



International Agreement for Early Release of IBM Verse On-Premises Program Offerings

Part 1 - General Terms

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, CLICKING ON AN "ACCEPT" BUTTON, OR OTHERWISE USING THE PROGRAM, LICENSEE AGREES TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF LICENSEE, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND LICENSEE TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS,

* DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, CLICK ON AN "ACCEPT" BUTTON, OR USE THE PROGRAM; AND

* PROMPTLY RETURN THE UNUSED MEDIA AND DOCUMENTATION TO IBM. IF THE PROGRAM WAS DOWNLOADED, DESTROY ALL COPIES OF THE PROGRAM.

1. Definitions

"Authorized Use" - the specified level at which Licensee is authorized to execute or run the Program. That level may be measured by number of users, millions of service units ("MSUs"), Processor Value Units ("PVUs"), or other level of use specified by IBM.

"Early Release" - a release of a Program for purposes of testing prior to it being made commercially available that may still be under development and therefore, potentially unreliable.

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

"License Information" ("LI") - a document that provides information and any additional terms specific to a Program. The Program's LI can be found in the Program's directory, by the use of a system command, or as a booklet included with the Program.

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

"Test Period" - the period during which the Licensee tests a Program that has not been made commercially available to customers.

2. Agreement Structure

This Agreement includes Part 1 - General Terms, Part 2 - Country-unique Terms (if any) and the LI and is the complete agreement between Licensee and IBM regarding the use of the Program. It replaces any prior oral or written communications between Licensee and IBM concerning Licensee's use of the Program. The terms of Part 2 may replace or modify those of Part 1. To the extent of any conflict, the LI prevails over both Parts.

Z125-5544-05 (07/2011)

3. License Grant

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

IBM grants Licensee a limited, nonexclusive, nontransferable license to 1) download, install, and use the Program during the Test Period up to the Authorized Use specified in the LI solely for test purposes and to provide feedback to IBM and 2) make a backup copy, all provided that

- a. Licensee has lawfully obtained the Program and complies with the terms of this Agreement;
- b. the backup copy does not execute unless the backed-up Program cannot execute;
- c. Licensee reproduces all copyright notices and other legends of ownership on each copy, or partial copy, of the Program;
- d. Licensee maintains a record of all copies of the Program and ensures that anyone who uses the Program (accessed either locally or remotely) 1) does so only on Licensee's behalf and 2) complies with the terms of this Agreement;
- e. Licensee does not 1) use the Program for productive purposes or otherwise use, copy, modify, or distribute the Program except as expressly permitted in this Agreement; 2) reverse assemble, reverse compile, otherwise translate, or reverse engineer the Program, except as expressly permitted by law without the possibility of contractual waiver; 3) use any of the Program's components, files, modules, audio-visual content, or related licensed materials separately from that Program; 4) sublicense, rent, or lease the Program; or 5) use the Program for commercial application hosting; and
- f. if Licensee obtains this Program as a Supporting Program, Licensee uses this Program only to support the Principal Program and subject to any limitations in the license to the Principal Program, or, if Licensee obtains this Program as a Principal Program, Licensee uses all Supporting Programs only to support this Program, and subject to any limitations in this Agreement. For purposes of this Item "f," a "Supporting Program" is a Program that is part of another IBM Program ("Principal Program") and identified as a Supporting Program in the Principal Program's LI. (To obtain a separate license to a Supporting Program without these restrictions, Licensee should contact the party from whom Licensee obtained the Supporting Program.)

This license applies to each copy of the Program that Licensee makes.

3.1 Updates, Fixes, and Patches

When Licensee receives an update, fix, or patch to a Program, Licensee accepts any additional or different terms that are applicable to such update, fix, or patch that are specified in its LI. If no additional or different terms are provided, then the update, fix, or patch is subject solely to this Agreement. If the Program is replaced by an update, Licensee agrees to promptly discontinue use of the replaced Program.

