

Service Processor Readme File

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Version 2, June 1991

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Version 2.1, February 1999

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bash

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busybox

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glibc

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kernel

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util-linux

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cracklib

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libpcap

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netkit-combo

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International License Agreement for Non-Warranted Programs

Part 1 - General Terms

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, OR USING THE PROGRAM YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS,

- DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, OR USE THE PROGRAM; AND
- PROMPTLY RETURN THE PROGRAM AND PROOF OF ENTITLEMENT TO THE PARTY FROM WHOM YOU ACQUIRED IT TO OBTAIN A REFUND OF THE AMOUNT YOU PAID. IF YOU DOWNLOADED THE PROGRAM, CONTACT THE PARTY FROM WHOM YOU ACQUIRED IT.

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

"License Information" ("LI") is a document that provides information specific to a Program. The Program's LI is available at <http://www.ibm.com/software/sla/>. The LI may also be found in a file in the Program's directory, by the use of a system command, or as a booklet which accompanies the Program.

"Program" is 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.

A "Proof of Entitlement" ("PoE") is evidence of Your authorization to use a Program at a specified level. That level may be measured, for example, by the number of processors or users. The PoE is also evidence of Your eligibility for future upgrade prices, if any, and potential special or promotional opportunities. If IBM does not provide You with a PoE, then IBM may accept the original paid sales receipt or other sales record from the party (either IBM or its reseller) from whom You acquired the Program, provided that it specifies the name of the Program and the usage level acquired.

"You" and "Your" refer either to an individual person or to a single legal entity.

This Agreement includes Part 1 - General Terms, Part 2 - Country-unique Terms (if any), License Information, and Proof of Entitlement and is the complete agreement between You and IBM regarding the use of the Program. It replaces any prior oral or written communications between You and IBM concerning Your use of the Program. The terms of Part 2 and License Information may replace or modify those of Part 1. To the extent there is a conflict between the terms of this Agreement and those of the IBM International Passport Advantage Agreement, the terms of the latter agreement prevail.

1. Entitlement

License

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

IBM grants You a nonexclusive license to use the Program when You lawfully acquire it.

You may 1) use the Program up to the level of use specified in the PoE and 2) make and install copies, including a backup copy, to support such use. The terms of this license apply to each copy You make. You will reproduce all copyright notices and all other legends of ownership on each copy, or partial copy, of the Program.

If You acquire the Program as a program upgrade, after You install the upgrade You may not use the Program from which You upgraded or transfer it to another party.

You will ensure that anyone who uses the Program (accessed either locally or remotely) does so only for Your authorized use and complies with the terms of this Agreement.

You may not 1) use, copy, modify, or distribute the Program except as provided in this Agreement; 2) reverse assemble, reverse compile, or otherwise translate the Program except as specifically permitted by law without the possibility of contractual waiver; or 3) sublicense, rent, or lease the Program.

IBM may terminate Your license if You fail to comply with the terms of this Agreement. If IBM does so, You must destroy all copies of the Program and its PoE.

Money-back Guarantee

If for any reason You are dissatisfied with the Program and You are the original licensee, You may obtain a refund of the amount You paid for it, if within 30 days of Your invoice date You return the Program and its PoE to the party from whom You obtained it. If You downloaded the Program, You may contact the party from whom You acquired it for instructions on how to obtain the refund.

Program Transfer

You may transfer a Program and all of Your license rights and obligations to another party only if that party agrees to the terms of this Agreement. When You transfer the Program, You must also transfer a copy of this Agreement, including the Program's PoE. After the transfer, You may not use the Program.

2. Charges

The amount payable for a Program license is a one-time charge.

One-time charges are based on the level of use acquired which is specified in the PoE. IBM does not give credits or refunds for charges already due or paid, except as specified elsewhere in this Agreement.

If You wish to increase the level of use, notify IBM or the party from whom You acquired it and pay any applicable charges.

If any authority imposes a duty, tax, levy or fee, excluding those based on IBM's net income, upon the Program, then You agree to pay the amount specified or supply exemption documentation. You are responsible for any personal property taxes for the Program from the date that You acquire it.

3. No Warranty

SUBJECT TO ANY STATUTORY WARRANTIES WHICH CAN NOT BE EXCLUDED, IBM MAKES NO WARRANTIES OR CONDITIONS EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, REGARDING THE PROGRAM OR TECHNICAL SUPPORT, IF ANY.

The exclusion also applies 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 technical support, unless IBM specifies otherwise.

4. Limitation of Liability

Circumstances may arise where, because of a default on IBM's part or other liability, You are entitled to recover damages from IBM. In each such instance, regardless of the basis on which You may be entitled to claim damages from IBM, (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM is liable for no more than 1) damages for bodily injury (including death) and damage to real property and tangible personal property and 2) the amount of any other actual direct damages up to the charges for the Program that is the subject of the claim.

This limitation of liability also applies to IBM's Program developers and suppliers. It is the maximum for which they and IBM are collectively responsible.

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

- 1. LOSS OF, OR DAMAGE TO, DATA;**
- 2. SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR**
- 3. LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

5. General

- Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.
- In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.
- You agree to comply with all applicable export and import laws and regulations.
- You agree to allow IBM to store and use Your contact information, including names, phone numbers, and e-mail addresses, anywhere they do business. Such information will be processed and used in connection with our business relationship, and may be provided to contractors, Business Partners, and assignees of IBM for uses consistent with their collective business activities, including communicating with You (for example, for processing orders, for promotions, and for market research).
- Neither You nor IBM will bring a legal action under this Agreement more than two years after the cause of action arose unless otherwise provided by local law without the possibility of contractual waiver or limitation.
- Neither You nor IBM is responsible for failure to fulfill any obligations due to causes beyond its control.
- This Agreement will not create any right or cause of action for any third party, nor will IBM be responsible for any third party claims against You except, as permitted by the Limitation of Liability section above, for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable.

6. Governing Law, Jurisdiction, and Arbitration

Governing Law

Both You and IBM consent to the application of the laws of the country in which You acquired the Program license to govern, interpret, and enforce all of Your and IBM's 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.

Jurisdiction

All of our rights, duties, and obligations are subject to the courts of the country in which You acquired the Program license.

Part 2 - Country-unique Terms

AMERICAS

ARGENTINA: Governing Law, Jurisdiction, and Arbitration (Section 6): *The following exception is added to this section:*

Any litigation arising from this Agreement will be settled exclusively by the Ordinary Commercial Court of the city of Buenos Aires.

BRAZIL: Governing Law, Jurisdiction, and Arbitration (Section 6): *The following exception is added to this section:*

Any litigation arising from this Agreement will be settled exclusively by the court of Rio de Janeiro, RJ.

CANADA: General (Section 5): *The following replaces item 7:*

7. This Agreement will not create any right or cause of action for any third party, nor will IBM be responsible for any third party claims against You 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."

Governing Law, Jurisdiction, and Arbitration (Section 6): *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws in the Province of Ontario"

PERU: Limitation of Liability (Section 4): *The following is added at the end of this section:*

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: General (Section 5): *The following is added to this section:*

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

Governing Law, Jurisdiction, and Arbitration (Section 6): *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of the State of New York, United States of America

ASIA PACIFIC

AUSTRALIA: No Warranty (Section 3): *The following is added:*

Although IBM specifies that there are no warranties, You may have certain rights under the Trade Practices Act 1974 or other legislation and are only limited to the extent permitted by the applicable legislation.

Limitation of Liability (Section 4): *The following is added:*

Where IBM is in breach of a condition or warranty implied by the Trade Practices Act 1974, 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 acquired for personal, domestic or household use or consumption, then none of the limitations in this paragraph apply.

Governing Law, Jurisdiction, and Arbitration (Section 6): *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of the State or Territory in which You acquired the Program license

CAMBODIA, LAOS, and VIETNAM: Governing Law, Jurisdiction, and Arbitration (Section 6): *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of the State of New York, United States of America

The following is added to this section:

Arbitration

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Center ("SIAC Rules") 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 president of the SIAC. 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 language. The English language version of this Agreement prevails over any other language version.

HONG KONG S.A.R. and MACAU S.A.R. of China: Governing Law, Jurisdiction, and Arbitration (Section 6): *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of Hong Kong Special Administrative Region of China

INDIA: Limitation of Liability (Section 4): *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 You for the individual Program that is the subject of the claim.

General (Section 5): *The following replaces the terms of item 5:*

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.

Governing Law, Jurisdiction, and Arbitration (Section 6): *The following is added to this section:*

Arbitration

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Bangalore, India in accordance with the laws of India 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 president of the Bar Council of India. 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 language. The English language version of this Agreement prevails over any other language version.

JAPAN: General (Section 5): *The following is inserted after item 5:*

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

MALAYSIA: Limitation of Liability (Section 4): *The word "SPECIAL" in item 2 of the third paragraph is deleted:*

NEW ZEALAND: No Warranty (Section 3): *The following is added:*

Although IBM specifies that there are no warranties, You 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 You require the goods for the purposes of a business as defined in that Act.

Limitation of Liability (Section 4): *The following is added:*

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

PEOPLE'S REPUBLIC OF CHINA: Charges (Section 2): *The following is added:*

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

Governing Law, Jurisdiction, and Arbitration (Section 6): *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of the State of New York, United States of America (except when local law requires otherwise)

PHILIPPINES: Limitation of Liability (Section 4): *The following replaces the terms of item 2 of the third paragraph:*

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

Governing Law, Jurisdiction, and Arbitration (Section 6): *The following is added to this section:*

Arbitration

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Metro Manila, Philippines in accordance with the laws of the Philippines 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 president of the Philippine Dispute Resolution Center, Inc. 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 language. The English language version of this Agreement prevails over any other language version.

SINGAPORE: Limitation of Liability (Section 4): *The words "SPECIAL" and "ECONOMIC" are deleted from item 2 of the third paragraph.*

General (Section 5): *The following replaces the terms of item 7:*

Subject to the rights provided to IBM's suppliers and Program developers as provided in Section 4 above (Limitation of Liability), a person who is not a party to this Agreement shall have no right under the Contracts (Right of Third Parties) Act to enforce any of its terms.

EUROPE, MIDDLE EAST, AFRICA (EMEA)

No Warranty (Section 3): *In the European Union, the following is added at the beginning of this section:*

In the European Union, consumers have legal rights under applicable national legislation governing the sale of consumer goods. Such rights are not affected by the provisions of this Section 3.

Limitation of Liability (Section 4): *In Austria, Denmark, Finland, Greece, Italy, Netherlands, Norway, Portugal, Spain, Sweden and Switzerland, the following replaces the terms of this section in its entirety:*

Except as otherwise provided by mandatory law:

1. IBM's liability 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 amount equal to the charges You paid for the Program.

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

2. **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 OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST**

PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

3. 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.

Limitation of Liability (Section 4): *In France and Belgium, the following replaces the terms of this section in its entirety:*

Except as otherwise provided by mandatory law:

1. IBM's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with 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), for a maximum amount equal to the charges You paid for the Program that has caused the damages.

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

2. **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 OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**
3. 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.

Governing Law, Jurisdiction, and Arbitration (Section 6)

Governing Law

The phrase "the laws of the country in which You acquired the Program license" is replaced by:

- 1) "the laws of Austria" in Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldova, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia; 2) "the laws of France" in Algeria, 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 & Futuna; 3) "the laws of Finland" in Estonia, Latvia, and Lithuania; 4) "the laws of England" in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe; and 5) "the laws of South Africa" in South Africa, Namibia, Lesotho and Swaziland.

Jurisdiction

The following exceptions are added to this section:

- 1) **In Austria** the choice of jurisdiction for all disputes arising out of this Agreement and relating thereto, including its existence, will be the competent court of law in Vienna, Austria (Inner-City); 2) **in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan,**

Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, West Bank/Gaza, Yemen, Zambia, and Zimbabwe all disputes arising out of this Agreement or related to its execution, including summary proceedings, will be submitted to the exclusive jurisdiction of the English courts; 3) **in Belgium and Luxembourg**, all disputes arising out of this Agreement or related to its interpretation or its execution, the law, and the courts of the capital city, of the country of Your registered office and/or commercial site location only are competent; 4) **in France, Algeria, 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 & Futuna** all disputes arising out of this Agreement or related to its violation or execution, including summary proceedings, will be settled exclusively by the Commercial Court of Paris; 5) **in Russia**, all disputes arising out of or in relation to the interpretation, the violation, the termination, the nullity of the execution of this Agreement shall be settled by Arbitration Court of Moscow; 6) **in South Africa, Namibia, Lesotho and Swaziland**, both of us agree to submit all disputes relating to this Agreement to the jurisdiction of the High Court in Johannesburg; 7) **in Turkey** all disputes arising out of or in connection with this Agreement shall be resolved by the Istanbul Central (Sultanahmet) Courts and Execution Directorates of Istanbul, the Republic of Turkey; 8) in each of the following specified countries, any legal claim arising out of this Agreement will be brought before, and settled exclusively by, the competent court of a) Athens for **Greece**, b) Tel Aviv-Jaffa for **Israel**, c) Milan for **Italy**, d) Lisbon for **Portugal**, and e) Madrid for **Spain**; and 9) **in the United Kingdom**, both of us agree to submit all disputes relating to this Agreement to the jurisdiction of the English courts.

Arbitration

In Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldavia, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia 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.

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.

AUSTRIA: No Warranty (Section 3): *The terms of this section are completely replaced by the following:*

The following limited warranty applies if You have paid a charge to obtain the Program:

The warranty period is twelve months from the date of delivery. The limitation period for consumers in action for breach of warranty is the statutory period as a minimum.

The warranty for an IBM Program covers the functionality of the Program for its normal use and the Program's conformity to its specifications.

IBM warrants that when the Program is used in the specified operating environment it will conform to its specifications. IBM does not warrant uninterrupted or error-free operation of the Program or that IBM will correct all Program defects. You are responsible for the results obtained from the use of the Program.

The warranty applies only to the unmodified portion of the Program.

If the Program does not function as warranted during the warranty period and the problem cannot be resolved with information available. You may return the Program to the party from whom You acquired it and receive a refund in the amount You paid. If You downloaded the Program, You may contact the party from whom You acquired it to obtain the refund.

This is our sole obligation to You, except as otherwise required by applicable statutory law.

General (Section 5): *The following is added to item 4:*

For purposes of this clause, contact information will also include information about You as a legal entity, for example revenue data and other transactional information.

GERMANY: No Warranty (Section 3): *The same changes apply as those in No Warranty (Section 3) under Austria above.*

Limitation of Liability (Section 4): *The following paragraph is added to this Section:*

The limitations and exclusions specified in this Section will not apply to damages caused by IBM intentionally or by gross negligence.

General (Section 5): *The following replaces the terms of item 5:*

Any claims resulting from this Agreement are subject to a statute of limitation of three years, except as stated in Section 3(No Warranty) of this Agreement.

HUNGARY: Limitation of Liability (Section 4): *The following is added at the end of this section:*

The limitation and exclusion specified herein shall not apply to liability for a breach of contract damaging life, physical well-being, or health that has been caused intentionally, by gross negligence, or by a criminal act.

The parties accept the limitations of liability as valid provisions and state that the Section 314.(2) of the Hungarian Civil Code applies as the acquisition price as well as other advantages arising out of the present Agreement balance this limitation of liability.

IRELAND: No Warranty (Section 3): *The following is added to this section:*

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 and 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).

Limitation of Liability (Section 4): *The following replaces the terms of this section in its entirety:*

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 You whether in contract or tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default occurring on the date of occurrence of the last such Default.

Circumstances may arise where, because of a Default, You are entitled to recover damages from IBM. This section sets out the extent of IBM's liability and Your sole remedy.

1. IBM will accept unlimited liability for (a) death or personal injury caused by the negligence of IBM, and (b) subject always to the **Items for Which IBM is Not Liable** below, for physical damage to Your tangible property resulting from the negligence of IBM.
2. Except as provided in item 1 above, IBM's entire liability for actual damages for any one Default will not in any event exceed the greater of 1) 125,000, or 2) 125% of the amount You paid for the Program directly relating to the Default. These limits also apply to any of IBM's

suppliers and Program developers. They state the maximum for which IBM and such suppliers and Program developers are collectively responsible.

Items for Which IBM is Not Liable

Save with respect to any liability referred to in item 1 above, under no circumstances is IBM or any of its suppliers or Program developers liable for any of the following, even if IBM or they were informed of the possibility of such losses:

1. loss of, or damage to, data;
2. special, indirect, or consequential loss; or
3. loss of profits, business, revenue, goodwill, or anticipated savings.

ITALY: General (Section 5): *The following is added to this section:*

IBM and Customer (hereinafter, individually, "Party") shall comply with all the obligations of the applicable provisions of law and/or regulation on personal data protection. Each of the Parties will indemnify and keep the other Party harmless from any damage, claim, cost or expense incurred by the latter, directly and or indirectly, as a consequence of an infringement of the other Party of the mentioned provisions of law and/or regulations.

SLOVAKIA: Limitation of Liability (Section 4): *The following is added to the end of the last paragraph:*

The limitations apply to the extent they are not prohibited under §§ 373-386 of the Slovak Commercial Code.

General (Section 5): *The terms of item 5 are replaced with the following:*

THE PARTIES AGREE THAT, AS DEFINED BY APPLICABLE LOCAL LAW, ANY LEGAL OR OTHER ACTION RELATED TO A BREACH OF THIS AGREEMENT MUST BE COMMENCED NO LATER THAN FOUR YEARS FROM THE DATE ON WHICH THE CAUSE OF ACTION AROSE.

SWITZERLAND: General (Section 5): *The following is added to item 4:*

For purposes of this clause, contact information will also include information about You as a legal entity, for example revenue data and other transactional information.

UNITED KINGDOM: No Warranty (Section 3): *The following replaces the first sentence in the first paragraph of this section:*

SUBJECT TO ANY STATUTORY WARRANTIES WHICH CANNOT BE EXCLUDED, IBM MAKES NO WARRANTY OR CONDITION EITHER EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) THE IMPLIED WARRANTIES OF SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, REGARDING THE PROGRAM.

Limitation of Liability (Section 4): *The following replaces the terms of this section in its entirety:*

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 You, whether in contract or 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, You are entitled to recover damages from IBM. This section sets out the extent of IBM's liability and Your sole remedy.

1. IBM will accept unlimited liability for:
 - a. death or personal injury caused by the negligence of IBM;

- b. any breach of its obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982, or any statutory modification or re-enactment of either such Section; and
 - c. subject always to the **Items for Which IBM is Not Liable** below, for physical damage to Your tangible property resulting from the negligence of IBM.
2. IBM's entire liability for actual damages for any one Default will not in any event, except as provided in item 1 above, exceed the greater of 1) £75,000, or 2) 125% of the amount You paid for the Program directly relating to the Default. These limits also apply to IBM's suppliers and Program developers. They state the maximum for which IBM and such suppliers and Program developers are collectively responsible.

Items for Which IBM is Not Liable

Save with respect to any liability referred to in item 1 above, under no circumstances is IBM or any of its suppliers or Program developers liable for any of the following, even if IBM or they were informed of the possibility of such losses:

1. loss of, or damage to, data;
2. special, indirect, or consequential loss; or
3. loss of profits, business, revenue, goodwill, or anticipated savings.

