In case of minor warranty defects, the Customer shall not be entitled to rescind this Agreement.

In case the Customer should be entitled to liability claims because of a warranty defect, the Limitation of Liability section shall apply. However the Customer shall not be entitled to liability claims resulting from minor warranty defects.

2.5 Extent of Warranty

The second paragraph is deleted.

The following replaces the last paragraph:

Warranty for Non-IBM Eligible Products may, at IBM's discretion, also be provided by non-IBM manufacturers, developers, suppliers, or publishers themselves.

4.4.6 Disposal of Machines

The following terms are added as a new section 4.4.6:

In accordance with the law for the placing on the market, the return, and the environmentally compatible disposal of Electrical and Electronic Equipment (Electrical and Electronic Equipment Law - ElektroG), for machines the following will apply:

4.4.6.1 IBM is prepared to take back IBM waste electrical and electronic equipment (WEEE) that were put on the market as new machines after August 13, 2005, and IBM will be responsible for the disposal of such machines.

4.4.6.2 According to German law, Customer is responsible to dispose of WEEE, which is not covered by the preceding sentence. In such case, IBM is prepared to take back and dispose of, in compliance with applicable law, such WEEE by charging the applicable disposal fee to the Customer, based on a separate agreement.

Customer is responsible for making the WEEE available for collection from Customer's premises within 30 days after supply of the replacement Machine.

4.4.6.3 Whenever IBM collects and disposes of Customer WEEE, based on a legal or contractual obligation, Customer agrees:

a. Customer is responsible to remove all funds, if any, from WEEE returned to IBM, and to securely erase any data that Customer considers sensitive (including personal data), existing in/on waste machines (e.g. hard disk, storage devices, memory chips, etc.), before making them available for collection by IBM or its designated assignee. In the event that Customer is unable to comply with this obligation due to technical reasons, Customer will inform IBM thereof in writing. In this case, IBM shall be entitled to delete all data stored in/on the waste machines, as instructed and requested by Customer and according to the "IBM Supplementary Terms and Conditions for Processing of Customer Data by Order according to § 11 BDSG";

b. IBM is not responsible for saving or protecting any funds, programs not provided by IBM with the original equipment, or any data contained in a WEEE that Customer returns to IBM; and

c. IBM may ship all or part of the WEEE or its software to other IBM or third party locations around the world to perform its responsibilities under this Agreement, and Customer authorizes IBM to do so.

NETHERLANDS

1.6. Payment

Add the following paragraphs to 1.6b:

We may apply Customer's payment to Customer's 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 Customer fails 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 Customer on Customer's solvency and to require payment in advance of delivery or other security for payment.

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

Replace 1.7 with the following:

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

SOUTH AFRICA, NAMIBIA, LESOTHO, SWAZILAND

1.6 Payment

Add the following additional sentence:

When Customer makes payment by cheque, payment is deemed to have been made only when Customer's cheque has been received by IBM and its relevant account has been credited by IBM's authorised bankers.

SWITZERLAND

1.3 Definitions - Definition of "Non-IBM Program"

The following is added to definition of Non-IBM Programs:

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

1.12. General Principles of Our Relationship

Delete 1.12.1.

TURKEY

1.6 Payment

The following replaces 1.6b

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

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

Add the following to the end of this section:

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

IRELAND AND UNITED KINGDOM

The following sentence is added to the first paragraph of the preamble:

Nothing in this paragraph shall have the effect of excluding or limiting liability for fraud.

1.11 Limitation of Liability

1.11.1 Items for Which IBM May Be Liable

The following replaces the first paragraph of the Subsection:

For the purposes of this section, a "Default" means any act, statement, omission or negligence on the part of IBM in connection with, or relating to, any Program license granted, any goods sold or services rendered by IBM under this Agreement in respect of which IBM is legally liable to Customer, whether in contract or in tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default.

Circumstances may arise where, because of a Default by IBM in the performance of its obligations under this Agreement or other liability, Customer is entitled to recover damages from IBM. Regardless of the basis on which Customer is entitled to claim damages from IBM and except as expressly required by law without the possibility of contractual waiver, IBM's entire liability for any one Default will not exceed the amount of any direct damages, to the extent actually suffered by Customer as an immediate and direct consequence of the default, up to the greater of (1) 500,000 euro (or the equivalent in local currency) or (2) 125% of the charges (if the Eligible Product is subject to fixed term charges, up to 12 months' charges) for the Eligible Product that is the subject of the claim. Notwithstanding the foregoing, the amount of any damages for bodily injury (including death) and damage to real property and tangible personal property for which IBM is legally liable is not subject to such limitation. In addition, the amount (if any) payable by IBM under the provisions of section 1.10.1 shall not be subject to any limitation or exclusion set forth in this section 1.11.

1.11.2 Items for Which IBM is Not Liable

The following replaces Items 1.11.2b and 1.11.2c:

b.   special, incidental, exemplary, or indirect damages or consequential damages; or

c.   wasted management time or lost profits, business, revenue, goodwill, or anticipated savings.