3.2 Term and Termination

The Test Period begins on the date Licensee agrees to the terms of this Agreement and ends upon the earliest of 1) the end of the duration or the date specified by IBM in either the License Information or a Z125-5544-05 (07/2011)

transaction document, 2) the date on which the Program automatically disables itself, or 3) the date on which IBM makes the Program commercially available. Licensee's license to the Program terminates at the end of the Test Period, and Licensee agrees to promptly discontinue use of the Program and destroy all of Licensee's copies of the Program within 10 days of the end of the Test Period.

IBM may terminate Licensee's license if Licensee fails to comply with the terms of this Agreement. If the license is terminated for any reason by either party, Licensee agrees to promptly discontinue use of and destroy all of Licensee's copies of the Program.

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

4. Charges

There is no charge for the use of the Program for the duration of the Test Period.

5. Rights in Data

Licensee assigns to IBM all right, title, and interest (including ownership of copyright) in any data, suggestions, or written materials that 1) are related to the Program and 2) Licensee provides to IBM. Upon IBM's request, Licensee will sign additional documents necessary to assign such rights. In addition to the foregoing, Licensee grants to IBM a non-exclusive, irrevocable, unrestricted, worldwide and paid-up right and license to a) include in any product or service any idea, know-how, concept, technique, invention, discovery or improvement, whether or not patentable, that Licensee provides to IBM related to the Program b) use, manufacture and market any such product or service, and c) allow others to do any of the foregoing.

6. No Warranties

SUBJECT TO ANY STATUTORY WARRANTIES THAT CANNOT BE EXCLUDED, IBM MAKES NO WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, REGARDING THE PROGRAM OR SUPPORT, IF ANY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND TITLE, AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT.

SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO LICENSEE. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE MINIMUM PERIOD REQUIRED BY LAW. NO WARRANTIES APPLY AFTER THAT PERIOD. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO LICENSEE. LICENSEE MAY HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE OR JURISDICTION TO JURISDICTION.

THE DISCLAIMERS AND EXCLUSIONS IN THIS SECTION 6 ALSO APPLY TO ANY OF IBM'S PROGRAM DEVELOPERS AND SUPPLIERS.

MANUFACTURERS, SUPPLIERS, OR PUBLISHERS OF NON-IBM PROGRAMS MAY PROVIDE THEIR OWN WARRANTIES.

IBM DOES NOT PROVIDE SUPPORT OF ANY KIND, UNLESS IBM SPECIFIES OTHERWISE. IN SUCH EVENT, ANY SUPPORT PROVIDED BY IBM IS SUBJECT TO THE DISCLAIMERS AND EXCLUSIONS IN THIS SECTION 6.

7. Licensee Data and Databases

To assist Licensee in isolating the cause of a problem with the Program, IBM may request that Licensee 1) allow IBM to remotely access Licensee's system or 2) send Licensee information or system data to IBM. However, IBM is not obligated to provide such assistance unless IBM and Licensee enter a separate written agreement under which IBM agrees to provide to Licensee that type of support, which is beyond IBM's obligations in this Agreement. In any event, 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 Licensee is located), and Licensee authorizes IBM to do so.

Licensee remains responsible for 1) any data and the content of any database Licensee 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. Licensee 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.

8. Limitation of Liability

The limitations and exclusions in this Section 8 (Limitation of Liability) apply to the full extent they are not prohibited by applicable law without the possibility of contractual waiver.

8.1 Items for Which IBM May Be Liable

Circumstances may arise where, because of a default on IBM's part or other liability, Licensee is entitled to recover damages from IBM. Regardless of the basis on which Licensee 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 Program or otherwise arising under this Agreement will not exceed the amount of any 1) damages for bodily injury (including death) and damage to real property and tangible personal property and 2) other actual direct damages up to U.S. \$10,000 (or equivalent in local currency).

This limit also applies to any of IBM's Program developers and suppliers. It is the maximum for which IBM and its Program developers and suppliers are collectively responsible.

8.2 Items for Which IBM Is Not Liable

UNDER NO CIRCUMSTANCES IS IBM, ITS PROGRAM 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.