无保证软件的国际许可协议

第一部分 — 通用条款

一旦下载、安装、复制、访问或使用软件，即表明您同意本协议的条款。如果您代表他人、公司或其他法律实体接受此类条款，则您须声明并保证您拥有完全的授权以使该人员、公司或法律实体受此类条款的约束。如果您不同意此类条款，

- 则请勿下载、安装、复制、访问或使用软件；并且
- 及时将软件和权利证明退还至软件和权利证明的提供方，以便获得您所支付金额的退款。如果您下载了软件，请与软件提供方联系。

“IBM”指 International Business Machines Corporation 或其任一子公司。

“许可信息”（“LI”）指提供专用于软件的信息的文档。<http://www.ibm.com/software/sla/> 上提供软件的“许可信息”。也可以通过使用系统命令在软件目录下的某个文件中找到“许可信息”。“许可信息”还可作为手册与软件一起随附。

“软件”指下列各项，包括原件及其所有的完整的或部分的复制件：1）机器可读的指令或数据；2）组件；3）音像内容（例如图像、文本、录音或图片）；4）相关的许可资料以及 5）许可使用文件或密钥和文档。

“权利证明”（“PoE”）指您以指定级别使用软件的授权证明。该级别是可以度量的，例如，通过处理器数或用户数。PoE 也是您享有将来的升级价格（如有）和可能的特别机会或促销机会的资格证明。如果 IBM 不向您提供 PoE，则 IBM 可接受已付讫的收据正本或软件提供方（IBM 或其转售商）的其他销售记录，但此类收据或记录必须说明该软件的名称以及所获得的使用级别。

“您”和“您的”指个人或单个的法律实体。

本协议包括第一部分（通用条款）、第二部分（国家或地区特别条款）（如有）、许可信息和权利证明，为您与 IBM 之间有关软件使用的完整协议。本协议替代您与 IBM 之间有关软件使用的任何先前的口头或书面通信。第二部分和“许可信息”中的条款可能替代或修改第一部分的条款。如果本协议条款和 IBM International Passport Advantage Agreement 的条款间存在冲突，则 IBM International Passport Advantage Agreement 的条款优先适用。

1. 权利

许可

软件由 IBM 或其供应商所有，受版权保护。软件系许可使用，而非出售。

IBM 在您合法获得软件时授予您使用该软件的非专属性许可。

您可以 1）在 PoE 中规定的使用级别内使用软件，并且 2）制作和安装其复制件，包括备份复制件，以支持此类使用。本许可证的条款适用于您制作的每一份复制件。您须在软件的每一复制件或复制件的一部分上复制所有的版权声明或所有其他所有权说明。

如果您是通过软件升级而获得软件的，则在安装升级之后，您不得使用升级前的旧软件或将其转让至其他方。

您须确保使用软件的所有人员（不论是本机或远程访问）都仅在您被授权的范围内如此使用软件，并遵守本协议中的条款。

您不得 1）使用、复制、修改或分发软件，除非本协议另有规定；2）反汇编、反编译、或以其他方法解译软件，但法律特别许可且不得以约定放弃者除外；3）再许可、出租或租赁软件。

如果您未能遵守本协议的条款，则 IBM 可以终止您的许可。如果 IBM 终止了您的许可，则您必须销毁软件的所有复制件及其 PoE。

退款保证

如果您因任何原因对软件不满意并且您是原被许可方，则您可获得您所付金额的退款，但您须在发票日期三十（30）天内将软件及其 PoE 退还至软件及其 PoE 的提供方。如果您下载了软件，则请与软件提供方联系以了解获得退款的指导。

软件转让

仅当另一方同意本协议的条款时，您方可将软件和您所有的许可权利和义务转让至该方。当您转让软件时，您必须同时转让本协议的复制件，包括软件的 PoE。转让之后，您不得使用软件。

2. 费用

软件许可证的应付金额是一次性费用。

一次性费用是以所获得的使用级别（在 PoE 中指定）为基础的。对于应付或已付款项，IBM 不予返款或退款，除非本协议中另有规定。

如果您希望提高使用级别，请通知 IBM 或使用级别的提供方并支付一切相应费用。

如有任何政府机构对软件征收税款或其他费用（不包括基于 IBM 净收入的部分），则您须同意支付其规定的费用，或提供豁免文件。获得软件之后，您须自行负责支付有关软件的任何个人财产税。

3. 不保证声明

除了某些不能被排除的法定保证以外，IBM 不作出有关软件或技术支持的任何明示或暗示的保证和条件，包括但不限于暗示的有关适销、适用于某种特定用途和非侵权的保证或条件（如果有）。

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非 IBM 软件的生产厂家、供应商或发行人可以提供他们自己的有关软件的保证。

IBM 不提供技术支持，除非 IBM 另行指定。

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2. 特别的、附带的或间接的损害，或任何后果性经济损害；或
3. 利润、业务、收入、商誉或预期可节省金额的损失。

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1. 本协议中的任何条款都不影响任何不能依合同放弃或限制的消费者的法定权利。
2. 如果本协议的任一规定无效或不可执行，本协议的其余规定将继续完全有效。

3. 您同意遵守所有适用的进出口法律和法规。
4. 您同意允许 IBM 在其任何营业场所存储和使用您的联系信息，包括姓名、电话号码和电子邮件地址。此类信息将为双方业务关系的相关事项进行处理和使用，并可提供给承包商、业务合作伙伴和 IBM 的受托方以供其共同的业务活动使用，包括与您进行通信（例如，为处理订单、促销和市场调查而与您通信）。
5. 无论是您还是 IBM，均不得在诉因发生两（2）年后方据此协议提起诉讼，但当地法律另有规定不得以约定放弃或限制者除外。
6. 无论是您还是 IBM，均不对因不可控制的原因而无法履行的任何义务负责。
7. 本协议将不为任何第三方创建任何权利或诉因，IBM 也不对任何第三方对您的索赔负责，但，依据以上“责任限制”一节的许可，对于 IBM 应付法律责任的人身伤害（包括死亡）或不动产或有形动产的索赔除外。

6. 适用法律、司法辖区和仲裁

适用法律

您与 IBM 双方均同意，您获得软件许可证所在的国家或地区的法律将管辖、解释和强制执行本协议主体引起的或以任何方式与之相关的您与 IBM 的权利、责任和义务，而不考虑冲突法原则。

不适用《联合国国际货物销售合同公约》。

司法辖区

双方的所有权利、责任和义务均受您获得软件许可证所在的国家或地区的法院的管辖。

第二部分 — 国家或地区特别条款

亚太地区

中国香港特别行政区与澳门特别行政区：适用法律、司法辖区和仲裁（第六节）： “适用法律”分款中的“您获得软件许可证所在的国家或地区的法律”替换为：

中国香港特别行政区的法律

中华人民共和国：费用（第二节）： 添加以下内容：

所有在中华人民共和国境内发生的银行费用都由您支付，而所有在中华人民共和国境外发生的银行费用都由 IBM 支付。

适用法律、司法辖区和仲裁（第六节）： “适用法律”分款中的“您获得软件许可证所在的国家或地区的法律”替换为：

美国纽约州法律（但当地法律另有要求的除外）

國際授權合約 - 無保證程式

第一部分 - 一般條款

貴客戶一旦下載、安裝、複製、存取或使用本「程式」，即表示 貴客戶同意本合約之條款。若 貴客戶係代表他人、其他公司或其他法律實體同意此等條款，則 貴客戶保證 貴客戶擁有充分權限得使該他人、該公司或該法律實體受此等條款拘束。若 貴客戶不同意本合約條款時，

- 請勿下載、安裝、複製、存取或使用本「程式」，且
- 將本「程式」退回原供貨廠商 (IBM 或其轉銷商)，並要求退還已付款項。若 貴客戶已下載本「程式」，請與提供本「程式」予 貴客戶之原供貨廠商聯絡。

“IBM” 係指 International Business Machines Corporation 或其子公司。

「授權手冊」係指內含某「程式」特定資訊之文件。本「程式」之「授權手冊」可於 <http://www.ibm.com/software/sla/> 網站取得。本「授權手冊」亦可能位於本「程式」某目錄之檔案內，以使用系統指令方式便可找到，此外，亦可能以小冊子形式檢附於本「程式」。

「程式」係指程式原版及其全部或部分拷貝，包括：1) 機器可閱讀指令與資料；2) 元件；3) 聲／影部分（如圖像、文稿、錄音、或照片等）；4) 相關授權著作物；以及 5) 相關授權文件。

貴客戶應保留「程式」之「權利證明書」，以證明其係經合法授权使用「程式」特定層級。該層級係依處理器或使用之數目認定之。 貴客戶若要求提供程式昇級優惠價格或其他促銷優惠時，應出示該「權利證明書」。若 IBM 未提供「權利證明書」予 貴客戶，則 IBM 得接受提供「程式」予 貴客戶之原供貨廠商（指 IBM 或其轉銷商）所提供之原有已付款銷貨收據或其他銷貨紀錄，惟該收據或紀錄需指明「程式」名稱與所得使用層級。

「貴客戶」係指單一個人或單一法律實體。

本合約包括第一部分：一般條款、第二部分：各國專有條款、「授權手冊」以及「權利證明書」，為有關 貴客戶使用本「程式」之完整合約，且取代 貴客戶先前與 IBM 所作之一切口頭或書面協議。第二部分條款及「授權手冊」得取代或修訂第一部分之條款。若本合約之條款與「IBM 國際 Passport Advantage 合約」有抵觸，則依後者合約條款之規定。

1. 權利

授權條款

IBM 或 IBM 之供應商擁有本「程式」之著作權，本合約為授權合約而非著作權讓售合約。

IBM 就 貴客戶合法取得之本「程式」授與 貴客戶非專屬之授權。

貴客戶得 1) 依「權利證明書」所載使用層級使用本「程式」，及 2) 製作及安裝多份複本（包括備份），以支援該使用目的。本授權之條款適用於 貴客戶所製作之每一份拷貝。 貴客戶複製本「程式」時，不論其係全部或部分拷貝，均須於該拷貝上複製本「程式」之著作權及其他有關之權利標示。

如本「程式」是昇級版程式，則 貴客戶於安裝該昇級版後不得再使用昇級前之「程式」，亦不得將昇級前之「程式」轉讓予他人使用。

貴客戶應確保任何人於使用本「程式」時（不論藉由本地或遠端存取），均業經 貴客戶授權，並能遵守本合約條款之規定。

除本合約另有規定外， 貴客戶不得：(1) 使用、複製、修改或散布本「程式」。(2) 逆向組合 (reverse assemble)、逆向編纂 (reverse compile) 或以其他方法解譯本「程式」，但法律規定不得以契約限制者，不在此限。(3) 轉授權或出租本「程式」。

若 貴客戶違反本合約條款，IBM 得終止對 貴客戶之授權。若 IBM 終止授權， 貴客戶需銷毀本「程式」之所有複本與其「權利證明書」。

退款保證

若 貴客戶因故不滿意本「程式」，且 貴客戶為原始被授權人，則 貴客戶得索回原已付款項，惟 貴客戶需於發票日三十天內將本「程式」及其「權利證明書」退還提供予 貴客戶之原供貨廠商。若 貴客戶已下載本「程式」， 貴客戶得與提供本「程式」予 貴客戶之原供貨廠商聯絡，並依其指示以取回原付款項。

程式轉讓

只有在第三人同意本合約條款時， 貴客戶始得轉讓本「程式」及授權之相關權利義務。 貴客戶轉讓本「程式」之同時，亦應交付一份本合約之拷貝，包括本「程式」之「權利證明書」。轉讓後， 貴客戶即不得繼續使用本「程式」。

2. 費用

「程式」授權應付金額係一次收足之費用。

一次收足之費用係基以「權利證明書」所載明之可使用層級而定。IBM 將不退還 貴客戶之應付或已付費用，但本合約另有規定者，不在此限。

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3. 利潤、營業、收益、商譽或預期節餘等項之損失。

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6. 準據法、管轄及仲裁

準據法

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管轄

雙方之所有權利、職責及義務均受 貴客戶取得本「程式」授權當地之法庭管轄。

第二部分 - 各國專有條款

沒有適用的各國專有條款。

Mezinárodní licenční smlouva pro programy bez záruky

Část 1 - Obecná ustanovení

STAŽENÍM, INSTALACÍ, ZKOPÍROVÁNÍM, PŘÍSTUPEM K PROGRAMU NEBO POUŽITÍM PROGRAMU VYJADŘUJETE SVŮJ SOUHLAS S TOUTO SMLOUVOU. JESTLIŽE AKCEPTUJETE TYTO PODMÍNKY JMÉNEM JINÉ OSOBY NEBO SPOLEČNOSTI NEBO JINÉHO PRÁVNÍHO SUBJEKTU, PAK TÍMTO PROHLAŠUJETE A ZARUČUJETE, ŽE JSTE PLNĚ ZMOCNĚNI VÁZAT TUTO OSOBU, SPOLEČNOST NEBO PRÁVNÍ SUBJEKT TĚMITO PODMÍNKAMI. JESTLIŽE S TĚMITO PODMÍNKAMI NESOUHLASÍTE,

- NESTAHOJTE, NEINSTALUJTE, NEKOPÍRUJTE, NEPŘÍSTUPOUJTE NEBO NEPOUŽÍVEJTE PROGRAM, A
- BEZODKLADE VRAŤTE PROGRAM A DOKUMENT O OPRÁVNĚNÍ (PROOF OF ENTITLEMENT) SUBJEKTU, OD KTERÉHO JSTE JE ZÍSKALI, A BUDE VÁM VRÁCENA ČÁSTKA, KTEROU JSTE ZA NĚ ZAPLATILI. JESTLIŽE JSTE JIŽ PROGRAM STÁHLI, OBRAŤTE SE NA SUBJEKT, OD KTERÉHO JSTE JEJ ZÍSKALI.

"IBM" je společnost International Business Machines Corporation nebo některá z jejích dceřiných společností.

"Licenční informace" ("LI") je dokument, který uvádí informace specifické pro program. Licenční informace pro program jsou k dispozici na adrese <http://www.ibm.com/software/sla/>. Licenční informace lze nalézt rovněž v souboru v adresáři s programem - prostřednictvím systémového příkazu - nebo ve formě příručky, kterou obdržíte s programem.

"Program" zahrnuje níže uvedené komponenty, včetně originálu a všech úplných nebo dílčích kopií: 1) strojově čitelné instrukce (MRI) a data, 2) komponenty, 3) audiovizuální obsah (jako jsou obrazy, text, nahrávky nebo obrázky), 4) související licencované materiály a 5) licenční dokumenty nebo klíče a dokumentace.

"Dokument o oprávnění" ("PoE") představuje důkaz o Vašem oprávnění používat program na specifikované úrovni. Tuto úroveň lze měřit, např. podle počtu procesorů nebo uživatelů. Dokument PoE je rovněž důkazem o Vašem nároku na ceny za budoucí přechody na vyšší verzi, vyskytnou-li se nějaké, a potenciální zvláštní nebo propagační příležitosti. Jestliže Vám IBM nedodá dokument PoE, pak IBM může akceptovat původní stvrzenku o nákupu nebo jiný doklad o nákupu od subjektu (buď IBM nebo její prodejce), od kterého jste program zakoupili, za předpokladu, že tento doklad uvádí jméno programu a zakoupenou úroveň užívání.

"Vy" a "Váš/Vaše" se vztahuje na jednotlivou osobu nebo na jeden právní subjekt.

Tato smlouva je tvořena částí 1 - Obecná ustanovení, částí 2 - Specifická ustanovení pro jednotlivé země (jsou-li nějaká), licenčními informacemi a dokumentem PoE a tvoří úplnou smlouvu mezi Vámi a IBM týkající se užívání programu. Nahrazuje veškerá předchozí ústní nebo písemná ujednání mezi Vámi a IBM ohledně užívání programu. Podmínky části 2 a licenčních informací mohou nahrazovat nebo upravovat podmínky části 1. Pokud se vyskytne rozpor mezi podmínkami této smlouvy a podmínkami smlouvy IBM IPA (International Passport Advantage Agreement), pak mají přednost podmínky smlouvy, která byla uzavřena později.

1. Oprávnění

Licence

Program je vlastnictvím IBM nebo dodavatele IBM, je chráněn autorskými právy a je k němu poskytováno právo užívání, není prodáván.

IBM Vám uděluje nevýhradní licence na užívání programu, pokud jej získáte zákonným způsobem.

Smíte 1) používat program až do úrovně užívání uvedené v dokumentu PoE a 2) vytvářet a instalovat kopie, včetně záložní kopie za účelem podpory takového užívání. Podmínky této licence se vztahují na každou

kopii, kterou vytvoříte. Jste povinni reprodukovat všechna upozornění o autorských právech a další poznámky týkající se vlastnictví na každé kopii nebo dílčí kopii programu.

Kupujete-li tento program jako programovou aktualizaci, nesmíte po nainstalování vyšší verze používat program, ze kterého jste přešli, a nesmíte jej ani převádět na třetí osobu.

Zavazujete se, že zajistíte, aby kdokoli, kdo používá tento program (s lokálním nebo vzdáleným přístupem), tak činil výhradně v souladu s Vaším oprávněným užíváním a v souladu s podmínkami této smlouvy.

Není povoleno 1) používat, rozmnožovat, upravovat nebo distribuovat program jinak, než je výslovně umožněno touto smlouvou 2) zpětně sestavovat, zpětně kompilovat, či jakkoliv překládat program, není-li to výslovně povoleno ze zákona bez možnosti toto povolení smluvně vyloučit; ani 3) program sublicencovat, pronajímat nebo poskytovat formou leasingu.

IBM je oprávněna Vaši licenci ukončit, nejednáte-li v souladu s podmínkami této smlouvy. Pokud tak IBM učiní, jste povinni zničit všechny kopie programu a související dokumenty PoE.

Záruka vrácení peněz

Jestliže z nějakého důvodu nejste spokojeni s programem a jste původním nabyvatelem licence, může Vám být vrácena částka, kterou jste za program zaplatili, za předpokladu, že během 30 dnů od data fakturace vrátíte program a dokument PoE subjektu, od kterého jste je získali. Jestliže jste program stáhli, můžete požádat subjekt, od kterého jste program získali, o pokyny, jak dosáhnout vrácení peněz.

Přenos programu

Program a všechna Vaše práva a závazky, kterých jste nabyli na základě udělené licence, smíte přenést na třetí osobu za předpokladu, že tato třetí osoba souhlasí s podmínkami této smlouvy. Pokud právo užívání programu převádíte, musíte převést rovněž kopii této smlouvy, včetně dokumentu PoE k programu. Po té, co program převedete, nejste oprávněni jej dále používat.

2. Poplatky

Částka splatná za licenci k programu představuje jednorázový poplatek.

Jednorázové poplatky jsou založeny na získané úrovni užívání, která je specifikována v dokumentu PoE. IBM nevrací ani jinak nerefunduje již splatné nebo zaplacené částky, s výjimkou případů, které jsou specifikovány jinde v této smlouvě.

Přejete-li si úroveň užívání zvýšit, uvědomte o této skutečnosti IBM nebo subjekt, od kterého jste program získali, a zaplaťte všechny příslušné poplatky.

Bude-li na program uvaleno orgánem k tomu oprávněným clo, daň či poplatek, vyjma těch, které jsou založeny na čistém příjmu IBM, zavazujete se, že uhradíte příslušnou částku nebo předložíte potvrzení o osvobození od takové povinnosti. Od data pořízení programu jste odpovědni za veškeré příslušné daně vztahující se na vás v souvislosti s programem.

3. Vyloučení záruky

S VÝJIMKOU ZÁRUK VYPLÝVAJÍCÍCH ZE ZÁKONA, JEŽ NEMOHOU BÝT VYLOUČENY, IBM V ŽÁDNÉM PŘÍPADĚ NEPOSKYTUJE ZÁRUKY NEBO PODMÍNKY VYJÁDRĚNÉ NEBO ODVOZENÉ, VČETNĚ, (ALE NE VÝHRADNĚ), ODVOZENÝCH ZÁRUK PRODEJNOSTI A VHODNOSTI PRO URČITÉ ÚČELY A ZÁRUKY NEPORUŠENÍ PRÁV TÝKAJÍCÍ SE PROGRAMU NEBO PŘÍPADNĚ TECHNICKÉ PODPORY.

Uvedené vyloučení záruk se vztahuje rovněž na všechny vývojáře programu a dodavatele IBM.

Výrobci, dodavatelé nebo vydavatelé programů jiných než od IBM mohou poskytovat své vlastní záruky.

Jestliže IBM nespecifikuje jinak, neposkytuje technickou podporu.

4. Omezení odpovědnosti

Mohou nastat okolnosti, kdy Vám z důvodu neplnění závazku na straně IBM či z jiného důvodu vznikne nárok na náhradu škody ze strany IBM. V každém takovém případě, bez ohledu na příčinu vzniku takového nároku (včetně hrubého porušení smlouvy, nedbalosti, přivedení v omyl či jiného porušení závazkového či mimozávazkového vztahu), odpovídá IBM pouze 1) za škody na zdraví (včetně smrti) a škody na nemovitém nebo osobním hmotném majetku a 2) u jiných skutečných přímých škod do výše poplatků za program, který je předmětem nároku.

Uvedené omezení odpovědnosti se vztahuje rovněž na vývojáře programu a dodavatele IBM. Jedná se o maximum, za které IBM a její dodavatelé společně odpovídají.

