

# International Program License Agreement

## Part 1 – General Terms

This Software License Agreement (the “Agreement”) is entered into by and between International Business Machines (“IBM”) and the Licensee identified below (“Licensee”, also called “Customer” “you” and “your”), and governs IBM’s provision of certain software (“Programs” as defined below) to you.

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### 1. Definitions

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### **3.1 Trade-ups, Updates, Fixes, and Patches**

#### **3.1.1 Trade-ups**

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### **3.2 Updates, Fixes, and Patches**

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If any authority imposes on the Program a duty, tax, levy, or fee, excluding those based on IBM's net income, then Licensee agrees to pay that amount, as specified in an invoice, or supply exemption documentation. Licensee is responsible for any personal property taxes for the Program from the date that Licensee obtains it. If any authority imposes a customs duty, tax, levy, or fee for the import into or the export, transfer, access, or use of the Program outside the country in which the original Licensee was granted the license, then Licensee agrees that it is responsible for, and will pay, any amount imposed.

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

## **8. Compliance Verification**

The rights and obligations set forth in this Section remain in effect during the period the Program is licensed to Licensee, and for two years thereafter.

### **8.1 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 this Agreement, 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 this Agreement.

Upon reasonable notice, IBM may verify Licensee's compliance with this Agreement at all sites and for all environments in which Licensee uses (for any purpose) Programs subject to this Agreement. 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.

### **8.2 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 this Agreement. 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.

## **9. 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.

## **10. General**

- a. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.
- b. For Programs IBM provides to Licensee in tangible form, IBM fulfills its shipping and delivery obligations upon the delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by Licensee and IBM.
- c. 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.
- d. Licensee agrees to comply with all applicable export and import laws and regulations, including U.S. embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users.

- e. Licensee agrees that IBM and its parent company International Business Machines Corporation (“IBM”) may process the business contact information of its employees and contractors and information about Licensee as a legal entity (“Contact Information”) in connection with Programs and services or in furtherance of IBM’s business relationship with Licensee. This contact information can be stored, disclosed internally and processed by IBM and its subsidiaries, and IBM business partners and subcontractors wherever they do business, solely for the purpose described above provided that these companies comply with applicable data privacy laws related to this processing. Where required by applicable law, Licensee has notified and obtained the consent of the individuals whose contact information may be stored, disclosed internally and processed and will forward their requests to access, update, correct or delete their contact information to IBM who will then comply with those requests.
- f. 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.
- g. 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.
- h. Neither party shall assign the Agreement in whole or in part except that IBM may assign to a subsidiary, affiliate, or parent company without consent being required. IBM may assign its rights to payments under this Agreement without obtaining Licensee’s consent.
- i. Neither Licensee nor IBM is responsible for failure to fulfill any obligations due to causes beyond its control.
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## **11. Geographic Scope and Governing Law**

### **11.1 Governing Law**

Both parties agree to the application of the laws of the State of New York 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.

### **11.2 Jurisdiction**

All rights, duties, and obligations are subject to the courts of the United States.

## License Information Attachment for IBM Programs

The Programs listed below are licensed under the following terms and conditions in addition to those of the International Program License Agreement, as modified above.

Program Name: IBM AnthillPro 5.0  
Program Number: 5725M74

Program Name: IBM uDeploy 5.0  
Program Number: 5725M77

Program Name: IBM uBuild 5.0  
Program Number: 5725M75

Program Name: IBM uRelease 5.0  
Program Number: 5725M76

Definitions:

### Legacy Agent

A legacy agent is a unit of measure by which the Program can be licensed. An entitlement is required for each instance of an agent connected to or managed by the Program. Multiple agents in a single environment are each considered to be separate instances of the agent and each must have an entitlement.

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Licensee must obtain separate, dedicated entitlements for each server installed with the Program in any manner directly or indirectly (for example: via a multiplexing program, device, or application server) through any means. An entitlement for a Legacy Server is unique to that Legacy Server and may not be shared, nor may it be reassigned other than for the permanent transfer of the Legacy Server entitlement to another person.

### Legacy Socket:

Legacy Socket is a unit of measure by which the Program can be licensed. A socket is electronic circuitry that accepts a processor chip. A server is a physical computer that is comprised of processing units, memory, and input/output capabilities and that executes requested procedures, commands, or applications for one or more users or client devices. Where racks, blade enclosures, or other similar equipment is being employed, each

separable physical device (for example, a blade or a rack-mounted device) that has the required components is considered itself a separate server. A virtual server is either a virtual computer created by partitioning the resources available to a physical server or the unpartitioned physical server. An Activated Processor Core is a processor core that is available for use in a physical or virtual server, regardless of whether the capacity of the processor core can be or is limited through virtualization technologies, operating system commands, BIOS settings, or similar restrictions. The Licensee must obtain socket entitlements for each socket of activated processor cores in the physical hardware environment made available to or managed by the Program, except for those servers from which the Program has been permanently removed.

### **Authorized User Single Install:**

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### **Program-unique Terms:**

### **Compliance Management Programs**

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