9. Compliance Verification

For purposes of this Section 9 (Compliance Verification), "Early Release Program Terms" means 1) this Agreement and applicable amendments and transaction documents provided by IBM, and 2) IBM software policies that may be found at the IBM Software Policy website (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 9 remain in effect during the period the Program is licensed to Licensee, and for two years thereafter.

9.1 Verification Process

Licensee 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 Licensee's use of all Programs is in compliance with the Early Release Program Terms, including, without limitation, all of IBM's applicable licensing and pricing qualification terms. Licensee is responsible for 1) ensuring that it does not exceed its Authorized Use, and 2) remaining in compliance with Early Release Program Terms.

Upon reasonable notice, IBM may verify Licensee's compliance with Early Release Program Terms at all sites and for all environments in which Licensee uses (for any purpose) Programs subject to Early Release Program Terms. Such verification will be conducted in a manner that minimizes disruption to Licensee's business, and may be conducted on Licensee'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.

9.2 Resolution

IBM will notify Licensee in writing if any such verification indicates that Licensee has used any Program in excess of its Authorized Use or is otherwise not in compliance with the Early Release Program Terms. Licensee agrees to promptly pay directly to IBM the charges that IBM specifies in an invoice for 1) any such excess use, 2) 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.

10. Third Party Notices

The Program may include third party code that IBM, not the third party, licenses to Licensee under this Agreement. Notices, if any, for the third party code ("Third Party Notices") are included for Licensee's information only. These notices can be found in the Program's NOTICES file(s). Information on how to obtain source code for certain third party code can be found in the Third Party Notices. If in the Third Party Notices IBM identifies third party code as "Modifiable Third Party Code," IBM authorizes Licensee to 1) modify the Modifiable Third Party Code and 2) reverse engineer the Program modules that directly interface with the Modifiable Third Party Code provided that it is only for the purpose of debugging Licensee's modifications to such third party code. IBM's service and support obligations, if any, apply only to the unmodified Program.

11. General

- a. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.
- b. 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.
- c. Licensee is prohibited from exporting the Program.
- d. Licensee authorizes International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors and IBM Business Partners) to store and use Licensee's business contact information wherever they do business, in connection with IBM products and services, or in furtherance of IBM's business relationship with Licensee.
- e. 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.
- f. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation: 1) neither party will bring a legal action, regardless of form, for any claim arising out of or related to this Agreement more than two years after the cause of action arose; and 2) upon the expiration of such time limit, any such claim and all respective rights related to the claim lapse.
- g. Neither Licensee nor IBM is responsible for failure to fulfill any obligations due to causes beyond its control.
- h. 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 Licensee, except as permitted in Subsection 8.1 (Items for Which IBM May Be Liable) above for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable to that third party.
- i. In entering into this Agreement, neither party is relying on any representation not specified in this Agreement, including but not limited to any representation concerning: 1) the performance or function of the Program, other than as expressly warranted in Section 6 (No Warranties) above; 2) the experiences or recommendations of other parties; or 3) any results or savings that Licensee may achieve.
- j. IBM has signed agreements with certain organizations (called "IBM Business Partners") to promote, market, and support certain Programs. IBM Business Partners remain independent and separate from IBM. IBM is not responsible for the actions or statements of IBM Business Partners or obligations they have to Licensee.
- k. The license and intellectual property indemnification terms of Licensee's other agreements with IBM (such as the IBM Customer Agreement) do not apply to Program licenses granted under this Agreement.
- l. IBM does not warrant that any version of the Program that is formally released or made commercially available (if any) will be similar to, or compatible with, Early Release versions.

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

n. Any terms of this Agreement that by their nature extend beyond termination of this Agreement remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

o. Both parties agree that all information exchanged is nonconfidential. If either party requires the exchange of confidential information, it will be made under a signed confidentiality agreement.