IBM ANI JEJÍ VÝVOJÁŘI PROGRAMU NEJSOU ZA ŽÁDNÝCH OKOLNOSTÍ ODPOVĚDNÍ ZA ŽÁDNÉ Z NÍŽE UVEDENÝCH ŠKOD, ANI KDYŽ BYLI O MOŽNOSTI JEJICH VZNIKU PŘEDEM INFORMOVÁNI:

- 1. ZTRÁTA NEBO POŠKOZENÍ DAT;**
- 2. ZVLÁŠTNÍ, NAHODILÉ NEBO NEPŘÍMÉ ŠKODY NEBO NÁSLEDNÉ EKONOMICKÉ ŠKODY;**
- 3. UŠLÝ ZISK, ZTRÁTU OBCHODNÍCH TRANSAKCÍ, VÝNOSU, DOBRÉHO JMÉNA NEBO PŘEDPOKLÁDANÝCH ÚSPOR.**

NĚKTERÉ JURISDIKCE NEUMOŽŇUJÍ VYLOUČENÍ NEBO OMEZENÍ NAHODILÝCH NEBO NÁSLEDNÝCH ŠKOD, TAKŽE SE NA VÁS VÝŠE UVEDENÉ OMEZENÍ NEBO VYLOUČENÍ NEMUSÍ VZTAHOVAT.

5. Všeobecná ustanovení

1. Ustanovení této smlouvy se nedotýkají zákonných práv spotřebitelů, jež nemohou být smluvně vyloučena či omezena.
2. V případě, že některé z ustanovení této smlouvy bude považováno za neplatné nebo nevymahatelné, zbývající ustanovení této smlouvy zůstávají plně platná a účinná.
3. Souhlasíte, že budete jednat v souladu s příslušnými vývozními a dovozními předpisy a nařízeními.
4. Souhlasíte s tím, že IBM je oprávněna uložit a použít Vaše osobní údaje včetně jmen, telefonních čísel a e-mailové adresy, a to kdekoli, kde IBM provádí obchodní činnost. Tyto informace budou zpracovány a použity v souvislosti s naším obchodním vztahem a mohou být poskytnuty dodavatelům, obchodním partnerům a právním nástupcům IBM pro účely, které jsou v souladu s jejich společnými obchodními aktivitami včetně komunikace s Vámi (například pro účely zpracování objednávek, propagace a průzkumu trhu).
5. Všechny nároky vyplývající ze smlouvy mohou být uplatněny kteroukoli ze stran do dvou let ode dne, kdy vznikla příčina nároku, nestanoví-li místní právní předpisy jinak, bez možnosti smluvního vyloučení nebo omezení.
6. Žádná ze smluvních stran neodpovídá za porušení závazků, ke kterým dojde nezávisle na její vůli.
7. Tato smlouva nedává žádné třetí straně žádné právo nebo důvod k žalobě a IBM není odpovědná za nároky třetích stran vznesené vůči vám, s výjimkou, jak uvádí odstavec Omezení odpovědnosti výše, škody na zdraví (včetně smrti) nebo škody na nemovitém nebo osobním hmotném majetku, za které je IBM právně odpovědná.

6. Rozhodné právo, jurisdikce a arbitráž

Rozhodné právo, kterým se smlouva řídí

Obě smluvní strany souhlasí, že se řízení, interpretace a vymáhání všech práv a závazků, Vašich i IBM, vzniklých z nebo nějakým způsobem souvisejících s předmětem této smlouvy, bude řídit právními předpisy země, ve které jste získali licenci k programu.

Konvence OSN o smlouvách pro mezinárodní prodej zboží se neaplikuje.

Jurisdikce

Všechna práva a povinnosti vyplývající z této smlouvy budou řešena příslušným soudem země, ve které jste získali licenci k programu.

Část 2 - Ustanovení specifická pro jednotlivé státy

Neaplikují se žádná ustanovení specifická pro jednotlivé státy.

Conditions Internationales d'Utilisation de Logiciels IBM non garantis

Chapitre 1 - Dispositions Générales

LE TELECHARGEMENT, L'INSTALLATION, LA COPIE, L'ACCES OU L'UTILISATION DU LOGICIEL SERA CONSIDERE COMME UNE ACCEPTATION DE VOTRE PART DES DISPOSITIONS DU PRESENT CONTRAT. SI VOUS ACCEPTEZ CES DISPOSITIONS POUR LE COMPTE D'UNE AUTRE PERSONNE, D'UNE SOCIETE OU D'UNE AUTRE PERSONNE MORALE, VOUS CERTIFIEZ AVOIR QUALITE POUR ENGAGER CETTE PERSONNE, SOCIETE OU PERSONNE MORALE A RESPECTER CES DISPOSITIONS. SI VOUS N'ACCEPTEZ PAS CES DISPOSITIONS,

- NE TELECHARGEZ PAS, N'INSTALLEZ PAS, NE COPIEZ PAS, N'ACCEDEZ PAS ET N'UTILISEZ PAS LE LOGICIEL ; ET
- DEMANDEZ A ETRE REMBOURSE DE LA SOMME QUE VOUS AVEZ PAYEE A LA PERSONNE AUPRES DE LAQUELLE VOUS AVEZ ACQUIS LE LOGICIEL, EN LUI RETOURNANT, SANS DELAI, LE LOGICIEL ET L'AUTORISATION D'UTILISATION DU LOGICIEL. SI VOUS AVEZ TELECHARGE LE LOGICIEL, PRENEZ CONTACT AVEC LA PERSONNE AUPRES DE LAQUELLE VOUS L'AVEZ ACQUIS.

"IBM" désigne la compagnie "International Business Machines Corporation" ou l'une de ses filiales.

"Informations sur la Licence" ("LI") désigne un document qui fournit des informations spécifiques à un Logiciel donné. Les Informations sur la Licence sont disponibles à l'adresse suivante : <http://www.ibm.com/software/sla/>. Elles peuvent aussi se trouver dans un fichier livré avec le Logiciel et accessible par une commande système ou dans une brochure livrée avec le Logiciel.

"Logiciel" désigne les éléments suivants, y compris l'original et toutes les copies partielles ou totales de chaque élément : 1) instructions et données lisibles par machine ; 2) modules ; 3) informations audio et/ou visuelles (par exemple, des images, des textes, des enregistrements ou des dessins) ; 4) éléments sous licence associés ; et 5) des clés, des documents relatifs à l'utilisation de la licence et de la documentation.

L'"Autorisation d'Utilisation du Logiciel" ("PoE") constitue la preuve que Vous avez le droit d'utiliser le Logiciel à un niveau donné. Ce niveau peut être mesuré, par exemple, par le nombre de processeurs ou d'utilisateurs. Ce PoE prouve également Votre éligibilité aux prix applicables à d'éventuelles mises à niveau ultérieures du Logiciel et à d'éventuelles offres spéciales ou promotionnelles. Si IBM ne Vous fournit pas une Autorisation d'Utilisation du Logiciel, IBM peut cependant accepter l'original de la facture dont Vous vous êtes acquitté ou toute autre preuve d'achat émanant de la personne (IBM ou l'un de ses revendeurs) auprès de laquelle vous avez acquis le Logiciel, sous réserve que ce document indique le nom du Logiciel et le niveau d'utilisation acquis.

"Vous" et "Votre" font référence à un individu ou à une personne morale.

Ce Contrat est constitué du présent document qui comprend un premier chapitre intitulé "Chapitre 1 - Dispositions Générales" et un second chapitre intitulé "Chapitre 2 - Dispositions Nationales Particulières", du document intitulé Informations sur la Licence et de l'Autorisation d'Utilisation du Logiciel. Le Contrat exprime l'intégralité de l'accord intervenu entre Vous et IBM en ce qui concerne l'utilisation du Logiciel. Il prévaut sur tout autre accord ou communication antérieur, oral ou écrit, intervenu entre les parties, concernant Votre utilisation du Logiciel. Les dispositions du second chapitre et du document Informations sur la Licence peuvent remplacer ou modifier celles du premier chapitre. En cas de contradiction entre les dispositions du présent Contrat et celles du Contrat International Passport Advantage IBM, les dispositions du Contrat International Passport Advantage IBM prévalent.

1. Autorisation d'Utilisation

Licence

Le Logiciel est la propriété d'IBM ou d'un fournisseur d'IBM et est protégé par les droits d'auteur. Le Logiciel est concédé sous licence et non vendu.

IBM Vous concède une licence d'utilisation du Logiciel non exclusive, dans la mesure où Vous avez acquis le Logiciel en toute légalité.

Vous avez le droit 1) d'utiliser le Logiciel dans les limites d'utilisation indiquées dans l'Autorisation d'Utilisation du Logiciel et 2) d'effectuer et installer des copies du Logiciel, dont une copie de sauvegarde, pour permettre une telle utilisation. Les dispositions de la présente licence s'appliquent à toutes les copies que Vous effectuez. Vous devez reproduire toutes les mentions relatives aux droits d'auteur et toute autre mention de propriété sur chaque copie, totale ou partielle, du Logiciel.

Si Vous avez acquis le Logiciel sous forme de mise à jour, après avoir installé celle-ci, Vous ne pouvez plus utiliser le Logiciel à partir duquel cette mise à jour a été effectuée, ni le transférer à une autre partie.

Vous vous engagez à ce que toute personne utilisant le Logiciel (que ce soit au travers de son réseau privé ou d'un réseau public) ne le fasse que pour Votre usage dans la limite des droits concédés et conformément aux dispositions de ce Contrat.

Cette licence ne Vous autorise pas à 1) utiliser, copier, modifier ou distribuer le Logiciel, sauf indication contraire dans le présent Contrat ; 2) désassembler, décompiler ou traduire de quelque façon que ce soit le Logiciel, à moins d'y être autorisé par une disposition légale d'ordre public ; 3) concéder des sous-licences ou donner le Logiciel en location sous quelque forme que ce soit.

IBM peut résilier la licence qui Vous a été concédée si Vous ne respectez pas les dispositions du présent Contrat. Dans ce cas, Vous devrez détruire tous les exemplaires du Logiciel et l'Autorisation d'Utilisation du Logiciel.

Garantie "satisfait ou remboursé"

Si pour une raison quelconque, Vous n'étiez pas satisfait du Logiciel et que Vous êtes le détenteur initial de la licence, Vous pouvez obtenir le remboursement du montant que Vous avez payé pour ce Logiciel, si, dans les 30 jours suivant la date de la facture qui vous est envoyée, Vous retournez le Logiciel et son Autorisation d'Utilisation du Logiciel à la personne auprès de laquelle Vous avez acquis ce Logiciel. Si Vous aviez téléchargé le Logiciel, Vous pouvez prendre contact avec la personne auprès de laquelle Vous l'avez acquis pour savoir comment en obtenir le remboursement.

Cession du Logiciel

Vous pouvez céder un Logiciel ainsi que Vos droits et obligations au titre de la licence à un tiers uniquement si celui-ci accepte de respecter les dispositions du présent Contrat. Lorsque Vous cédez le Logiciel à ce tiers, Vous devez également lui remettre un exemplaire du présent Contrat et notamment l'Autorisation d'Utilisation du Logiciel concerné. Une fois cédé, Vous ne pouvez plus utiliser le Logiciel.

2. Redevances

Le montant dû pour une licence de logiciel est une redevance unique.

Les redevances uniques sont fonction du niveau d'utilisation acquis, tel que précisé dans l'Autorisation d'Utilisation du Logiciel. Sauf indication contraire dans le présent Contrat, IBM n'accordera aucun crédit ou remboursement concernant les redevances déjà exigibles ou payées.

Si Vous souhaitez augmenter le niveau d'utilisation, Vous devez en informer IBM ou la personne auprès de laquelle Vous avez acquis le Logiciel et Vous acquitter de toute redevance applicable.

Si une autorité quelconque impose un droit, une taxe, un impôt ou une redevance (à l'exclusion de ceux basés sur le revenu net d'IBM) sur le Logiciel fourni par IBM dans le cadre du présent Contrat, Vous vous engagez à Vous en acquitter aux conditions définies par IBM ou à fournir le certificat d'exonération approprié. Toute taxe relative au bien mobilier pour le Logiciel vous incombe à partir de la date à laquelle vous l'avez acquis.

3. Exclusion de garantie

SOUS RESERVE DE TOUTE GARANTIE LEGALE QUI NE PEUT ETRE EXCLUE, IBM NE FOURNIT AUCUNE GARANTIE OU CONDITION EXPLICITE OU IMPLICITE, Y COMPRIS, ET DE FACON NON LIMITATIVE, TOUTE GARANTIE OU CONDITION IMPLICITE D'APTITUDE A L'EXECUTION D'UN TRAVAIL DONNE, ET TOUTE GARANTIE EN NON CONTRE-FACON CONCERNANT LE LOGICIEL OU LE SUPPORT TECHNIQUE, LE CAS ECHEANT.

Cette exclusion s'applique également aux développeurs et fournisseurs d'un Logiciel IBM.

Les fabricants, fournisseurs ou éditeurs de Logiciels non IBM peuvent fournir leurs propres garanties.

IBM ne fournit aucun support technique, sauf indication contraire d'IBM.

4. Limitation de responsabilité

Des circonstances peuvent survenir Vous donnant le droit, en raison d'un manquement de la part d'IBM ou d'une autre forme de responsabilité, de réclamer des dommages-intérêts à IBM. Dans ce cas, quel que soit le fondement de l'action que Vous pourriez engager contre IBM (notamment pour violation d'une condition essentielle de ce Contrat, négligence, tromperie ou autre faute contractuelle), la responsabilité d'IBM sera limitée 1) au montant des dommages corporels (y compris le décès) et des dommages aux biens matériels, mobiliers et immobiliers, et 2) au montant de tout autre dommage direct et réel plafonné au montant de la redevance payé pour le Logiciel à l'origine de la réclamation.

Cette limitation de responsabilité s'applique également aux développeurs et fournisseurs d'un Logiciel d'IBM. C'est le maximum pour lequel IBM, ses développeurs et ses fournisseurs sont collectivement responsables.

IBM, SES DEVELOPPEURS OU FOURNISSEURS NE PEUVENT EN AUCUN CAS ETRE TENUS RESPONSABLES DES DOMMAGES SUIVANTS, ET CE, MEME S'ILS ONT ETE INFORMES DE LEUR POSSIBLE SURVENANCE :

- 1. PERTE OU DETERIORATION DE VOS DONNEES ;**
- 2. PREJUDICES MORAUX, ACCESSOIRES OU INDIRECTS ; OU**
- 3. PERTE DE BENEFICE, D'ACTIVITE COMMERCIALE, DE REVENU, DE CLIENTELE OU D'ECONOMIES ESCOMPTEES.**

CERTAINES LEGISLATIONS N'AUTORISENT PAS LA LIMITATION OU L'EXCLUSION DE PREJUDICES ACCESSOIRES OU INDIRECTS, AUQUEL CAS L'EXCLUSION OU LA LIMITATION QUI PRECEDE NE VOUS SERA PAS APPLICABLE.

5. Autres dispositions

1. Le présent Contrat ne porte atteinte à aucune des dispositions légales d'ordre public relatives aux droits des consommateurs.
2. Si l'une quelconque des dispositions du présent Contrat est considérée comme nulle ou inapplicable, elle n'entraînera pas la nullité des autres dispositions.
3. Vous acceptez de vous conformer à toutes les lois et réglementations applicables en matière d'exportation et d'importation.

4. Vous acceptez par le présent Contrat qu'IBM enregistre et utilise les coordonnées de Vos contacts, comprenant leurs noms, numéros de téléphone, et adresses électroniques, quel que soit le lieu où ils exercent leurs activités. Ces informations seront traitées et utilisées dans le cadre de nos relations commerciales et pourront être communiquées à des sous-traitants, des revendeurs et des cessionnaires d'IBM à des fins compatibles avec leurs activités commerciales, y compris celle de communiquer avec Vous (par exemple, pour traiter des commandes, pour réaliser des opérations promotionnelles et pour effectuer des études de marché).
5. Ni Vous-même, ni IBM ne pourra intenter une action contre l'autre plus de deux ans après l'apparition de son fait générateur, sauf disposition légale contraire d'ordre public.
6. Ni Vous-même, ni IBM ne sera responsable d'un manquement à ses obligations si un tel manquement résulte d'un cas de force majeure.
7. Ce Contrat ne crée aucun droit ni intérêt pour agir à tout tiers et IBM n'est responsable d'aucune réclamation d'un tiers contre Vous sauf, tel qu'il est prévu dans l'article "Limitation de responsabilité" ci-dessus, au titre de dommages corporels (incluant le décès) et dommages aux biens matériels, mobiliers et immobiliers, pour lesquels IBM est légalement responsable.

6. Droit applicable, juridiction compétente et arbitrage

Droit applicable

Les parties (Vous et IBM) sont d'accord pour que soient appliquées les lois du pays où Vous avez acquis la licence de Logiciel pour régir, interpréter et faire respecter leurs droits, devoirs et obligations découlant, directement ou indirectement, de l'objet du présent Contrat, sans donner effet aux principes de conflit de lois.

La Convention des Nations Unies sur les contrats régissant le Commerce International de Biens ne s'applique pas.

Juridiction compétente

Tous les droits, devoirs et obligations des parties sont soumis aux tribunaux du pays dans lequel vous avez acquis la licence du Logiciel.

Chapitre 2 - Dispositions nationales particulières

AMERIQUE

CANADA : Autres dispositions (Article 5) : *L'alinéa suivant remplace l'alinéa 7 :*

7. Ce Contrat ne crée aucun droit ni intérêt pour agir à tout tiers et IBM n'est responsable d'aucune réclamation d'un tiers contre Vous sauf, tel qu'il est prévu dans l'article "Limitation de responsabilité" ci-dessus, au titre de dommages corporels (incluant le décès) et dommages aux biens matériels, mobiliers et immobiliers, pour lesquels IBM est légalement responsable.

Droit applicable, juridiction compétente et arbitrage (Article 6) : *La mention "les lois du pays où Vous avez acquis la licence de Logiciel" dans la sous-section Droit applicable est remplacée par la mention suivante :*

les lois en vigueur dans la Province de l'Ontario"

EUROPE, MOYEN-ORIENT, AFRIQUE (EMEA)

Exclusion de garantie (article 3) : *Pour l'Union européenne, l'article suivant a été ajouté :*

Dans l'Union européenne, les consommateurs disposent de droits selon la loi nationale en vigueur régissant la vente de biens de consommation. Ces droits ne sont pas affectés par les dispositions de l'article 3 du présent Contrat.

Limitation de responsabilité (Article 4) : *En Suisse, le paragraphe suivant remplace intégralement les dispositions de cet article :*

Sauf disposition légale impérative contraire :

1. La responsabilité d'IBM, concernant tout dommage et perte pouvant survenir dans le cadre de l'exercice de ses obligations liées directement ou indirectement au présent Contrat ou résultant d'autres causes liées à ce Contrat, est limitée au dédommagement des seuls dommages et pertes prouvés et résultant immédiatement et directement du manquement à ces obligations (en cas de faute d'IBM) ou d'une telle cause, pour un montant maximum égal à la redevance que Vous avez payé pour le Logiciel.

La limitation sus-mentionnée ne s'applique pas aux dommages corporels (incluant le décès) et dommages aux biens matériels, mobiliers et immobiliers, pour lesquels IBM est légalement responsable.

2. **IBM ET SES DEVELOPPEURS NE PEUVENT EN AUCUN CAS ETRE TENUS RESPONSABLES DES DOMMAGES SUIVANTS, ET CE, MEME S'ILS ONT ETE INFORMES DE LEUR POSSIBLE SURVENANCE : 1) PERTE OU DETERIORATION DE DONNEES ; 2) DOMMAGES INDIRECTS OU SPECIAUX ; 3) PERTE DE BENEFICES, MEME SI CELLE-CI EST LA CONSEQUENCE IMMEDIATE DE L'EVENEMENT A L'ORIGINE DES DOMMAGES ; ET 4) PREJUDICE COMMERCIAL, PERTE DE CHIFFRE D'AFFAIRES, PERTE DE CLIENTELE OU PERTE D'ECONOMIES ESCOMPTEES.**
3. Les limitations et exclusions convenues ci-dessus s'appliquent non seulement aux activités d'IBM mais également à celles de ses fournisseurs et ses développeurs, et définissent le montant maximum pour lequel IBM, ses fournisseurs et ses développeurs sont collectivement responsables.

Limitation de responsabilité (Article 4) : *En France et en Belgique, le paragraphe suivant remplace intégralement les dispositions de cet article :*

Sauf disposition légale impérative contraire :

1. La responsabilité d'IBM, concernant tout dommage et perte pouvant survenir dans le cadre de l'exercice de ses obligations liées directement ou indirectement au présent Contrat ou résultant d'autres causes liées à ce Contrat, est limitée au dédommagement des seuls dommages et pertes prouvés et résultant immédiatement et directement du manquement à ces obligations (en cas de faute d'IBM) ou d'une telle cause, pour un montant maximum égal à la redevance que Vous avez payé pour le Logiciel.

La limitation sus-mentionnée ne s'applique pas aux dommages corporels (incluant le décès) et dommages aux biens matériels, mobiliers et immobiliers, pour lesquels IBM est légalement responsable.

2. **IBM ET SES DEVELOPPEURS NE PEUVENT EN AUCUN CAS ETRE TENUS RESPONSABLES DES DOMMAGES SUIVANTS, ET CE, MEME S'ILS ONT ETE INFORMES DE LEUR POSSIBLE SURVENANCE : 1) PERTE OU DETERIORATION DE DONNEES ; 2) DOMMAGES INDIRECTS OU SPECIAUX ; 3) PERTE DE BENEFICES, MEME SI CELLE-CI EST LA CONSEQUENCE IMMEDIATE DE L'EVENEMENT A L'ORIGINE DES DOMMAGES ; ET 4) PREJUDICE COMMERCIAL, PERTE DE CHIFFRE D'AFFAIRES, PERTE DE CLIENTELE, OU PERTE D'ECONOMIES ESCOMPTEES.**
3. Les limitations et exclusions convenues ci-dessus s'appliquent non seulement aux activités d'IBM mais également à celles de ses fournisseurs et ses développeurs, et définissent le montant maximum pour lequel IBM, ses fournisseurs et ses développeurs sont collectivement responsables.

Droit applicable, juridiction compétente et arbitrage (Article 6)

Droit applicable

La mention "soient appliquées les lois du pays où Vous avez acquis la licence de Logiciel" est remplacée par "soit appliqué le droit français" **en Algérie, au Bénin, au Burkina Faso, au Cameroun, au Cap-Vert, en République centrafricaine, au Tchad, aux Comores, au Congo, à**

Djibouti, en République démocratique du Congo, en Guinée Equatoriale, en Guyane française, en Polynésie française, au Gabon, en Gambie, en Guinée, en Guinée-Bissau, en Côte d'Ivoire, au Liban, à Madagascar, au Mali, en Mauritanie, sur l'Île Maurice, sur l'Île Mayotte, au Maroc, en Nouvelle Calédonie, au Niger, dans l'Île de la Réunion, au Sénégal, aux Seychelles, au Togo, en Tunisie, dans les îles Vanuatu, et Wallis & Futuna.

Juridiction compétente

Les exceptions suivantes sont ajoutées à cet article :

1) En Belgique et au Luxembourg, pour tout conflit résultat du ou relatif au présent contrat, à son interprétation ou à son exécution, seules sont compétentes la loi et les cours de justice de la capitale du pays où se situent Votre siège social et/ou Votre bureau commercial ; **2) En France, en Algérie, au Bénin, au Burkina Faso, au Cameroun, au Cap Vert, en République centrafricaine, au Tchad, aux Comores, au Congo, à Djibouti, en République démocratique du Congo, en Guinée Equatoriale, en Guyane française, en Polynésie française, au Gabon, en Gambie, en Guinée, en Guinée-Bissau, en Côte d'Ivoire, au Liban, à Madagascar, au Mali, en Mauritanie, dans l'Île Maurice, dans l'Île Mayotte, au Maroc, en Nouvelle Calédonie, au Niger, dans l'Île de la Réunion, au Sénégal, aux Seychelles, au Togo, en Tunisie, dans les îles Vanuatu, et Wallis & Futuna** tout conflit résultant du ou relatif à ce Contrat, à sa violation ou à son exécution sera exclusivement réglé par le Tribunal de Commerce de Paris.

SUISSE : Autres dispositions (Article 5) : La phrase suivante est ajoutée à l'alinéa 4 :

Dans le cadre de cette clause, les données relatives aux contacts comporteront également des informations Vous concernant en tant que personne morale, par exemple données sur Votre chiffre d'affaires ou autres données commerciales.

Internationale Nutzungsbedingungen für Programme ohne Gewährleistung

Teil 1 - Allgemeine Bestimmungen

Durch Herunterladen, Installation, Kopieren, Zugreifen auf das Programm oder Nutzung des Programms erklären Sie sich mit den Bedingungen dieser Vereinbarung einverstanden. Wenn Sie diese Bedingungen im Auftrag einer anderen Person oder eines Unternehmens oder einer anderen juristischen Person akzeptieren, gewährleisten Sie, dass Sie berechtigt sind, diese Person, dieses Unternehmen oder diese juristische Person zur Einhaltung dieser Bedingungen zu verpflichten. Wenn Sie mit den Bedingungen dieser Vereinbarung nicht einverstanden sind,

- dürfen Sie das Programm nicht herunterladen, installieren, kopieren, darauf zugreifen oder es benutzen; und
- müssen das Programm sowie den zugehörigen Berechtigungsnachweis umgehend an die Stelle zurückgeben, bei der Sie das Programm erworben haben, um eine Rückerstattung des bezahlten Betrags zu veranlassen. Wenn Sie das Programm heruntergeladen haben, wenden Sie sich an die Stelle, bei der Sie das Programm erworben haben.

"IBM" steht für International Business Machines Corporation oder eine IBM Tochtergesellschaft.

Die "Lizenzinformation" ist ein Dokument, das programmspezifische Informationen enthält. Die Lizenzinformation eines Programms kann unter <http://www.ibm.com/software/sla/> abgerufen werden. Darüber hinaus kann sie in einer Datei im Verzeichnis des Programms zur Verfügung gestellt oder über einen entsprechenden Systembefehl abgerufen werden oder ist dem Programm als Broschüre beigelegt.

Das "Programm" umfasst die folgenden Komponenten einschließlich des Originals und aller vollständigen und Teilkopien: 1) maschinenlesbare Instruktionen und Daten, 2) Komponenten, 3) audiovisuelles Material (z. B. Abbildungen, Texte, Aufzeichnungen oder Grafiken), 4) zugehöriges Lizenzmaterial und 5) Lizenznutzungsdokumente oder -schlüssel sowie Dokumentationen.

Ein "Berechtigungsnachweis" belegt Ihre Berechtigung zur Nutzung eines Programms in einer definierten Programmstufe. Diese Stufe kann z. B. anhand der Anzahl der Prozessoren oder Benutzer ermittelt werden. Der Berechtigungsnachweis gibt darüber hinaus Aufschluss über Ihren Anspruch auf die Preise für zukünftige Upgrades (sofern vorhanden) sowie über mögliche Sonder- und Werbeaktionen. Wenn Ihnen von IBM kein Berechtigungsnachweis zur Verfügung gestellt wird, akzeptiert IBM ggf. den Originalverkaufsbeleg oder einen gleichwertigen Verkaufsbeleg Ihrer Verkaufsstelle (entweder IBM oder ein IBM Reseller) für das Programm, vorausgesetzt, auf diesem ist der Name des Programms und die erworbene Nutzungsstufe dokumentiert.

"Sie" und "Ihr" bezieht sich entweder auf eine Einzelperson oder eine einzelne juristische Person.

Diese Vereinbarung umfasst Teil 1 - Allgemeine Bestimmungen, Teil 2 - Länderspezifische Bedingungen (sofern vorhanden), Lizenzinformationen und Berechtigungsnachweis und stellt eine vollständige Vereinbarung zwischen Ihnen und IBM zur Nutzung des Programms dar. Sie ersetzt alle zuvor getroffenen mündlichen oder schriftlichen Absprachen zwischen Ihnen und IBM in Bezug auf die Nutzung des Programms. Die Bedingungen von Teil 2 und die Lizenzinformationen können die Bedingungen in Teil 1 ersetzen oder ergänzen. Im Falle eines Widerspruchs zwischen den Bedingungen dieser Vereinbarung und den Bedingungen des IBM International Passport Advantage Vertrags gelten die Bedingungen der zuletzt genannten Vereinbarung.

1. Berechtigung

Lizenz

Das Programm ist Eigentum von IBM oder eines IBM Lieferanten und wird urheberrechtlich geschützt und lizenziert, jedoch nicht verkauft.

IBM erteilt Ihnen eine nicht ausschließliche Lizenz zur Nutzung des Programms, wenn Sie dieses rechtmäßig erworben haben.

Sie dürfen 1) das Programm in dem im Berechtigungsnachweis definierten Umfang nutzen und 2) Kopien des Programms, einschließlich einer Sicherungskopie, zur Unterstützung dieser Nutzung erstellen und installieren. Die Bedingungen dieser Lizenz gelten für jede Kopie. Sie verpflichten sich, auf jeder Kopie oder Teilkopie des Programms den Copyrightvermerk und alle anderen Eigentumshinweise anzubringen.

Wenn Sie das Programm als Programmupdate erwerben, dürfen Sie nach der Installation des Upgrades die Vorversion nicht mehr verwenden oder an Dritte weitergeben.

Sie verpflichten sich sicherzustellen, dass jeder Benutzer das Programm (unabhängig davon, ob der Zugriff lokal oder von einem fernen System aus erfolgt) bestimmungsgemäß verwendet und die Bedingungen dieser Vereinbarung beachtet.

Es ist Ihnen untersagt, 1) das Programm abweichend von den Bestimmungen dieser Vereinbarung zu nutzen, zu kopieren, zu ändern oder weiterzugeben; 2) umzuwandeln (reverse assemble, reverse compile), sofern eine solche Umwandlung nicht durch ausdrückliche gesetzliche Regelung unabdingbar vorgesehen ist; oder 3) das Programm in Unterlizenz zu vergeben, zu vermieten oder anderweitig weiterzugeben.

IBM kann Ihre Lizenz kündigen, wenn Sie die Bedingungen dieser Vereinbarung nicht einhalten. In diesem Fall sind Sie verpflichtet, alle Kopien des Programms sowie den zugehörigen Berechtigungsnachweis zu vernichten.

Geld-zurück-Garantie

Falls Sie aus irgendeinem Grund mit dem Programm nicht zufrieden sind und wenn Sie der ursprüngliche Lizenznehmer des Programms sind, können Sie es zusammen mit dem zugehörigen Berechtigungsnachweis innerhalb von 30 Tagen nach dem Datum der Rechnungsstellung gegen Erstattung des gezahlten Betrags an die Stelle zurückgeben, bei der Sie das Programm erworben haben. Wenn Sie das Programm heruntergeladen haben, erhalten Sie von der Stelle, bei der Sie das Programm erworben haben, weitere Anweisungen zur Erstattung des gezahlten Betrags.

Programmübertragung

Sie können ein Programm und alle Lizenzrechte und -verpflichtungen nur an Dritte übertragen, wenn diese sich mit den Bedingungen dieser Vereinbarung einverstanden erklären. Wenn Sie das Programm übertragen, müssen Sie auch eine Kopie dieser Vereinbarung einschließlich des zugehörigen Berechtigungsnachweises beifügen. Nach der Übertragung sind Sie nicht mehr berechtigt, das Programm weiterhin zu nutzen.

2. Gebühren

Bei dem für eine Programmlizenz zu bezahlenden Betrag handelt es sich um eine Einmalgebühr.

Einmalgebühren basieren auf der erworbenen Nutzungsstufe, die im Berechtigungsnachweis dokumentiert ist. IBM gewährt keine Gutschriften oder Rückerstattungen für bereits fällige oder gezahlte Gebühren, mit Ausnahme anders lautender Bestimmungen in dieser Vereinbarung.

Wenn Sie die Nutzungsstufe erhöhen wollen, müssen Sie IBM oder die Stelle, bei der Sie das Programm erworben haben, benachrichtigen und die anfallenden Gebühren bezahlen.

Wenn eine andere Stelle für das Programm Zölle, Steuern, Abgaben oder Gebühren erhebt, die nicht in den IBM Gebühren enthalten sind, erklären Sie sich mit der Zahlung des angegebenen Betrags einverstanden oder verpflichten sich zur Bereitstellung der für die Freistellung erforderlichen Unterlagen. Ab dem Datum des Kaufes sind Sie verantwortlich für alle das Programm betreffenden Vermögenssteuern.

3. Gewährleistungsausschluss

Vorbehaltlich einer gesetzlichen Gewährleistung, die nicht ausgeschlossen werden kann, gibt IBM keine ausdrückliche oder implizite Gewährleistung für die Marktfähigkeit, die Eignung für einen bestimmten Zweck oder die Freiheit von Rechten Dritter in Bezug auf das Programm oder die technische Unterstützung.

Dieser Gewährleistungsausschluss gilt auch für die IBM Programmlieferanten.

Hersteller, Lieferanten oder Herausgeber von Nicht-IBM Programmen können ihre eigenen Gewährleistungen mitliefern.

IBM bietet keine technische Unterstützung, sofern dies nicht ausdrücklich angegeben ist.

4. Haftungsbegrenzung

Soweit Sie aus Verschulden der IBM oder aus sonstigen Gründen von der IBM Schadensersatz fordern, ist die Haftung der IBM unabhängig von der Rechtsgrundlage, auf der Ihr Schadensersatzanspruch an IBM beruht (einschließlich Verletzung wesentlicher Vertragspflichten, Fahrlässigkeit, unrichtiger Angaben oder anderer Ansprüche aus dem Vertrag oder auf Grund unerlaubter Handlungen) und außer in Fällen der gesetzlich zwingenden Haftung, begrenzt auf: 1) Personenschäden (einschließlich Tod) und Schäden an Immobilien und beweglichen Sachen und 2) bei anderen direkten Schäden bis zu den Gebühren für das Programm, das Grundlage des Rechtsanspruches ist.

Diese Haftungsbegrenzung gilt auch für Programmlieferanten. Dies ist der maximale Betrag, für den IBM und diese gemeinsam haftbar gemacht werden können.

Auf keinen Fall sind IBM oder ihre Programmlieferanten in folgenden Fällen haftbar, auch wenn auf die Möglichkeit solcher Schäden hingewiesen wurde:

- 1. Verlust oder Beschädigung von Daten;**
- 2. unmittelbare, mittelbare oder sonstige Folgeschäden; oder**
- 3. entgangener Gewinn, entgangene Geschäftsabschlüsse, Umsätze, Schädigung des guten Namens oder Verlust erwarteter Einsparungen.**

Einige Rechtsordnungen erlauben nicht den Ausschluss oder die Begrenzung von Folgeschäden, so dass obige Einschränkungen und Ausschlüsse möglicherweise nicht anwendbar sind.

5. Allgemeines

- Keine Bestimmung in dieser Vereinbarung betrifft Verbraucherschutzrechte und sonstige Regeln, die gesetzlich unabdingbar sind.
- Falls eine der Bedingungen dieser Vereinbarung im Rahmen des geltenden Rechts ungültig oder undurchführbar ist, sind die übrigen Bedingungen dieser Vereinbarung davon nicht betroffen und gelten weiterhin in vollem Umfang.
- Sie erklären sich mit allen geltenden Gesetzen zur Kontrolle von Im- und Export, Verordnungen und Bestimmungen einverstanden.
- Sie erklären sich damit einverstanden, dass IBM Ihre persönlichen Daten einschließlich Name, Telefonnummern und E-Mail-Adressen speichert und verwendet. Diese Informationen werden im Rahmen unserer Geschäftsbeziehung verarbeitet und verwendet und dürfen Vertragsnehmern, Business Partnern und Bevollmächtigten von IBM für die Durchführung der gemeinsamen Geschäftsaktivitäten einschließlich der Kommunikation mit Ihnen (z. B. zur Bestellverarbeitung, zu Werbezwecken oder für Marktuntersuchungen) zur Verfügung gestellt werden.

5. Sowohl Sie als auch IBM verpflichten sich, keine Klage im Rahmen dieser Vereinbarung später als zwei Jahre nach Auftreten des Klagegegenstands einzureichen, soweit keine anders lautenden gesetzlichen Regelungen unabdingbar vorgesehen sind.
6. Weder Sie noch IBM sind für die Nichterfüllung von vertraglichen Verpflichtungen aus Gründen haftbar, die von den Vertragspartnern nicht beeinflusst werden können.
7. Aus dieser Vereinbarung ergibt sich kein Recht auf Klage oder Klagegegenstand für Dritte, und IBM ist nicht haftbar für Ansprüche Dritter gegen Sie, die nicht im zuvor aufgeführten Abschnitt zur Haftungsbegrenzung spezifiziert sind, und für Personenschäden (einschließlich Tod) und Schäden an Immobilien und beweglichen Sachen, für die IBM nach den gesetzlichen Bestimmungen haftbar ist.

6. Geltendes Recht, Rechtsprechung und Schiedsspruchverfahren

Geltendes Recht

Sowohl Sie als auch IBM sind damit einverstanden, dass die Gesetze des Landes zur Anwendung kommen, in dem Sie die Programmlizenz erworben haben, um die Rechte, Pflichten und Verpflichtungen von Ihnen und IBM, die sich aus dem Inhalt dieser Vereinbarung ergeben oder in irgendeiner Weise damit in Zusammenhang stehen, zu regeln, zu interpretieren und durchzuführen, ungeachtet unterschiedlicher Rechtsgrundlagen.

Die Vertragskonvention der Vereinten Nationen für den internationalen Warenverkauf kommt nicht zur Anwendung.

Rechtsprechung

Alle Rechte, Pflichten und Verpflichtungen unterliegen der Rechtsprechung des Landes, in dem die Programmlizenz erworben wurde.

Teil 2 - Länderspezifische Bedingungen

EUROPA, MITTLERER OSTEN, AFRIKA (EMEA)

Gewährleistungsausschluss (Abschnitt 3): *In der Europäischen Gemeinschaft wird am Anfang dieses Abschnitts Folgendes eingefügt:*

In der Europäischen Gemeinschaft sind für Konsumenten unter den geltenden nationalen rechtlichen Bestimmungen Rechte für den Verkauf von Konsumgütern definiert. Diese Rechte sind von den Bestimmungen in diesem Abschnitt 3 nicht betroffen.

Haftungsbegrenzung (Abschnitt 4): *In Österreich und der Schweiz wird dieser Abschnitt vollständig durch folgende Regelungen ersetzt:*

Vorausgesetzt, dass keine anderweitigen verbindlichen Rechtsbestimmungen gelten:

1. Die Haftung von IBM für Schäden und Verluste, die als Folge der Erfüllung der Bestimmungen dieser Vereinbarung oder in Zusammenhang mit dieser Vereinbarung verursacht wurden oder die auf einem anderen, mit dieser Vereinbarung in Zusammenhang stehenden Grund beruhen, ist begrenzt auf die Kompensation der Schäden und Verluste, die als unmittelbare und direkte Folge der Nichterfüllung solcher Verpflichtungen (bei Verschulden von IBM) oder Gründe entstanden und belegt sind. Der Höchstbetrag entspricht hierbei den von Ihnen für das Programm bezahlten Gebühren.
Die obige Einschränkung gilt nicht für Personenschäden (einschließlich Tod) und für direkte Schäden an Immobilien und beweglichen Sachen, für die IBM rechtlich haftbar ist.
2. **Auf keinen Fall ist IBM in folgenden Fällen haftbar, auch wenn auf die Möglichkeit solcher Schäden hingewiesen wurde:** 1) Verlust oder Beschädigung von Daten; 2) spezielle mittelbare oder Folgeschäden oder andere geschäftliche Folgeschäden; 3) entgangene Gewinne, auch wenn sie als direkte Folge des Ereignisses entstanden sind, das zu den Schäden geführt hat; oder 4) entgangene Geschäftsabschlüsse, Umsätze, Schädigung des guten Namens oder Verlust erwarteter Einsparungen.

3. Die in dieser Vereinbarung spezifizierten Haftungsbegrenzungen und -ausschlüsse gelten nicht nur für die von IBM durchgeführten Aktivitäten, sondern auch für die Aktivitäten von IBM Lieferanten. Sie legen den Höchstbetrag fest, für den IBM und IBM Lieferanten gemeinsam haftbar sind.

Geltendes Recht, Rechtsprechung und SchiedsSpruchverfahren (Abschnitt 6)

Rechtsprechung

Folgende Ausnahmen werden zu diesem Abschnitt hinzugefügt:

In Österreich gilt als Gerichtsstand für alle aus dieser Vereinbarung erwachsenden und mit dieser in Zusammenhang stehenden Streitfälle einschließlich Streitfällen bezüglich ihres Vorhandenseins das zuständige Gericht in Wien, Österreich (Innenstadt).