12. Geographic Scope and Governing Law

12.1 Governing Law

Both parties agree to the application of the laws of the country in which Licensee obtained the Program license to govern, interpret, and enforce all of Licensee'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.

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

12.2 Jurisdiction

All rights, duties, and obligations are subject to the courts of the country in which Licensee obtained the Program license.

Part 2 - Country-unique Terms

For licenses granted in the countries specified below, the following terms replace or modify the referenced terms in Part 1. All terms in Part 1 that are not changed by these amendments remain unchanged and in effect. This Part 2 is organized as follows:

* Multiple country amendments to Part 1, Section 12 (Governing Law and Jurisdiction);

* Americas country amendments to other Agreement terms;

* Asia Pacific country amendments to other Agreement terms; and

* Europe, Middle East, and Africa country amendments to other Agreement terms.

Multiple country amendments to Part 1, Section 12 (Governing Law and Jurisdiction)

12.1 Governing Law

The phrase "the laws of the country in which Licensee obtained the Program license" in the first paragraph of 12.1 Governing Law is replaced by the following phrases in the countries below:

AMERICAS

(1) In Canada: the laws in the Province of Ontario;

(2) in Mexico: the federal laws of the Republic of Mexico;

(3) 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;

(4) in Venezuela: the laws of the Bolivarian Republic of Venezuela;

ASIA PACIFIC

(5) in Cambodia and Laos: the laws of the State of New York, United States;

(6) in Australia: the laws of the State or Territory in which the transaction is performed;

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

(8) in Taiwan: the laws of Taiwan;

EUROPE, MIDDLE EAST, AND AFRICA

(9) 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;

(10) 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;

(11) in Estonia, Latvia, and Lithuania: the laws of Finland;

(12) 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

(13) in South Africa, Namibia, Lesotho, and Swaziland: the laws of the Republic of South Africa.

12.2 Jurisdiction

The following paragraph pertains to jurisdiction and replaces Subsection 12.2 (Jurisdiction) as it applies for those countries identified below:

All rights, duties, and obligations are subject to the courts of the country in which Licensee obtained the Program license 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

- (1) In Argentina: the Ordinary Commercial Court of the city of Buenos Aires;
- (2) in Brazil: the court of Rio de Janeiro, RJ;
- (3) in Chile: the Civil Courts of Justice of Santiago;
- (4) in Ecuador: the civil judges of Quito for executory or summary proceedings (as applicable);
- (5) in Mexico: the courts located in Mexico City, Federal District;
- (6) in Peru: the judges and tribunals of the judicial district of Lima, Cercado;
- (7) in Uruguay: the courts of the city of Montevideo;
- (8) in Venezuela: the courts of the metropolitan area of the city of Caracas;

EUROPE, MIDDLE EAST, AND AFRICA

- (9) in Austria: the court of law in Vienna, Austria (Inner-City);
- (10) 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;
- (11) 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;
- (12) in South Africa, Namibia, Lesotho, and Swaziland: the High Court in Johannesburg;
- (13) in Greece: the competent court of Athens;
- (14) in Israel: the courts of Tel Aviv-Jaffa;

(15) in Italy: the courts of Milan;

(16) in Portugal: the courts of Lisbon;

(17) in Spain: the courts of Madrid; and

(18) in Turkey: the Istanbul Central Courts and Execution Directorates of Istanbul, the Republic of Turkey.

12.3 Arbitration

The following paragraph is added as a new Subsection 12.3 (Arbitration) as it applies for those countries identified below. The provisions of this Subsection 12.3 prevail over those of Subsection 12.2 (Jurisdiction) to the extent permitted by the applicable governing law and rules of procedure:

ASIA PACIFIC

(1) 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.

(2) In the People's Republic of China:

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 which the parties are disputing and which is undergoing arbitration.

(3) 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

(4) 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.

(5) 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.