ÖSTERREICH: Gewährleistungsausschluss (Abschnitt 3): *Die Bedingungen dieses Abschnitts werden vollständig durch den folgenden Text ersetzt:*

Die folgende begrenzte Gewährleistung kommt zur Anwendung, wenn Sie für den Erwerb des Programms eine Gebühr bezahlt haben:

Der Gewährleistungszeitraum beträgt zwölf Monate ab dem Datum der Lieferung. Als Begrenzungszeitraum für Kunden mit laufenden Verfahren wegen Verstößen gegen die Gewährleistungsbestimmungen gilt mindestens die gesetzlich vereinbarte Zeitdauer.

Die Gewährleistung für ein IBM Programm umfasst die Funktionalität des Programms bei normalem Gebrauch und die Übereinstimmung des Programms mit den geltenden Spezifikationen.

IBM gewährleistet, dass das Programm bei Nutzung in der angegebenen Betriebsumgebung seinen Spezifikationen entspricht. IBM gewährleistet keinen ununterbrochenen oder fehlerfreien Betrieb des Programms oder die Korrektur aller Programmfehler. Für die Ergebnisse aus der Nutzung des Programms sind Sie selbst verantwortlich.

Die Gewährleistung gilt nur für den unveränderten Teil des Programms.

Wenn das Programm innerhalb des Gewährleistungszeitraums nicht wie zugesichert funktioniert und das Problem mit Hilfe der bereitgestellten Informationen nicht behoben werden kann, sind Sie berechtigt, das Programm bei der Stelle zurückzugeben, bei der das Programm gekauft wurde. Sie erhalten die bezahlten Gebühren dann zurück. Wenn Sie das Programm heruntergeladen haben, wird Ihnen der gezahlte Betrag von der Stelle zurückerstattet, bei der Sie das Programm erworben haben.

Sofern durch die geltenden gesetzlichen Regelungen nicht anders vorgesehen, sind unsere Verpflichtungen auf die genannten Bestimmungen begrenzt.

Allgemeines (Abschnitt 5): *Zu Unterziffer 4 wird Folgendes hinzugefügt:*

Im Rahmen dieser Bestimmung umfassen die Kontaktinformationen auch Ihre persönlichen Informationen als juristische Person, z. B. Umsatzdaten und andere Informationen zu Geschäftsaktivitäten.

DEUTSCHLAND: Gewährleistungsausschluss (Abschnitt 3): *Es gelten dieselben Änderungen wie in Gewährleistungsausschluss (Abschnitt 3) oben unter Österreich.*

Haftungsbegrenzung (Abschnitt 4): *Der folgende Absatz wird diesem Abschnitt hinzugefügt:*

Die in diesem Abschnitt genannten Begrenzungen und Ausschlüsse entfallen bei Vorsatz und grober Fahrlässigkeit der IBM.

Allgemeines (Abschnitt 5): *Die Bestimmungen in Unterziffer 5 werden durch Folgendes ersetzt:*

Für alle Ansprüche, die aus dieser Vereinbarung entstehen, gilt eine gesetzliche
Begrenzungsfrist von drei Jahren. Ausgenommen von dieser Regelung sind die unter Abschnitt
3 (**Gewährleistungsausschluss**) dieser Vereinbarung aufgeführten Fälle.

SCHWEIZ: Allgemeines (Abschnitt 5): *Zu Unterziffer 4 wird Folgendes hinzugefügt:*

Im Rahmen dieser Bestimmung umfassen die Kontaktinformationen auch Ihre persönlichen
Informationen als juristische Person, z. B. Umsatzdaten und andere Informationen zu
Geschäftsaktivitäten.

Accordo Internazionale di Licenza per Programmi senza Garanzia (ILAN)

Parte 1 - Condizioni Generali

SCARICANDO, INSTALLANDO, COPIANDO, ACCEDENDO O UTILIZZANDO IL PROGRAMMA SI ACCETTANO LE DISPOSIZIONI DEL PRESENTE ACCORDO. SE SI ACCETTANO TALI DISPOSIZIONI PER CONTO DI UN'ALTRA SOCIETÀ O PERSONA FISICA O GIURIDICA, SI DICHIARA E SI GARANTISCE DI AVERE PIENA AUTORITÀ DI VINCOLARE TALE SOCIETÀ O PERSONA FISICA O GIURIDICA ALLE PRESENTI DISPOSIZIONI. SE NON SI ACCETTANO LE PRESENTI DISPOSIZIONI,

- NON SCARICARE, INSTALLARE, COPIARE, ACCEDERE O UTILIZZARE IL PROGRAMMA; E
- RESTITUIRE TEMPESTIVAMENTE IL PROGRAMMA E LA PROVA DI TITOLARITÀ AL SOGGETTO DA CUI È STATO ACQUISITO PER OTTENERE IL RIMBORSO DEL CORRISPETTIVO PAGATO. SE IL PROGRAMMA È STATO SCARICATO, CONTATTARE IL SOGGETTO DA CUI È STATO ACQUISITO.

Per "IBM" si intende International Business Machines Corporation o una delle sue consociate.

Per "Informazioni relative alla Licenza" (LICENSE INFORMATION - "LI") si intende un documento che fornisce informazioni specifiche di un Programma. Le LI del Programma sono disponibili presso il sito web <http://www.ibm.com/software/sla/>. Le LI si possono trovare anche in un file nella directory del Programma, utilizzando un comando di sistema, o nel libretto che accompagna il Programma.

Per "Programma" si intende sia il programma originale che tutte le copie integrali o parziali di esso: 1) istruzioni in forma leggibile dalla macchina e dati, 2) sue componenti, 3) contenuto audiovisivo (quale immagini, testo, registrazioni o figure), 4) materiali su licenza associati, e 5) documenti o chiavi di utilizzo della licenza, e documentazione.

Per "Prova di Titolarità" (Proof of Entitlement - "PoE") si intende la prova dell'autorizzazione all'utilizzo di un Programma per uno specifico livello. Tale livello può essere misurato, ad esempio, in base al numero di processori o utilizzatori. La PoE costituisce anche il titolo per beneficiare dei corrispettivi per futuri aggiornamenti, se esistenti, e di eventuali offerte speciali o promozionali. In caso IBM non fornisca una PoE, allora IBM può accettare la ricevuta originale dei pagamenti effettuati o di altre registrazioni di vendita effettuate dal soggetto (IBM o suo rivenditore) da cui è stato acquisito il Programma, a condizione che sia specificato il nome del Programma ed il livello di utilizzo acquisito.

Per "Utilizzatore" si intende sia una singola persona fisica che giuridica.

Il presente Accordo, che è suddiviso in **Parte 1 - Condizioni Generali**, **Parte 2 - Disposizioni specifiche per i singoli paesi** (se esistenti), **le Informazioni relative alla Licenza e la Prova di Titolarità**, costituiscono l'accordo integrale tra l'utilizzatore ed IBM relativamente all'uso del Programma. Sostituiscono qualsiasi altra precedente comunicazione verbale o scritta intercorsa tra l'utilizzatore ed IBM relativa all'uso del Programma. Le disposizioni contenute nella Parte 2 e nelle Informazioni relative alla Licenza possono sostituire o modificare quelle contenute nella Parte 1. In caso di contrasto tra le disposizioni del presente Accordo e quelle dell'Accordo IBM International Passport Advantage, prevarranno le disposizioni del secondo Accordo.

1. Titolarità

Licenza

Il Programma è di proprietà di IBM o di un fornitore IBM, ed è tutelato dalle leggi sul diritto d'autore, viene concesso in licenza, ma non venduto.

IBM concede una licenza d'uso non esclusiva del Programma quando lo si acquisisce legalmente.

La licenza consente di 1) utilizzare il Programma fino al livello di utilizzo specificato nella PoE e 2) effettuare ed installare copie, inclusa una copia di backup, per supportare tale utilizzo. Le disposizioni della presente licenza si applicano a ciascuna copia effettuata. Sarà necessario riprodurre su ciascuna copia, anche parziale, del Programma tutte le indicazioni relative al diritto d'autore e tutte le altre indicazioni relative a diritti di proprietà.

Qualora il Programma sia acquisito come aggiornamento di un programma precedente, dopo l'installazione di tale aggiornamento non sarà più possibile utilizzare il Programma precedente o trasferirlo a terzi.

Sarà necessario assicurarsi che chiunque utilizzi il Programma (con accesso locale o remoto) rispetti l'uso autorizzato ed accetti le disposizioni del presente Accordo.

La licenza non consente di 1) utilizzare, copiare, modificare o distribuire il Programma, fatto salvo quanto previsto nel presente Accordo; 2) assemblare a ritroso, compilare a ritroso o in altro modo tradurre il Programma, senza possibilità di deroga contrattuale, salvo il caso in cui sia espressamente previsto dalle norme inderogabili di legge; o 3) sublicenziare, concedere in noleggio o locazione il Programma.

IBM potrà revocare la licenza se non si rispettano le disposizioni del presente Accordo. In tal caso, l'utilizzatore dovrà distruggere tutte le copie del Programma e la sua PoE.

Garanzia di rimborso

Qualora l'utilizzatore non sia soddisfatto del Programma e sia anche il licenziatario originale, esso può ottenere un rimborso del corrispettivo pagato per il Programma, se restituisce il Programma e la sua PoE entro 30 giorni dalla data della fattura al soggetto da cui è stato acquisito. Se il Programma è stato scaricato, è possibile contattare il soggetto da cui è stato acquisito per istruzioni su come ottenere il rimborso.

Trasferimento del Programma

È possibile trasferire ad un terzo un Programma e tutti i diritti e le obbligazioni relativi alla licenza solo se il terzo accetta le disposizioni del presente Accordo. Con il trasferimento del Programma, al terzo si deve trasferire anche una copia del presente Accordo, con acclusa la Prova di Titolarità al Programma. Dopo il trasferimento, l'autorizzazione ad utilizzare il Programma è revocata.

2. Corrispettivi

Il corrispettivo dovuto per una licenza del Programma è in soluzione unica.

I corrispettivi in soluzione unica si basano sul livello di utilizzo acquisito specificato nella PoE. IBM non restituisce i corrispettivi già pagati né accredita quelli dovuti, fatto salvo quanto diversamente specificato nel presente Accordo.

Qualora si desideri incrementare il livello di utilizzo, è necessario darne comunicazione ad IBM o al soggetto da cui è stato acquisito il Programma e pagare i corrispettivi applicabili.

Qualora sul Programma un'autorità imponga un'imposta, un dazio o un tributo, con esclusione di quelli basati sul reddito imponibile di IBM, allora si accetta di pagare l'ammontare specificato o si dovrà fornire documentazione dell'esenzione eventualmente spettante. L'utilizzatore è responsabile di qualsiasi tassa relativa alla proprietà personale sul Programma dalla data della sua acquisizione.

3. Esclusione della garanzia

FATO SALVO LE GARANZIE INDEROGABILI DI LEGGE, IBM NON FORNISCE GARANZIE O DICHIARAZIONI DI ALCUN TIPO, ESPRESSE O IMPLICITE, INCLUSE, A TITOLO ESEMPLIFICATIVO, GARANZIE O CONDIZIONI IMPLICITE DI

COMMERCIALIZITÀ O IDONEITÀ PER UNO SCOPO PARTICOLARE, INCLUSE LE GARANZIE DI FUNZIONAMENTO ININTERROTTO, RELATIVE AL PROGRAMMA O AL SUPPORTO TECNICO, SE ESISTENTE.

La presente esclusione si applica anche a qualsiasi sviluppatore e fornitore dei Programmi IBM.

Produttori, fornitori o editori di Programmi non IBM possono prestare proprie garanzie.

IBM non fornisce supporto tecnico, a meno che IBM non specifichi diversamente

4. Limitazione di responsabilità

Possono verificarsi circostanze in cui, per fatto imputabile ad IBM o per altri fatti di cui IBM debba rispondere, si abbia il diritto ad un risarcimento da parte di IBM. In questi casi, indipendentemente da ciò che dà titolo all'utilizzatore a richiedere il risarcimento danni ad IBM, (incluso colpa grave, negligenza, erronee dichiarazioni o altri fatti di natura contrattuale o extracontrattuale), la responsabilità di IBM è limitata 1) ai danni fisici alla persona (incluso il decesso), danni alla proprietà immobiliare e personale e 2) nel caso di ogni altro danno diretto, fino al corrispettivo pagato per il Programma oggetto del reclamo.

Questa limitazione di responsabilità si applica anche agli sviluppatori del Programma IBM e ai fornitori. Ciò rappresenta il massimo per cui IBM ed i suoi fornitori sono collettivamente responsabili.

IN NESSUN CASO IBM, GLI SVILUPPATORI DEL PROGRAMMA O I FORNITORI SARANNO RESPONSABILI PER QUANTO SEGUE, ANCHE SE INFORMATI DELLA POSSIBILITÀ DEL LORO VERIFICARSI:

1. **PERDITA O DANNEGGIAMENTO DI DATI;**
2. **DANNI SPECIALI, INCIDENTALI O INDIRETTI, O QUALSIASI ALTRO DANNO ECONOMICO CONSEGUENTE; O**
3. **MANCATI GUADAGNI, PERDITA DI OPPORTUNITÀ COMMERCIALE, DI REDDITO, DI BENEFICI, O MANCATI RISPARMI.**

LA LEGISLAZIONE DI ALCUNI PAESI NON CONSENTE L'ESCLUSIONE O LA LIMITAZIONE DI DANNI INCIDENTALI O CONSEGUENZIALI, PERTANTO LE SUDDETTE LIMITAZIONI O ESCLUSIONI POTREBBERO NON ESSERE APPLICABILI.

5. Disposizioni generali

1. Le disposizioni del presente Accordo non pregiudicano in alcun modo le garanzie legali del consumatore che non possono essere escluse o limitate per contratto.
2. Nel caso in cui una qualsiasi clausola del presente Accordo dovesse essere dichiarata invalida o inefficace, le restanti clausole del presente Accordo rimarranno pienamente in vigore ed efficaci.
3. Si accetta di osservare tutte le disposizioni di legge e le normative applicabili in materia di esportazione ed importazione.
4. Si consente ad IBM di memorizzare ed utilizzare le informazioni relative ai contatti, inclusi nomi, numeri telefonici, ed indirizzi e-mail, laddove vi siano rapporti commerciali. Tali informazioni saranno elaborate ed utilizzate nell'ambito delle commerciali, e potranno essere fornite agli appaltatori, ai Business Partner e ai cessionari IBM per usi relativi alle attività commerciali, inclusa la comunicazione con il cliente (ad esempio, per l'elaborazione di ordini, promozioni, e ricerche di mercato).
5. Ciascuna parte potrà adire l'autorità giudiziaria in relazione al presente Accordo solamente entro due anni a far data dall'evento che ha causato l'azione legale a meno che la legge del paese non disponga diversamente escludendo la possibilità di rinuncia o limitazione contrattuale.
6. Ciascuna parte non sarà ritenuta responsabile per eventuali inadempimenti dovuti a cause che esulino dal proprio controllo.
7. Il presente Accordo non creerà alcun diritto o azione legale da terze parti, né IBM sarà responsabile di alcun reclamo da parte di terzi fatto salvo, laddove consentito dall'articolo

Limitazione di responsabilità, per danni fisici (incluso il decesso) o danni tangibili a proprietà personale per cui IBM è legalmente responsabile.

6. Legge applicabile, Giurisdizione e Arbitrato

Legge applicabile

Le parti concordano sull'applicazione delle leggi del paese in cui è stata acquisita la licenza al Programma al fine di disciplinare, interpretare ed applicare tutti i diritti e le obbligazioni che derivano, o in qualche modo sono correlati al presente Accordo, indipendentemente dal conflitto di principi di legge.

La Convenzione delle Nazioni Unite sui Contratti per la Vendita Internazionale di Mercì non è applicabile.

Giurisdizione

Tutti i diritti, i doveri e le obbligazioni sono soggetti agli organi giudiziari del paese in cui è stata acquisita la licenza al Programma.

Parte 2 - Disposizioni specifiche per i singoli Paesi

EUROPA, MEDIO ORIENTE, AFRICA (EMEA)

Esclusione della garanzia (Articolo 3): *Nell'Unione Europea, quanto segue viene aggiunto all'inizio del presente articolo:*

Nell'Unione Europea, i consumatori hanno diritti legali in base alla legislazione nazionale applicabile che regola la vendita dei beni al consumatore. Quanto dichiarato nell'Articolo 3 non riguarda tali diritti.

Limitazione di responsabilità (Articolo 4): *In Italia e Svizzera, il testo seguente sostituisce integralmente le disposizioni di questo articolo:*

Fatto salvo quanto stabilito da norme inderogabili di legge:

1. La responsabilità di IBM per qualsiasi danno e perdita derivante dall'adempimento dei propri obblighi in base a o in associazione con il presente accordo o dovuta ad altre cause correlate all'accordo è limitata solo alla compensazione di quei danni e quelle perdite provate e realmente derivanti come conseguenza diretta del mancato adempimento di tali obblighi (se è colpa di IBM) o di tale causa, per un ammontare massimo pari al corrispettivo pagato per il Programma.

La suddetta limitazione non si applica ai danni fisici (incluso il decesso) e ai danni tangibili alla proprietà dei beni mobili ed immobili per cui IBM è legalmente responsabile.

2. **IN NESSUN CASO IBM, O UNO QUALSIASI DEI SUOI SVILUPPATORI DI PROGRAMMI, SARÀ RESPONSABILE DEI SEGUENTI EVENTI, ANCHE SE INFORMATA DELLA POSSIBILITÀ DEL LORO VERIFICARSI: 1) PERDITA O DANNEGGIAMENTO DI DATI; 2) DANNI INCIDENTALI O INDIRETTI, O QUALSIASI DANNO ECONOMICO CONSEGUENTE; 3) LUCRO CESSANTE, ANCHE SE DERIVANTE COME IMMEDIATA CONSEGUENZA DALL'EVENTO CHE HA PRODOTTO IL DANNO; O 4) MANCATI AFFARI, PERDITA COMMERCIALE, DI REDDITO, DI BENEFICI, O MANCATI RISPARMI.**
3. La limitazione ed esclusione di responsabilità qui accettata si applica non solo alle attività eseguite da IBM, ma anche a quelle eseguite dai suoi fornitori e sviluppatori di Programmi, e rappresenta l'ammontare massimo per il quale IBM, i suoi fornitori e sviluppatori di Programmi, sono complessivamente responsabili.

Legge applicabile, Giurisdizione ed Arbitrato (Articolo 6)

Giurisdizione

Le seguenti eccezioni si aggiungono a questo articolo:

In Italia, qualsiasi pretesa legale derivante dal presente Accordo verrà portata dinnanzi e discussa esclusivamente dal foro di Milano.

ITALIA: Disposizioni Generali (Articolo 5): *Quanto segue si aggiunge a questo articolo:*

IBM e l'utilizzatore originario (di seguito, individualmente, "Parte") soddisferanno tutti gli obblighi delle disposizioni e/o regolamenti di legge applicabili sulla protezione dei dati personali. Ciascuna delle Parti indennizzerà e proteggerà l'altra da qualsiasi danno, pretesa, costo o spesa derivante, direttamente o indirettamente, dalla violazione delle disposizioni e/o regolamenti di legge commesse dall'altra Parte.

SVIZZERA: Disposizioni Generali (Articolo 5): *Quanto segue si aggiunge al punto 4:*

Per quanto concerne questa clausola, le informazioni relative ai contatti includeranno anche informazioni sull'utilizzatore originario in qualità di persona giuridica, ad esempio dati relativi al reddito ed altre informazioni che riguardano la fornitura.

プログラムのご使用条件 (保証適用外プログラム用)

第 1 章 - 共通事項

お客様が「プログラム」をダウンロード、導入、複製、アクセスあるいは使用されると、このプログラムのご使用条件 (以下「使用条件」といいます) に同意されたものと見なされます。他の個人、会社あるいは法人に代わってこの使用条件に同意される場合は、お客様はそれらの個人、会社あるいは法人にこの使用条件を順守させる全権限を有していることを表明・保証いただくものとします。この使用条件に同意いただけない場合は、お客様は

- ・ 「プログラム」をダウンロード、導入、複製、アクセスまたは使用することなく、かつ
- ・ 直ちに「プログラム」ならびにライセンス証書をその調達元に返却することにより、これらと引き換えに支払済料金の返金を受けることができます。もし「プログラム」をダウンロードしてしまった場合は、その調達元にご連絡下さい。

「IBM」とは、International Business Machines Corporation、もしくはその子会社をいいます。

「ライセンス情報」(以下「LI」といいます)とは、「プログラム」に固有の情報を提供する文書をいいます。「プログラム」の LI は、<http://www.ibm.com/software/sla/> から入手することができます。また、LI は、「プログラム」のディレクトリー内のファイルとして (システム・コマンドを使用します。)、あるいは「プログラム」と同梱される小冊子として提供される場合があります。

「プログラム」とは、プログラムの原本ならびにそのすべての複製物 (全体複製か部分複製かを問わない) を含めて、次のものを意味します。1) 機械で読み取りうる形の命令およびデータ、2) その構成要素、3) 視聴覚コンテンツ (イメージ、テキスト、録音、画像など)、4) 関連するライセンス資料、ならびに 5) ライセンス・ユース・ドキュメントまたはキー、および付属文書。

「ライセンス証書」(以下「PoE」といいます) は、特定「プログラム」に対する使用権および使用許諾範囲の証明としてお客様に保管いただくものとします。その使用許諾範囲は、例えば、プロセッサやユーザーの数等で示されます。また、PoE は、将来における「プログラム」のアップグレード (発表される場合) または販売促進用の特別な措置 (提供される場合) 等を受ける資格を確認し証明するものです。IBM が PoE を発行しない場合は、IBM は、お客様の「プログラム」の調達元 (IBM または IBM ビジネス・パートナー) が発行した支払済み代金受領書原票、その他の販売記録を PoE とみなす場合があります。ただし、その場合は、「プログラム」の名称と取得した使用許諾範囲が明記されていることが前提となります。

「お客様」とは、個人またはひとつの法人を意味します。

この使用条件は、第 1 章の共通条項、第 2 章の各国固有の条項 (該当する場合)、LI および PoE から構成され、本「プログラム」の使用に関する両当事者間の完全、唯一の合意文書であり、お客様の「プログラム」の使用に関する、事前の両当事者の口頭または書面による通知等のすべてに代わるものです。第 2 章および LI に、第 1 章の条件に対する追加条件または変更条件が記載されている場合があります。当使用条件と IBM パスポート・アドバンテージのご契約条件との間に齟齬があったときは、後者の条件が優先するものとします。

1. お客様の権利

使用権

「プログラム」は、IBM または「プログラム」の提供者が所有権を有しています。「プログラム」は、著作権により保護されており、使用許諾されるものであって、売買の対象となるものではありません。

IBM は、お客様が「プログラム」を適法に取得した場合、お客様に対して「プログラム」の非独占的な使用権を許諾します。

お客様は 1) PoE に記載された使用許諾範囲で「プログラム」を使用することができ、2) かかる使用の範囲において、バックアップ・コピーを含め、「プログラム」の複製を作成および導入することができます。この使用条件は、お客様が作成する各複製物にも適用されます。「プログラム」の複製物には、全部複製か部分複製かを問わず、お客様は「プログラム」に表示されているものと同一の著作権表示を必ず行なうものとします。

お客様がこの「プログラム」を既に取得済みの「プログラム」に対するアップグレードとして取得した場合、そのアップグレード「プログラム」を導入した後は、アップグレード前の「プログラム」を使用もしくは他人に移転することはできません。

お客様は、遠隔地からのアクセスを含めて「プログラム」を使用する何人（なんびと）もが、お客様に認められた使用許諾範囲内でのみ使用し、かつ、この使用条件に定める義務を守るよう適切な措置を講じるものとします。

お客様は、1) この使用条件に明記されている場合を除き、「プログラム」を使用、複製、結合、配布もしくは送信すること、2) 法律の強行規定のある場合を除き、「プログラム」を逆コンパイル、逆アセンブルもしくは翻案すること、または 3) 「プログラム」を再使用許諾、賃貸もしくは貸与することはできません。

お客様がこの使用条件に違反した場合には、IBM はお客様に対する使用許諾を終了することができます。この場合、お客様は「プログラム」のすべての複製物ならびにその PoE を速やかに破棄するものとします。

解約可能期間

お客様が、いかなる理由であっても「プログラム」に対して満足いただけず、かつお客様が当初の使用権取得者である場合、納品書（発行されない場合は領収書）の日付から 30 日以内に「プログラム」ならびにその PoE をその調達元に返却することにより、これと引き換えに支払済料金の返金を受けることができます。「プログラム」をダウンロードした場合の返金の受け方につきましては、当該「プログラム」の調達元にお問い合わせください。

「プログラム」の移転

お客様は、「プログラム」およびお客様が「プログラム」を使用する権利ならびにこれに関する義務のすべてを第三者に移転することができます。ただし、この第三者がこの使用条件に同意する場合に限ります。また、この場合、お客様はこの使用条件（「プログラム」の PoE を含む）を渡すものとします。移転後は、お客様は「プログラム」を使用することはできません。

2. 料金

「プログラム」の料金は一時払い料金です。

一時払い料金は、PoE に記載される使用許諾範囲に基づくものとします。IBM は、既に支払期日の到来している料金の請求または支払済みの料金を貸し付けもしくは返還しないものとします。ただし、この使用条件で別途規定がある場合は除きます。

お客様は、使用許諾範囲を拡大する場合、調達元である IBM または IBM ビジネス・パートナーに通知し、所定の料金を支払うものとします。

また、この使用条件のもとで提供された「プログラム」に対し、税金等（ただし、IBM に対する法人税を除きます）が課せられるときは、IBM がその種類を明示してお客様に請求したときに限り、お客様の負担とします。「プログラム」に対して課せられる動産税については、取得日以降はお客様の負担とします。

3. 保証の不提供

強行法規に反する場合を除き、IBM は「プログラム」を特定物として現存するままの状態を提供し、「プログラム」または技術サポート（提供される場合）について、法律上の瑕疵担保責任を

含め、第三者の権利の不侵害の保証、商品性の保証、特定目的適合性の保証を含む明示もしくは黙示のいかなる保証責任をも負わないものとします。

この不提供の規定は、IBM に「プログラム」を提供した「プログラム」開発者ならびに IBM ビジネス・パートナーに対しても適用されます。

なお、IBM 以外の「プログラム」については、その製造者、提供者または発行者により保証が提供される場合があります。

IBM は、別に規定した場合を除き、「プログラム」に対して技術サポートを提供いたしません。

4. 責任の制限

お客様が IBM の責に帰すべき事由 (契約不履行、過失、不実表示または不法行為などを含みます) に基づく損害に対して救済を求める場合、IBM の賠償責任は、請求の原因を問わず、次の各号に定めるものに限られます。 1) IBM の故意もしくは過失によってお客様に生じた身体、生命および有体物に対する賠償責任。 2) お客様に現実に発生した通常かつ直接の損害に対し、損害発生の原因となった当該「プログラム」の使用料金相当額を限度とする金銭賠償責任。

本条の責任の制限は、IBM に「プログラム」を提供した「プログラム」開発者ならびに IBM ビジネス・パートナーに対する損害賠償請求にも適用されるものとします。お客様は、IBM および「プログラム」開発者ならびに IBM ビジネス・パートナーに対して重複して損害賠償を請求することはできません。

いかなる場合においても、IBM、「プログラム」開発者および IBM ビジネス・パートナーは、その予見の有無を問わず発生した以下の損害については賠償責任を負いません。

1. データの喪失または損傷
2. 特別損害、付随的損害、間接損害、およびそのほかの拡大損害
3. 逸失利益 (ビジネス、収益、信用あるいは節約すべきし費用を含む)。

国または地域によっては、法律の強行規定により、上記の責任の制限が適用されない場合があります。

5. その他

1. この使用契約は、消費者保護法規によるお客様の権利を変更するものではありません。
2. この使用条件のいずれかの条項が無効または履行強制ができないとされた場合でも、その他の条項は有効に存続するものとします。
3. お客様は、関連する輸出入関連法規を順守するものとします。
4. お客様は、IBM がお客様の連絡先情報 (名前、電話番号、電子メール・アドレスを含む) を、IBM が営業を行う地域に保存し使用することに同意されるものとします。かかる情報は IBM とお客様との取引に関連して管理、使用されるものとし、IBM の委託先、ビジネス・パートナー、事業継承先に対して、お客様との連絡を含む、それらの一般的事業目的内の用途 (例えば、受注処理、販売促進、市場調査等) のために提供されることがあります。
5. この使用条件にもとづく請求権は、請求のいかににかかわらず、その原因が発生した日から 2 年を経過したときに、時効により消滅するものとします。
6. いずれの当事者も、自己の責めに帰すことのできない事由から生じた損害については、責任を負わないものとします。
7. この使用条件により第三者に対していかなる訴権あるいは請求権も生じるものではなく、またお客様に対する第三者からの賠償請求について IBM が責任を負うものではありません。ただし、前述の「責任の制限」条項で認められた、IBM が法的に責任を有する、身体 (生命を含む)、および有体物に対する賠償責任は除きます。

6. 準拠法、裁判管轄権および調停

準拠法

両当事者は、法原理の矛盾に関する場合を除き、本契約から生じる、もしくは本契約に関連する両当事者のすべての権利義務を、規制、解釈、実施するために、お客様が「プログラム」の使用権を取得した国の法律を適用することに同意するものとします。

国際売買契約に関する国連条約（United Nations Convention on Contracts for the International Sale of Goods）は適用されません。

裁判管轄権

両当事者の権利および義務については、お客様が「プログラム」の使用権を取得した国の裁判所の判断に従うものとします。

第 2 章 - 各国固有の条項

日本: その他 (第 5 条): 第 5 項の後に以下の文言を追加するものとします。

本書に関する疑義が生じた場合は、当事者双方が信義誠実の原則に従って協議するものとします。

무보증 프로그램에 관한 라이선스 계약(ILAN)

제 1 부 - 일반 조항

본 프로그램을 다운로드, 설치, 복사, 액세스 또는 사용함으로써 귀하는 본 계약의 조항에 동의하게 됩니다. 만일 귀하가 제3자 개인이나 회사 또는 기타 법인체를 대표하여 본 계약의 조항을 승인하는 경우, 귀하는 귀하에게 해당 제3자 개인이나 회사 또는 법인체가 이들 조항을 준수하도록 할 완전한 권한이 있음을 보증하고 진술합니다. 본 계약 조건에 동의하지 않는 경우,

- 본 프로그램을 다운로드, 설치, 복사, 액세스 또는 사용하지 마시고,
- 본 프로그램을 취득한 당사자에게 본 프로그램 및 해당 라이선스 증서를 반환하고 귀하가 지불한 금액을 환불 받으시기 바랍니다. 프로그램을 다운로드한 경우, 본 프로그램을 취득한 해당 당사자에게 문의하시기 바랍니다.

"IBM"은 International Business Machines Corporation 또는 그 자회사 중 하나를 의미합니다.

"라이선스 정보"란 프로그램 고유 정보를 제공하는 문서를 나타냅니다. 본 프로그램의 라이선스 정보는 <http://www.ibm.com/software/sla/>에서 볼 수 있습니다. 또한, 라이선스 정보는 시스템 명령을 사용하여 본 프로그램의 디렉토리에서 보거나 프로그램에 등록된 소책자에서 볼 수 있습니다.

"프로그램"이란 프로그램 원본 및 원본의 전체 또는 부분 사본을 포함하여 1) 기계 판독 가능 지침 및 데이터 2) 구성요소 3) 음성/영상 내용물(예를 들어, 이미지, 텍스트, 녹음 자료 또는 영상) 및 4) 라이선스 사용 문서나 키 또는 자료를 의미합니다.

"라이선스 증서"는 귀하가 프로그램을 지정된 레벨만큼 사용할 수 있다는 것을 인정하는 근거가 됩니다. 지정 레벨은 프로세서나 사용자 수 등으로 측정될 수 있습니다. 라이선스 증서는 귀하가 본 프로그램의 차후 업그레이드 프로그램에 대한 가격(발표되는 경우) 및 특별 판촉 기회를 이용할 수 있다는 것을 인정하는 근거가 됩니다. IBM에서 라이선스 증서를 제공하지 않는 경우, IBM은 지불 완료 판매 영수증의 원본이나 본 프로그램을 취득한 당사자(IBM 또는 IBM 리셀러)에게서 받은 기타 판매 기록을 승인할 수 있습니다. 단, 이들 문서에 본 프로그램의 이름 및 취득한 사용 레벨이 반드시 명시되어 있어야 합니다.

"귀하"는 한 명의 개인을 의미하거나 또는 단일 법인체를 의미합니다.

본 계약은 본 프로그램에 관한 귀하와 IBM 간의 완전한 계약으로, 제 1 부 - 일반 조항, 제 2 부 - 국가별 고유 조항(해당 조항이 있는 경우), 라이선스 정보 및 라이선스 증서로 이루어져 있습니다. 본 계약이 본 프로그램 사용과 관련된 귀하와 IBM 간의 모든 이전 구두 또는 서면 의사 교환을 대체합니다. 제 2 부의 조항과 라이선스 정보가 제 1 부의 조항을 대체 또는 수정할 수 있습니다. 본 계약의 조항과 IBM International Passport Advantage 계약의 조항이 서로 상반되는 경우, IBM International Passport Advantage 계약의 조항이 우선합니다.

제 1 조 권한

라이선스

본 프로그램의 소유권은 IBM 또는 IBM 공급자에게 있으며 저작권의 보호를 받습니다.

귀하가 본 프로그램을 합법적으로 취득한 경우, IBM은 귀하에게 본 프로그램에 대한 비독점적 라이선스를 부여합니다.

귀하는 1) 라이선스 증서에 명시된 사용 레벨 한도 만큼 본 프로그램을 사용할 수 있으며 2) 이러한 사용을 지원할 목적으로 본 프로그램의 사본을 작성하여 설치할 수 있습니다(백업 사본 포함). 본 라이선스 조항은 귀하가 작성하는 각 사본에도 적용됩니다. 귀하는 본 프로그램의 모든 전체 사본 또는 부분 사본에 반드시 모든 저작권 표시 및 기타 모든 소유권 표시를 해야 합니다.

본 프로그램의 업그레이드 판을 취득하여 설치하면, 귀하는 업그레이드 이전 프로그램을 사용하거나 제3자에게 이를 양도할 수 없습니다.

귀하는 로컬 또는 원격으로 액세스하여 본 프로그램을 사용하는 모든 사용자가 귀하에게 사용이 허가된 부분만을 사용하며, 이들 사용자가 본 계약의 조항을 준수하도록 할 것을 보증합니다.

다음과 같은 일은 금지됩니다. 1) 본 계약에 규정된 경우를 제외하고 본 프로그램을 사용, 복사, 수정 또는 배포하는 행위 2) 계약으로 제한하는 것이 허용되지 않고 관련 법령에 의해 명시적으로 허용되는 경우를 제외하고 본 프로그램을 리버스 어셈블, 리버스 컴파일 또는 달리 변환하는 행위 3) 본 프로그램을 재사용권 부여, 대여 또는 리스하는 행위.

IBM은 귀하가 본 계약의 조항을 준수하지 않는 경우, 귀하의 라이선스를 해지할 수 있습니다. IBM이 귀하의 라이선스를 해지하면, 귀하는 본 프로그램 및 라이선스 증서 사본을 모두 파괴해야 합니다.

환불 보증

귀하는 본 프로그램의 최초 라이선스 사용자로서 어떠한 이유든 본 프로그램에 만족하지 않는 경우, 본 프로그램에 대해 귀하가 지불한 금액을 환불받을 수 있습니다. 단, 본 프로그램 및 해당 라이선스 증서를 귀하가 청구서를 제출한 날로부터 30일 이내에 프로그램을 취득한 당사자에게 반환해야 합니다. 본 프로그램을 다운로드한 경우, 환불을 받는 방법에 관한 지침은 귀하가 본 프로그램을 취득한 해당 당사자에게 문의하십시오.

프로그램 양도

귀하는 본 프로그램을 양도받으려는 제3자가 본 계약의 조항에 동의하는 경우에만 해당 당사자에게 본 프로그램 및 귀하의 라이선스 권리와 의무를 양도할 수 있습니다. 본 프로그램을 양도할 때, 귀하는 본 프로그램의 라이선스 증서를 포함하여 본 계약의 사본을 반드시 함께 양도해야 합니다. 양도 후에는, 귀하는 본 프로그램을 사용할 수 없습니다.

제 2 조 요금

프로그램 라이선스에 대한 요금은 일시불로 지급해야 합니다.

일시불 요금은 라이선스 증서에 지정된 취득된 사용 레벨에 따라 결정됩니다. 본 계약에서 명시하는 경우를 제외하고, IBM은 이미 지불했거나 지불했어야 할 요금을 환불하거나 이러한 요금에 대해 크레디트를 인정하지 않습니다.

귀하가 사용 레벨을 확대하려는 경우에는 IBM 또는 프로그램을 취득한 당사자에게 이를 통지하고 이에 해당하는 요금을 지불해야 합니다.

만일 관계 당국이 본 프로그램에 대해 관세, 세금 혹은 공과금(IBM 순이익에 부과되는 세금은 제외)을 부과하는 경우, 귀하는 청구서에 명시된 금액을 지급하거나 면제 사유 증명 서류를 제출할 것에 동의합니다. 귀하는 귀하가 본 프로그램을 취득한 이후에 본 프로그램에 대해 부과되는 모든 개인 재산세를 지불할 책임이 있습니다.

제 3 조 무보증

강행 법규에 따라 제공하는 보증의 경우를 제외하고, IBM은 프로그램 지원 또는 기술적 지원과 관련하여(해당되는 경우) 상품성, 특정 목적에의 적합성 및 타인의 권리 침해에 대한 묵시적 보증 또는 조건을 포함하여(단, 이에 한하지 않음) 명시적이거나 묵시적 일체의 보증 또는 조건을 제공하지 않습니다.

이러한 제외사항은 IBM의 모든 프로그램 개발자 및 공급자에게도 적용됩니다.

비IBM 프로그램의 제조자, 공급자 또는 발행자는 자체 보증을 제공할 수 있습니다.

IBM은 달리 명시하지 않는 한 기술적 지원을 제공하지 않습니다.

제 4 조 책임 제한사항

IBM의 계약 불이행 또는 기타 귀책 사유로 귀하에게 손해가 발생한 경우, 귀하는 IBM으로부터 손해 배상을 받을 수 있습니다. 각 해당 경우, 귀하가 IBM으로부터 배상을 청구할 수 있는 원인(계약 위반 또는 과

실, 허위 진술, 기타 계약 또는 배상 청구 등을 포함)에 관계없이 IBM은 다음에 한하여 책임을 집니다. 1) 신체 상해(사망 포함)와 부동산 및 유체 재산상의 손해 및 2) 기타 직접적인 실손해에 대해 배상 청구의 원인이 된 프로그램의 대금.

이러한 제한사항은 IBM의 프로그램 개발자 및 공급자에게도 적용됩니다. IBM 프로그램 개발자 및 공급자와 IBM의 책임은 각자의 책임을 합하여 위 책임 한도를 초과하지 않습니다.

어떠한 경우에도 IBM, IBM 프로그램 개발자나 공급자는 다음과 같은 손해의 발생 가능성을 통지받았다 할지라도 책임을 지지 않습니다.

1. 데이터의 손실 또는 손상
2. 특별 손해, 부수 손해, 간접 손해 또는 경제적 결과적 손해
3. 기대했던 이익, 사업, 수익, 영업권 또는 비용 절감이 실현되지 못함으로 인해 발생하는 손해

일부 관할권에서는 부수 손해나 결과적 손해에 대한 제외사항이나 제한사항을 허용하지 않으므로, 위의 제한 사항이나 제외사항이 귀하에게 적용되지 않을 수도 있습니다.