AMERICAS COUNTRY AMENDMENTS

CANADA

8.1 Items for Which IBM May Be Liable

The following replaces Item 1 in the first paragraph of this Subsection 8.1 (Items for Which IBM May Be Liable):

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

11. General

The following replaces Item 11.h:

h. 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 Licensee except as permitted by the Limitation of Liability section above for bodily injury (including death) or physical harm to real or tangible personal property caused by IBM's negligence for which IBM is legally liable to that third party.

The following is added as Item 11.p:

p. For purposes of this Item 11.p, "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:

(1) General

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

(b) 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.

(2) Security Safeguards

(a) 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.

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

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

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

(3) 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.

(4) Access Requests

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

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

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

(5) 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.

(6) Public Bodies Who Are Subject to Public Sector Privacy Legislation

For Licensees who are public bodies subject to public sector privacy legislation, this Item 11.p applies only to Personal Data made available to Licensee in connection with this Agreement, and the obligations in this section apply only to Licensee, except that: 1) section (2)(a) applies only to IBM; 2) sections (1)(a) and (4)(a) apply to both parties; and 3) section (4)(b) and the last sentence in (1)(b) do not apply.

PERU

8. Limitation of Liability

The following is added to the end of this Section 8 (Limitation of Liability):

Except as expressly required by law without the possibility of contractual waiver, Licensee 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.

8.1 Items for Which IBM May Be Liable

The following is added to the end of this Subsection 8.1:

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

UNITED STATES OF AMERICA

11. General

The following is added to Section 11 as Item 11.p:

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

The following is added to Item 11.e:

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

ASIA PACIFIC COUNTRY AMENDMENTS

AUSTRALIA

6. No Warranties

The following is added to the first paragraph of Section 6 (No Warranties):

Although IBM specifies that there are no warranties, Licensee may have certain rights under the Competition and Consumer Act 2010 or other legislation and are only limited to the extent permitted by the applicable legislation.

8.1 Items for Which IBM May Be Liable

The following is added to Subsection 8.1 (Items for Which IBM May Be Liable):

Where IBM is in breach of a condition or warranty implied by the Competition and Consumer Act 2010, IBM's liability is limited to the repair or replacement of the goods, or the supply of equivalent goods. Where that condition or warranty relates to right to sell, quiet possession or clear title, or the goods are of a kind ordinarily obtained for personal, domestic or household use or consumption, then none of the limitations in this paragraph apply.

HONG KONG SAR, MACAU SAR, AND TAIWAN

As applies to licenses obtained in Taiwan and the special administrative regions, phrases throughout this Agreement containing the word "country" (for example, "the country in which the original Licensee was

granted the license" and "the country in which Licensee obtained the Program license") are replaced with the following:

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

(2) In Macau SAR: "Macau SAR" except in the Governing Law clause (Section 12.1)

(3) In Taiwan: "Taiwan."

INDIA

8.1 Items for Which IBM May Be Liable

The following replaces the terms of Items 1 and 2 of the first paragraph:

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

11. General

The following replaces the terms of Item 11.f:

f. 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

3.2 Term and Termination

The following is added to the last paragraph:

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

JAPAN

11. General

The following is added as Item 11.p:

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

MALAYSIA

8.2 Items for Which IBM Is Not Liable

The word "SPECIAL" in Item 8.2b is deleted.

NEW ZEALAND

6. No Warranties

The following is added to the first paragraph of this Section 6 (No Warranties):

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

8. Limitation of Liability

The following is added:

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

PHILIPPINES

8.2 Items for Which IBM Is Not Liable

The following replaces the terms of Item 8.2b:

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

SINGAPORE

8.2 Items for Which IBM Is Not Liable

The words "SPECIAL" and "ECONOMIC" are deleted from Item 8.2b.

11. General

The following replaces the terms of Item 11.h:

Z125-5544-05 (07/2011)

h. Subject to the rights provided to IBM's suppliers and Program developers as provided in Section 8 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.

TAIWAN

8.1 Items for Which IBM May Be Liable

The following sentences are deleted:

This limit also applies to any of IBM's subcontractors and Program developers. It is the maximum for which IBM and its subcontractors and Program developers are collectively responsible.

EUROPE, MIDDLE EAST, AFRICA (EMEA) COUNTRY AMENDMENTS

EUROPEAN UNION MEMBER STATES

6. No Warranties

The following is added to Section 6 (No Warranties):

In the European Union ("EU"), consumers have legal rights under applicable national legislation governing the sale of consumer goods. Such rights are not affected by the provisions set out in this Section 6 (No Warranties).

EU MEMBER STATES AND THE COUNTRIES IDENTIFIED BELOW

Iceland, Liechtenstein, Norway, Switzerland, Turkey, and any other European country that has enacted local data privacy or protection legislation similar to the EU model.

11. General

The following replaces Item 11.d:

(1) Definitions - For the purposes of this Item 11.d, the following additional definitions apply:

(a) Business Contact Information - business-related contact information disclosed by Licensee to IBM, including names, job titles, business addresses, telephone numbers and email addresses of Licensee's employees and contractors. For Austria, Italy and Switzerland, Business Contact Information also includes information about Licensee and its contractors as legal entities (for example, Licensee's revenue data and other transactional information)

(b) Business Contact Personnel - Licensee employees and contractors to whom the Business Contact Information relates.

(c) 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.

(d) 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.

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

(2) Licensee authorizes IBM:

(a) to process and use Business Contact Information within IBM Group in support of Licensee including the provision of support services, and for the purpose of furthering the business relationship between Licensee 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

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

(3) 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.

(4) To the extent required by the Data Protection & Electronic Communications Legislation, Licensee represents that (a) 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.

(5) Licensee 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.

AUSTRIA

8. Limitation of Liability

The following is added:

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

8.1 Items for Which IBM May Be Liable

Z125-5544-05 (07/2011)

The following replaces the first sentence in the first paragraph:

Circumstances may arise where, because of a default by IBM in the performance of its obligations under this Agreement or other liability, Licensee 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)".

8.2 Items for Which IBM Is Not Liable

The following replaces Item 8.2b:

b. indirect damages or consequential damages; or

BELGIUM, FRANCE, ITALY, AND LUXEMBOURG

8. Limitation of Liability

The following replaces the terms of Section 8 (Limitation of Liability) in its entirety:

Except as otherwise provided by mandatory law:

8.1 Items for Which IBM May Be Liable

IBM's entire liability for all claims in the aggregate for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this Agreement or due to any other cause related to this Agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if IBM is at fault) or of such cause, for a maximum of EUR 500,000 (five hundred thousand euro).

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

8.2 Items for Which IBM Is Not Liable

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

8.3 Suppliers and Program Developers

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

GERMANY

8. Limitation of Liability

The following replaces this Section 8 (Limitation of Liability) 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 Licensee is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), per claim only up to 500,000 euro for the Program 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 Licensee 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 Licensee suffers, subject to the provisions of Items a and b above.

11. General

The following replaces the provisions of 11.f:

f. Any claims resulting from this Agreement are subject to a limitation period of three years, except as stated in Section 6 (No Warranties) of this Agreement.

The following replaces the provisions of 11.h:

h. 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 Licensee, except (to the extent permitted in Section 8 (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.

IRELAND

6. No Warranties

Z125-5544-05 (07/2011)

The following paragraph is added to the second paragraph of this Section 5 (No Warranties):

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

IRELAND AND UNITED KINGDOM

2. Agreement Structure

The following sentence is added:

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

8.1 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 in relation to, the subject matter of an Agreement in respect of which IBM is legally liable to Licensee, 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, Licensee is entitled to recover damages from IBM. Regardless of the basis on which Licensee 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 Licensee as an immediate and direct consequence of the Default, up to 500,000 euro (or the equivalent in local currency) for the Program 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.

8.2 Items for Which IBM Is Not Liable

The following replaces Items 8.2b and 8.2c:

- b. special, incidental, exemplary, or indirect damages or consequential damages; or
- c. wasted management time or lost profits, business, revenue, goodwill, or anticipated savings.

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