제 5 조 일반 조항

1. 본 계약의 어떠한 조항도 계약에 의해 포기되거나 제한될 수 없는 강행 법규상의 소비자 권리에 영향을 미치지 않습니다.
2. 본 계약의 일부 조항이 무효이거나 시행이 불가능한 경우에도, 본 계약의 나머지 조항은 완전히 유효합니다.
3. 귀하는 대한민국과 미합중국의 모든 수출입 관련 법규를 준수해야 합니다.
4. 귀하는 IBM이 영업을 하는 곳에서는 어디서나 귀하의 담당자 정보(이름, 전화번호 및 전자우편 주소 포함)를 저장하고 사용할 수 있도록 허용할 것에 동의합니다. 이러한 정보는 귀하와 IBM 간의 영업 관계를 위하여 처리되거나 사용될 것이며, IBM의 계약직 직원, 비즈니스 파트너 및 파견 직원에게 귀하와의 의사 교환을 포함하는 이들의 총체적인 영업 활동(예를 들어, 주문 처리, 영업 촉진 및 시장 조사)을 위하여 제공될 수 있습니다.
5. 계약으로 제한하는 것이 허용되지 않고 법에서 달리 규정하고 있지 않는 한, 본 계약의 양 당사자는 소송 제기의 원인이 발생한 지 2년이 경과한 후에는 본 계약에 의거한 법률적 소송을 제기할 수 없습니다.
6. 양 당사자는 통제 불가능한 사유로 의무사항을 이행하지 못한 경우, 이에 대해 면책됩니다.
7. 본 계약은 제3자를 위한 어떠한 권리나 소송 제기의 원인을 제공하지 않으며, IBM은 제3자가 귀하에게 제기하는 어떠한 청구에 대해서도 책임을 지지 않습니다. 단, 상기 책임 제한사항에서 언급한 대로, 법적으로 IBM에게 책임이 있는 신체 상해(사망 포함)나 부동산 및 유체 재산상의 손해의 경우는 IBM이 책임을 집니다.

제 6 조 준거법, 관할권 및 중재

준거법

귀하와 IBM 양 당사자는 본 계약으로부터 또는 본 계약과 관련하여 발생한 귀하와 IBM의 모든 권리 및 의무를 통제, 해석 및 강제하는 데 있어 준거법 결정의 원칙과 관계없이 귀하가 본 프로그램 라이선스를 구입한 국가의 법률이 적용된다는 것에 동의합니다.

International Sale of Goods에 관한 계약과 관련된 United Nations 규약은 적용되지 않습니다.

관할권

귀하와 IBM의 모든 권리 및 의무는 귀하가 본 프로그램 라이선스를 취득한 국가의 법률에 따라 다릅니다.

제 2 부 - 국가별 고유 조항

해당되는 국가별 고유 조항이 없습니다.

Międzynarodowa Umowa Licencyjna na Programy nieobjęte Gwarancją

Część 1 - Warunki ogólne

POBIERANIE, INSTALOWANIE, KOPIOWANIE ORAZ UŻYWANIE PROGRAMU OZNACZA AKCEPTACJĘ WARUNKÓW NINIEJSZEJ UMOWY. ZAAKCEPTOWANIE PRZEZ UŻYTKOWNIKA WARUNKÓW NINIEJSZEJ UMOWY W IMIENIU OSOBY TRZECIEJ (FIZYCZNEJ LUB PRAWNEJ) OZNACZA, ŻE UŻYTKOWNIK GWARANTUJE POSIADANIE UPRAWNIEŃ DO PODPORZĄDKOWANIA TAKIEJ OSOBY (FIZYCZNEJ LUB PRAWNEJ) NINIEJSZYM WARUNKOM. JEŚLI UŻYTKOWNIK NIE WYRAŻA ZGODY NA NINIEJSZE WARUNKI,

- **NIE BĘDZIE POBIERAĆ, INSTALOWAĆ, KOPIOWAĆ ANI UŻYWAĆ TEGO PROGRAMU ORAZ**
- **NATYCHMIAST ZWRÓCI PROGRAM ORAZ DOKUMENT PROOF OF ENTITLEMENT OSOBE, OD KTÓREJ NABYŁ PROGRAM, ABY UZYSKAĆ ZWROT ZAPŁACONEJ KWOTY. W PRZYPADKU POBRANIA PROGRAMU DROGĄ ELEKTRONICZNĄ UŻYTKOWNIK WINIEN SKONTAKTOWAĆ SIĘ ZE ŹRÓDŁEM, Z KTÓREGO POBRAŁ PROGRAM.**

Termin "IBM" lub "firma IBM" oznacza firmę International Business Machines Corporation lub jedno z jej przedsiębiorstw podporządkowanych.

Termin "Informacje licencyjne" oznacza dokument zawierający informacje specyficzne dla Programu. Informacje licencyjne dla Programu są dostępne pod adresem <http://www.ibm.com/software/sla/>. Informacje licencyjne można też znaleźć w pliku umieszczonym w katalogu Programu, używając komend systemowych. Dokument ten może być również dołączony do Programu w postaci broszury.

Termin "Program" oznacza oryginał oraz pełne lub częściowe kopie: 1) instrukcji i danych w formie zapisu maszynowego, 2) komponentów, 3) zapisów audiowizualnych (takich jak obrazy, tekst, nagrania lub ilustracje), 4) odnoszących się do Programu materiałów licencjonowanych oraz 5) dokumentów dotyczących licencjonowanego używania i kluczy oraz innej dokumentacji.

Termin "Dokument Proof of Entitlement" ("Dokument PoE") oznacza dokument stanowiący dowód posiadania przez Użytkownika prawa do używania Programu na określonym poziomie. Poziom ten jest wyznaczony na przykład przez liczbę procesorów lub użytkowników. Dokument PoE stanowi również dowód uprawniający Użytkownika do korzystania z cen obowiązujących na kolejne aktualizacje, jeśli takowe mają zastosowanie, oraz specjalnych ofert i promocji. Jeśli IBM nie udostępni Użytkownikowi dokumentu PoE, wówczas IBM może zaakceptować oryginalny opłacony rachunek lub inny dokument potwierdzający sprzedaż, otrzymany od podmiotu, od którego Użytkownik nabył Program (IBM lub reselera IBM) pod warunkiem, że na dokumencie takim wyszczególniona jest nazwa nabytego Programu oraz poziom wykorzystania.

Termin "Użytkownik", występujący w różnych przypadkach, oznacza albo osobę fizyczną, albo osobę prawną.

Niniejsza Umowa składa się z Części 1 - Warunki ogólne, Części 2 - Warunki specyficzne dla poszczególnych krajów (jeśli mają zastosowanie), Informacji licencyjnych oraz dokumentu Proof of Entitlement, które tworzą kompletną umowę między Użytkownikiem i IBM dotyczącą używania Programu. Umowa ta zastępuje wszelkie wcześniejsze ustne lub pisemne ustalenia dokonane między Użytkownikiem i IBM w zakresie używania Programu. Warunki zawarte w Części 2 oraz warunki dokumentu Informacje licencyjne mogą zastąpić lub zmodyfikować warunki Części 1. W zakresie, w jakim pojawiają się sprzeczności między warunkami niniejszej Umowy i Międzynarodowej Umowy IBM Passport Advantage, warunki Międzynarodowej Umowy IBM Passport Advantage mają znaczenie rozstrzygające.

1. Uprawnienia

Licencja

Program ten jest własnością IBM lub dostawcy IBM. Program ten jest chroniony prawem autorskim i stanowi przedmiot umowy licencyjnej, a nie umowy sprzedaży.

IBM udziela Użytkownikowi niewyłącznej licencji na Program, jeśli Program ten został nabyty legalnie.

Użytkownik ma prawo 1) używać Programu do poziomu wykorzystania, określonego w dokumencie PoE oraz 2) wykonywać i instalować kopie, w tym kopię zapasową, potrzebne do takiego używania. Warunki niniejszej licencji mają zastosowanie do każdej wykonanej przez Użytkownika kopii Programu. Użytkownik odtworzy wszelkie uwagi dotyczące praw autorskich oraz wszelkie informacje o prawach własności na każdej pełnej lub częściowej kopii Programu.

Jeśli Użytkownik nabydzie Program jako aktualizację, to po zainstalowaniu takiej aktualizacji Użytkownik traci prawo do używania Programu będącego przedmiotem aktualizacji oraz prawo do przeniesienia takiego Programu na osobę trzecią.

Użytkownik zapewnia, że jakakolwiek osoba korzystająca z Programu (lokalnie lub zdalnie) dokonuje tego jedynie w ramach posiadanej autoryzacji na używanie oraz przestrzega warunków niniejszej Umowy.

Użytkownik nie może 1) używać, kopiować, modyfikować ani dystrybuować Programu z wyjątkiem sytuacji przewidzianych w niniejszej Umowie; 2) deasemblować, dekompilować Programu ani dokonywać jego translacji w inny sposób, z wyjątkiem sytuacji dozwolonych przez bezwzględnie obowiązujące przepisy prawa; ani też 3) udzielać dalszych licencji na Program, wynajmować go ani wydzierżawiać.

IBM ma prawo wypowiedzieć licencję udzieloną Użytkownikowi w przypadku niewypełnienia przez Użytkownika warunków niniejszej Umowy. W razie wypowiedzenia umowy przez IBM Użytkownik jest zobowiązany do zniszczenia wszelkich egzemplarzy Programu oraz odnoszących się do nich dokumentów PoE.

Gwarancja zwrotu pieniędzy

Jeśli z jakiegokolwiek powodu Użytkownik nie jest zadowolony z Programu, a jest pierwotnym licencjobiorcą, wówczas może uzyskać zwrot kwoty zapłaconej za ten Program pod warunkiem zwrotu Programu oraz odnoszącego się do Programu dokumentu PoE do osoby, od której Program został nabyty, w ciągu 30 dni do daty faktury. W przypadku pobrania Programu drogą elektroniczną Użytkownik może skontaktować się ze źródłem, z którego pobrał Program, aby dowiedzieć się, w jaki sposób uzyskać zwrot kwoty.

Przeniesienie Programu

Użytkownik może przenieść Program oraz wszelkie przysługujące mu prawa i obowiązki licencyjne na osobę trzecią pod warunkiem, że osoba taka zaakceptuje warunki niniejszej Umowy. Wraz z przeniesieniem Programu Użytkownik jest zobowiązany do przeniesienia egzemplarza niniejszej Umowy wraz z dokumentem PoE dla Programu. Użytkownik nie może używać Programu po dokonaniu przeniesienia.

2. Opłaty

Opłata za licencję na Program jest opłatą jednorazową.

Opłaty jednorazowe są naliczane w oparciu o nabyty poziom wykorzystania, określony w dokumencie PoE. IBM nie zwraca wcześniej wniesionych lub należnych opłat ani nie uwzględnia ich w rozliczeniach, chyba że niniejsza Umowa stanowi inaczej.

Jeśli Użytkownik chciałby podwyższyć poziom wykorzystania Programu, powinien powiadomić o tym IBM lub osobę, od której nabył Program, oraz uiścić odpowiednie opłaty.

Jeśli dostarczenie niniejszego Programu wymaga zapłacenia cła, podatku, akcyzy lub innych opłat na rzecz jakichkolwiek urzędów, z wyjątkiem obciążeń wiążących się z uzyskaniem przychodu netto przez IBM, Użytkownik wyraża zgodę na zapłacenie odpowiedniej kwoty wskazanej przez IBM lub zobowiązuje się przedstawić dowód zwolnienia od danej opłaty. Od daty nabycia Programu Użytkownik ponosi

odpowiedzialność z tytułu należnego podatku pośredniego.

3. Brak Gwarancji

Z ZASTRZEŻENIEM GWARANCJI WYNIKAJĄCYCH Z BEZWZGLĘDNIEM OBOWIĄZUJĄCYCH PRZEPISÓW PRAWA, IBM NIE UDZIELA NA NINIEJSZY PROGRAM CZY TEŻ W ZAKRESIE WSPARCIA TECHNICZNEGO JAKICHKOLWIEK GWARANCJI, W TYM TAKŻE RĘKOJMI, ANI TEŻ NIE USTALA JAKICHKOLWIEK WARUNKÓW, WYRAŹNYCH CZY DOMNIEMANYCH, A W SZCZEGÓLNOŚCI DOMNIEMANYCH GWARANCJI CZY WARUNKÓW PRZYDATNOŚCI HANDLOWEJ, PRZYDATNOŚCI DO OKREŚLONEGO CELU ANI TEŻ GWARANCJI CZY WARUNKÓW NIENARUSZANIA PRAW OSÓB TRZECICH.

Zastrzeżenie to ma również zastosowanie do wszelkich programistów i dostawców IBM.

Producenci, dostawcy i wydawcy zajmujący się Programami innymi niż Programy IBM mogą dostarczać swe własne gwarancje.

IBM nie świadczy wsparcia technicznego, chyba że IBM określi inaczej.

4. Ograniczenie odpowiedzialności

W przypadku wystąpienia określonych okoliczności, za które odpowiedzialność ponosi IBM, a w wyniku których Użytkownik doznał szkody, Użytkownik będzie uprawniony do uzyskania od IBM odszkodowania. W każdym takim przypadku, bez względu na podstawę, na jakiej Użytkownik jest uprawniony do domagania się odszkodowania od IBM (włączywszy w to naruszenie istotnych postanowień niniejszej Umowy, niedbalstwo, wprowadzenie w błąd lub inne roszczenia z tytułu odpowiedzialności kontraktowej lub deliktowej), odpowiedzialność IBM ogranicza się jedynie do 1) odpowiedzialności za uszerbek na zdrowiu (łącznie ze śmiercią) oraz za szkody wyrządzone w nieruchomościach lub majątku ruchomym, a 2) w przypadku innych rzeczywiście poniesionych szkód - do wysokości opłat za Program, będący przedmiotem roszczenia.

Niniejsze ograniczenie odpowiedzialności ma zastosowanie także do programistów i dostawców Programów IBM. Wskazany powyżej zakres odpowiedzialności stanowi całość odpowiedzialności ponoszonej przez IBM.

W ŻADNYCH OKOLICZNOŚCIACH IBM, ANI TEŻ PROGRAMIŚCI CZY DOSTAWCY PROGRAMÓW IBM, NIE PONOSZĄ ODPOWIEDZIALNOŚCI ZA PONIŻSZE SZKODY, NAWET JEŚLI ZOSTALI POINFORMOWANI O MOŻLIWOŚCI ICH WYSTĄPIENIA:

- 1. UTRATĘ LUB USZKODZENIE DANYCH;**
- 2. SZKODY SZCZEGÓLNE, UBOCZNE, POŚREDNIE ORAZ SZKODY, KTÓRYCH NIE MOŻNA BYŁO PRZEWIDZIEĆ PRZY ZAWIERANIU UMOWY, ANI TEŻ**
- 3. UTRACONE ZYSKI, KONTAKTY HANDLOWE, DOCHODY, REPUTACJĘ (GOODWILL) ANI TEŻ PRZEWIDYWANE OSZCZĘDNOŚCI.**

USTAWODAWSTWA NIEKTÓRYCH KRAJÓW NIE PRZEWIDUJĄ WYŁĄCZENIA LUB OGRANICZENIA ODPOWIEDZIALNOŚCI Z TYTUŁU SZKÓD UBOCZNYCH LUB SZKÓD, KTÓRYCH NIE MOŻNA BYŁO PRZEWIDZIEĆ PRZY ZAWIERANIU UMOWY, DLATEGO TEŻ POWYŻSZE WYŁĄCZENIA LUB OGRANICZENIA MOGĄ NIE MIEĆ ZASTOSOWANIA W PRZYPADKU NIEKTÓRYCH UŻYTKOWNIKÓW.

5. Postanowienia ogólne

1. Postanowienia zawarte w niniejszej Umowie pozostają bez wpływu na uprawnienia przysługujące konsumentom, które nie mogą być wyłączone lub ograniczone na podstawie bezwzględnie obowiązujących przepisów prawa.
2. W przypadku nieważności lub niewykonalności któregoś z postanowień niniejszej Umowy, pozostałe postanowienia niniejszej Umowy zachowują pełną moc prawną i skuteczność.
3. Użytkownik zobowiązuje się przestrzegać wszelkich obowiązujących praw i przepisów eksportowych i importowych.

4. Użytkownik zezwala IBM na przechowywanie informacji kontaktowych oraz na korzystanie z nich, włączając w to imiona i nazwiska, numery telefonów i adresy poczty elektronicznej, bez względu na miejsce prowadzenia działalności. Informacje takie będą przetwarzane i wykorzystywane w związku z prowadzoną działalnością i mogą być udostępnione wykonawcom, Partnerom Handlowym lub cesjonariuszom IBM, jeśli informacje te mają związek z prowadzoną przez nich działalnością, w tym w celu utrzymywania kontaktu z Użytkownikiem (np. w celu przetwarzania zamówień, promocji i prowadzenia badań marketingowych).
5. Wszelkie roszczenia związane z realizacją niniejszej Umowy ulegają przedawnieniu po upływie dwóch lat od powstania przyczyny takich roszczeń, chyba że bezwzględnie obowiązujące przepisy prawa stanowią inaczej.
6. Ani Użytkownik, ani IBM nie odpowiadają za niedopełnienie jakichkolwiek obowiązków, jeśli przyczyny takiego niedopełnienia leżały poza ich kontrolą.
7. Niniejsza Umowa nie daje osobom trzecim jakichkolwiek praw ani też podstawy do roszczeń, a IBM nie ponosi odpowiedzialności za jakiegokolwiek roszczenie osób trzecich wobec Użytkownika, chyba że zezwalają na to warunki powyższego paragrafu "Ograniczenie odpowiedzialności" w części dotyczącej uszczerbku na zdrowiu (łącznie ze śmiercią) lub szkód wyrządzonych w nieruchomościach lub w majątku ruchomym, za które IBM ponosi odpowiedzialność prawną.

6. Obowiązujące ustawodawstwo, jurysdykcja i arbitraż

Obowiązujące ustawodawstwo

Obie Strony przyjmują jako obowiązujące prawo kraju, w którym licencja na Program została nabyta, oraz wyrażają zgodę na stosowanie takiego prawa przy interpretowaniu oraz egzekwowaniu wszelkich praw i obowiązków Stron, wynikających z niniejszej Umowy lub mających w jakikolwiek sposób z nią związek, bez odwoływania się do norm kolizyjnych dotyczących przepisów prawnych.

Konwencja ONZ dotycząca umów o Międzynarodowej Sprzedaży Towarów (United Nations Convention on Contracts for the International Sale of Goods) nie ma zastosowania.

Jurysdykcja

Wszelkie prawa, obowiązki i zobowiązania IBM podlegają właściwym sądom kraju nabycia licencji na Program.

Część 2 - Warunki specyficzne dla poszczególnych krajów

EUROPA, BLISKI WSCHÓD, AFRYKA (EUROPE, MIDDLE EAST, AFRICA - EMEA)

Obowiązujące ustawodawstwo, jurysdykcja i arbitraż (paragraf 6)

Obowiązujące ustawodawstwo

Sformułowanie "prawo kraju, w którym licencja na Program została nabyta" zostaje zastąpione sformułowaniem "prawo Austrii". **Zasada ta dotyczy Polski.**

Arbitraż

W Polsce wszelkie kwestie sporne wynikające z niniejszej Umowy lub związane z jej naruszeniem, wypowiedzeniem lub nieważnością będą rozstrzygane w sposób ostateczny zgodnie z Zasadami Postępowania Arbitrażowego i Ugodowego Międzynarodowego Centrum Arbitrażu przy Federalnej Izbie Gospodarczej (Rules of Arbitration and Conciliation of the International Arbitral Center of the Austrian Federal Economic Chamber) w Wiedniu (Vienna Rules), przez trzech arbitrów, powołanych zgodnie ze wspomnianymi zasadami. Arbitraż będzie miał miejsce w Wiedniu, w Austrii. Językiem obowiązującym podczas postępowania będzie język angielski. Orzeczenia arbitrów będą ostateczne i wiążące dla obu Stron. Oznacza to, że zgodnie z artykułem 598(2) Austriackiego Kodeksu Postępowania Cywilnego (Austrian Code of Civil Procedure), Strony rezygnują ze stosowania artykułu 595(1) punkt 7 tego Kodeksu. Tym niemniej powyższe warunki w żadnym stopniu nie ograniczają prawa IBM do wszczęcia postępowania przed dowolnym właściwym sądem w kraju instalacji.

Acordo Internacional de Licenciamento para Programas Não-garantidos

Parte 1 - Termos Gerais

AO FAZER DOWNLOAD, INSTALAR, COPIAR, ACESSAR/ACEDER OU UTILIZAR O PROGRAMA, O CLIENTE CONCORDA COM OS TERMOS DESTES ACORDO. SE O CLIENTE ACEITAR ESTES TERMOS EM NOME DE OUTRA PESSOA OU DE UMA EMPRESA OU OUTRA ENTIDADE LEGAL, O CLIENTE DECLARA E GARANTE QUE POSSUI TOTAL AUTORIDADE PARA VINCULAR TAL PESSOA, EMPRESA OU ENTIDADE LEGAL A ESTES TERMOS. SE O CLIENTE NÃO CONCORDAR COM ESTES TERMOS,

- NÃO FAÇA DOWNLOAD, INSTALE, COPIE, ACESSE/ACEDA OU UTILIZE O PROGRAMA; E
- DEVOLVA IMEDIATAMENTE O PROGRAMA E A PROVA DE TITULARIDADE À PARTE DA QUAL VOCÊ OS ADQUIRIU/A QUEM OS ADQUIRIU PARA OBTER UM REEMBOLSO DO VALOR PAGO. SE O CLIENTE FEZ DOWNLOAD DO PROGRAMA, ENTRE EM CONTATO COM A ENTIDADE ONDE O ADQUIRIU/A QUEM O ADQUIRIU.

"IBM" significa International Business Machines Corporation ou uma das suas subsidiárias.

"Informações sobre Licenciamento" ("LI") é um documento que fornece informações específicas sobre um Programa. A LI do Programa está disponível no endereço <http://www.ibm.com/software/sla/>. A LI também pode ser encontrada num arquivo/ficheiro no diretório/directório do Programa, utilizando um comando do sistema ou como um folheto ("booklet") que acompanha o Programa.

"Programa" significa, incluindo o original e todas as cópias totais ou parciais: 1) instruções e dados legíveis por máquina, 2) componentes, 3) conteúdo áudio-visual/audiovisual (como imagens, textos, gravações ou figuras), 4) materiais licenciados relacionados e 5) documentos ou chaves de utilização da licença e a documentação.

Uma "Prova de Titularidade" ("PoE") é evidência da autorização do Cliente para utilizar um Programa num nível especificado. Este nível pode ser medido, por exemplo, pelo número de processadores ou usuários/utilizadores. A PoE também é a evidência da elegibilidade do Cliente para futuras atualizações/actualizações, caso existam, e possíveis oportunidades especiais ou promocionais. Se a IBM não oferecer ao Cliente uma PoE, a IBM pode aceitar o recibo de pagamento de venda original ou outro registro/registo de venda de quem (seja a IBM ou seu revendedor) o Cliente adquiriu o Programa, contanto que ele especifique o nome do Programa e o nível de utilização adquirido.

"Cliente" e "do Cliente" significa uma pessoa individual ou a uma entidade legal única.

Este Acordo inclui a Parte 1 - Termos Gerais, Parte 2 - Termos Exclusivos do País (se houver algum), Informações sobre Licenciamento e Prova de Titularidade e é o acordo completo entre o Cliente e a IBM relativo à utilização do Programa. Este Acordo substitui qualquer comunicação anterior oral ou escrita entre o Cliente e a IBM relativa à utilização do Programa. Os termos da Parte 2 e as Informações sobre Licenciamento podem substituir ou modificar os da Parte 1. Em caso de conflito entre os termos deste Acordo e os do Acordo IBM International Passport Advantage, prevalecem os termos deste último.

1. Titularidade

Licença

O Programa é de propriedade da IBM ou de um fornecedor da IBM e é protegido por copyright e licenciado, não é vendido.

A IBM concede ao Cliente uma licença não exclusiva para utilizar o Programa quando o Cliente a adquira legalmente.

O Cliente pode 1) utilizar o Programa até o nível de utilização especificado na PoE e 2) fazer e instalar cópias, incluindo uma cópia de backup, para suportar tal utilização. Os termos desta licença aplicam-se a cada cópia que o Cliente fizer. O Cliente reproduzirá todos os avisos de copyright e todas as outras legendas de propriedade em cada cópia, ou cópia parcial do Programa.

Se o Cliente adquirir o Programa como uma atualização/actualização (upgrade) de programa, após a instalação do upgrade, o Cliente não poderá utilizar o Programa a partir do qual fez o upgrade nem poderá transferi-lo para terceiros.

O Cliente deverá garantir que qualquer pessoa que utilize o Programa (por acesso local ou remoto) o faça apenas para a utilização autorizada do Cliente e de acordo com os termos deste Acordo.

O Cliente não pode 1) utilizar, copiar, modificar ou distribuir o Programa, exceto/excepto conforme estabelecido neste Acordo; 2) montar ou compilar inversamente, ou de qualquer outra forma, traduzir o Programa exceto/excepto conforme especificamente permitido por lei, sem a possibilidade de renúncia contratual; ou 3) sublicenciar, alugar ou arrendar o Programa.

A IBM pode terminar a licença do Cliente se este não cumprir com os termos deste Acordo. Se a IBM assim o fizer, o Cliente deverá destruir todas as cópias do Programa e a sua PoE.

Garantia de Reembolso

Se, por qualquer razão, o Cliente não estiver satisfeito com o Programa e for o licenciado original, é possível obter um reembolso do valor pago pelo Cliente, se dentro de 30 dias a partir da data da fatura/factura, o Cliente devolver o Programa e a sua PoE à entidade da qual/a quem o Cliente os obteve. Se o Cliente fez download do Programa, poderá entrar em contato/contacto com a entidade da qual/a quem o adquiriu para obter instruções sobre como obter o reembolso.

Transferência do Programa

O Cliente pode transferir um Programa e todos os direitos de licença e obrigações do Cliente para qualquer outra parte apenas se tal parte concordar com os termos deste Acordo. Quando o Cliente transfere o Programa, também deve transferir uma cópia deste Acordo, incluindo a PoE do Programa. Após a transferência, o Cliente não pode utilizar o Programa.

2. Encargos

O valor a ser pago por uma licença do Programa é um encargo único.

Os encargos únicos são baseados no nível de utilização adquirido que está especificado na PoE. A IBM não oferece créditos ou reembolsos para encargos já vencidos ou pagos, exceto/excepto conforme especificado neste Acordo.

Se o Cliente desejar aumentar o nível de utilização, deverá notificar a IBM ou a entidade da qual/a quem adquiriu o Programa e pagar os encargos aplicáveis.

Se qualquer autoridade impuser um imposto, taxa ou contribuição, excluindo os inerentes ao rendimento líquido da IBM, sobre o Programa, o Cliente concorda em pagar o valor especificado ou fornecer documentação relativa à respectiva isenção. O Cliente é responsável por quaisquer taxas que incidam sobre a propriedade pessoal do Programa a partir da data que o Cliente o adquiriu.

3. Sem Garantia

SUJEITA A QUAISQUER GARANTIAS ESTATUTÁRIAS QUE NÃO POSSAM SER EXCLUÍDAS, A IBM NÃO OFERECE GARANTIAS OU CONDIÇÕES, SEJAM EXPRESSAS OU IMPLÍCITAS, INCLUINDO MAS NÃO SE LIMITANDO ÀS GARANTIAS OU

CONDIÇÕES IMPLÍCITAS DE MERCADO, ADEQUAÇÃO A UM DETERMINADO PROPÓSITO/FIM E NÃO-VIOLAÇÃO, RELATIVAS AO PROGRAMA OU SUPORTE TÉCNICO, SE HOUVER.

A exclusão também se aplica a qualquer uma das entidades que desenvolvam software e fornecedores da IBM.

Fabricantes, fornecedores ou publicadores de Programas não-IBM podem fornecer as suas próprias garantias.

A IBM não fornece suporte técnico, a menos que especifique de outra forma.

4. Limitação de Responsabilidade

Podem surgir circunstâncias em que, devido ao não cumprimento/incumprimento das suas responsabilidades pela IBM, o Cliente tenha direito de exigir que a IBM o compense por danos sofridos. Em cada um desses casos, independentemente da base sobre a qual Cliente tenha direito a pedir indenizações/indemnizações, incluindo uma violação essencial deste Acordo, negligência, falsas declarações, ou qualquer outra reclamação contratual ou extracontratual, a IBM é somente responsável por não mais que: 1) por danos pessoais (incluindo morte) e danos a bens imóveis e bens móveis, e 2) pelo montante por danos ou perdas reais, até ao máximo dos encargos referentes ao Programa objeto/objecto de reclamação.

Esta limitação de responsabilidade também se aplica às entidades que desenvolvem software e fornecedores da IBM. Este é o limite máximo pelo qual a IBM, entidades que desenvolvem software e fornecedores da IBM são coletivamente/colectivamente responsáveis.

EM CASO ALGUM A IBM, ENTIDADES QUE DESENVOLVEM SOFTWARE OU FORNECEDORES DA IBM SERÃO RESPONSABILIZADOS POR QUALQUER UM DOS SEGUINTE, MESMO SE INFORMADOS DE SUA POSSIBILIDADE:

- 1. PERDA OU DANOS EM DADOS;**
- 2. DANOS ESPECIAIS, INCIDENTAIS OU INDIRETOS/INDIRECTOS OU QUAISQUER DANOS CONSEQÜENCIAIS/CONSEQUENCIAIS; OU**
- 3. LUCROS CESSANTES, NEGÓCIOS, RECEITA, CLIENTELA OU LUCROS ANTECIPADOS.**

ALGUMAS JURISDIÇÕES NÃO PERMITEM A EXCLUSÃO OU LIMITAÇÃO DE DANOS INCIDENTAIS OU CONSEQÜENCIAIS/CONSEQUENCIAIS, DESTA FORMA, A EXCLUSÃO OU LIMITAÇÃO ACIMA PODE NÃO SE APLICAR AO CLIENTE.

5. Geral

- Nada neste Acordo afeta/afecta quaisquer direitos estatutários dos consumidores que não sejam passíveis de renúncia ou limitação contratual.
- No caso de qualquer disposição deste Acordo ser considerada inválida ou não ineficaz, as restantes disposições do Acordo permanecem em vigor.
- O Cliente concorda em agir em conformidade com todas as leis e regulamentos de exportação e importação aplicáveis.
- O Cliente concorda em permitir que a IBM armazene e utilize as informações sobre contato/contacto do Cliente, incluindo nomes, números de telefone e endereços de e-mail, onde quer que tenha negócios. Tais informações serão processadas e utilizadas tendo em conta e em relação ao relacionamento comercial existente entre a IBM e o Cliente e podem ser fornecidas a subcontratados, Parceiros de Negócios e procuradores da IBM para utilizações consistentes com as suas atividades/actividades comerciais coletivas/colectivas, incluindo comunicações com o Cliente (por exemplo, para processamento de encomendas, para promoções e pesquisas de mercado).
- Salvo de outra forma prevista pela lei local, sem possibilidade de renúncia ou limitação contratual, o início de qualquer ação/acção judicial, ou outra relacionada com o presente Acordo, não deverá ser posterior a dois (2) anos da data da ocorrência do fato/facto que constituir causa para a referida ação/acção.

6. Nem o Cliente nem a IBM serão responsabilizados por falhas no cumprimento das suas obrigações devido a causas fora de seu controle.
7. Este Acordo não criará nenhum direito ou causa de ação/acção para qualquer terceiro, nem a IBM será responsabilizada por quaisquer reclamações de terceiros contra o Cliente, exceto/excepto, conforme permitido pela seção/secção de Limitação de Responsabilidade acima, para danos corporais (incluindo morte) ou danos em bens imóveis e móveis sobre as quais a IBM é legalmente responsável.

6. Lei Aplicável, Jurisdição e Arbitragem

Lei Aplicável

O Cliente e a IBM concordam com a aplicação das leis do país no qual o Cliente adquiriu a licença do Programa para reger, interpretar e fazer cumprir todos os direitos, deveres e obrigações do Cliente e da IBM decorrentes, ou de qualquer maneira relacionados, com este Acordo, sem atender aos princípios sobre conflitos de leis.

A Convenção das Nações Unidas sobre Acordos para Venda Internacional de Mercadorias não é aplicável.

Jurisdição

Todos os direitos, deveres e obrigações do Cliente e da IBM estão sujeitos aos tribunais do país em que o Cliente adquiriu a licença do Programa.

Parte 2 - Termos Exclusivos do País

AMÉRICAS

BRASIL: Lei Aplicável, Jurisdição e Arbitragem (Seção/Secção 6): *A seguinte exceção/excepção está incluída nesta seção/secção:*

Qualquer litígio emergente deste Acordo será dirimido exclusivamente pelo tribunal do Rio de Janeiro, RJ.

EUROPA, ORIENTE MÉDIO, ÁFRICA (EMEA)

Sem Garantia (Seção/Secção 3): *Na União Européia/Europeia, é incluído o seguinte no início desta seção/secção:*

Na União Européia/Europeia, os consumidores possuem direitos legais ao abrigo da legislação nacional aplicável que regula a venda de bens de consumo. Tais direitos não são afetados/afectados pelas provisões desta Seção/Secção 3.

Limitação de Responsabilidade (Seção/Secção 4): *Em Portugal, os termos a seguir substituem os termos desta seção/secção na sua totalidade:*

Salvo disposição legal imperativa em contrário:

1. A responsabilidade da IBM por danos e perdas que possam surgir como consequência/consequência do cumprimento das suas obrigações ou devido a qualquer outro motivo relacionado com este Acordo, encontra-se limitada à compensação apenas pelos danos e perdas provados e que surjam de fato/facto como consequência/consequência direta/directa e imediata do não cumprimento das referidas obrigações, pelo montante máximo igual aos encargos que o Cliente pagou pelo Programa.

O limite de responsabilidade indicado acima, não se aplica a danos corporais (incluindo os que provoquem morte), por danos ou perdas em bens imóveis e móveis pelos quais a IBM seja legalmente responsável.

2. **EM CASO ALGUM A IBM, OU QUALQUER UMA DAS ENTIDADES QUE DESENVOLVEM SOFTWARE SERÁ RESPONSÁVEL POR, MESMO SE INFORMADO DA POSSIBILIDADE DA SUA OCORRÊNCIA, 1) PERDA OU DANOS EM DADOS; 2)**

DANOS INCIDENTAIS OU INDIRETOS/INDIRECTOS, OU POR QUAISQUER DANOS ECONÔMICOS/ECONÓMICOS CONSEQÜENCIAIS/CONSEQUÊNCIAS; 3) LUCROS CESSANTES, MESMO QUE ESTES SEJAM CONSEQÜÊNCIA/CONSEQUÊNCIA IMEDIATA DO EVENTO QUE GEROU OS DANOS; OU 4) PERDA DE NEGÓCIOS, RECEITAS, CLIENTELA OU ECONOMIAS PREVISTAS.

3. A limitação e a exclusão de responsabilidade estabelecidas aqui aplicam-se não somente às atividades/atividades executadas pela IBM mas também às atividades/atividades executadas pelos seus fornecedores e entidades que desenvolvem software e representam o valor máximo pelo qual a IBM bem como os seus fornecedores e entidades que desenvolvem software são coletivamente/colectivamente responsáveis.

Lei Aplicável, Jurisdição e Arbitragem (Seção/Secção 6)

Lei Aplicável

A frase "as leis do país em que o Cliente adquiriu a licença do Programa" é substituída por 1) "as leis de França" **no Cabo Verde e Guiné-Bissau** e 2) "as leis de Inglaterra" **em Angola, Moçambique e São Tomé**.

Jurisdição

As seguintes exceções/excepções estão incluídas nesta seção/secção:

Em Angola, Moçambique e São Tomé, todas as divergências decorridas deste Acordo ou relacionadas com a sua execução, incluindo procedimentos sumários, serão submetidas à jurisdição exclusiva dos tribunais da Inglaterra.

Em Cabo Verde e Guiné-Bissau, todas as divergências decorrentes deste Acordo ou relacionadas com a sua violação ou execução, incluindo procedimentos sumários, serão definidas exclusivamente pelo Tribunal Comercial de Paris.

Em Portugal, qualquer reclamação legal decorrente deste Acordo será instaurada e dirimida exclusivamente pelo tribunal competente de Lisboa.

Acuerdo Internacional de Licencias para Programas sin Garantía

Parte 1 - Condiciones generales

AL BAJAR, INSTALAR, COPIAR, ACCEDER O UTILIZAR EL PROGRAMA, USTED ACEPTA LOS TÉRMINOS DE ESTE ACUERDO. SI USTED ACEPTA ESTOS TÉRMINOS EN NOMBRE DE OTRA PERSONA O DE UNA COMPAÑÍA U OTRA ENTIDAD LEGAL, MANIFIESTA Y GARANTIZA QUE TIENE AUTORIDAD TOTAL PARA COMPROMETER A ESA PERSONA, EMPRESA O ENTIDAD LEGAL CON ESTOS TÉRMINOS. SI NO ACEPTA ESTOS TÉRMINOS,

- NO BAJE, INSTALE, COPIE, ACCEDA O UTILICE EL PROGRAMA; Y
- DEVUELVA RÁPIDAMENTE EL PROGRAMA Y EL DOCUMENTO DE TITULARIDAD DONDE LO ADQUIRIÓ PARA OBTENER UN REEMBOLSO POR LA CANTIDAD QUE PAGÓ. SI BAJÓ EL PROGRAMA, CONTACTE CON LA PARTE DONDE LO ADQUIRIÓ.

"IBM" es International Business Machines Corporation o una de sus subsidiarias.

"Información sobre Licencia" ("LI") es un documento que proporciona información específica de un Programa. El LI del Programa se encuentra disponible en <http://www.ibm.com/software/sla/>. El LI también se puede encontrar en un archivo en el directorio del Programa, mediante el uso de un mandato de sistema, o como un folleto que acompaña al Programa.

"Programa" es lo siguiente, incluyendo el original y todas las copias completas o parciales: 1) datos e instrucciones automatizadas, 2) componentes, 3) contenido audiovisual (tales como imágenes, texto, grabaciones o fotos), 4) materiales relacionados con la licencia, y 5) documentos o claves de licencia de uso y documentación.

Un "Documento de Titularidad" ("PoE") es su prueba de autorización para utilizar un Programa a un nivel específico. Ese nivel se puede medir, por ejemplo, por el número de procesadores o de usuarios. El PoE es también su prueba de elegibilidad para futuras actualizaciones de precio, si las hubiere, y posibles oportunidades especiales o promocionales. Si IBM no le proporcionara un PoE, IBM podría aceptar el recibo de compra original o cualquier otro registro de la parte (tanto IBM como su distribuidor) de quien hubiera adquirido el Programa, siempre que se especifique el nombre del Programa y el nivel de uso que se hubiera adquirido.

"Vd." o "Usted" se refiere tanto a una persona como a una única entidad legal.

Este Acuerdo incluye Parte 1 - Condiciones Generales, Parte 2 - Condiciones exclusivas de cada país, CUT (si las hubiere), Información sobre Licencia, y Documento de Titularidad y constituye el acuerdo completo en lo que al uso del Programa se refiere entre Vd. e IBM. Sustituye cualquier comunicación verbal o escrita previa entre Vd. e IBM referente al uso del Programa. Los términos de la Parte 2 y la Información sobre Licencia pueden reemplazar o modificar los de la Parte 1. En el caso de que hubiere un conflicto entre los términos de este Acuerdo y los del Acuerdo de IBM International Passport Advantage, prevalecerán los términos del acuerdo más reciente.

1. Titularidad

Licencia

El Programa es propiedad de IBM o de un proveedor de IBM, y está sujeto a derechos de autor y son licenciados y no vendidos.

IBM le concede una licencia no exclusiva para utilizar el Programa cuando lo adquiera legalmente.

Vd. puede 1) usar el Programa hasta el nivel de uso que se haya especificado en el PoE y 2) realizar copias e instalarlas, incluida una copia de seguridad, para dar soporte a dicho uso. Los

términos de esta licencia se aplican a cada una de las copias que haga. Usted reproducirá todos los avisos de copyright y leyendas de propiedad en cada copia total o parcial del Programa.

Si Vd. adquirió este Programa como una actualización de Programa, después de instalar la actualización, no podrá utilizar el Programa a partir del cual realizó la actualización ni podrá transferirlo a nadie.

Deberá asegurarse de que cualquier persona que utilice el Programa (tanto si se accede de forma remota como si se accede de forma local) lo haga sólo para sus usos autorizados y cumpla con los términos de este Acuerdo.

Vd. no puede 1) utilizar, copiar, modificar o distribuir el Programa de un modo distinto al especificado en este Acuerdo; 2) desensamblar, descompilar o traducir el Programa de un modo distinto al permitido específicamente por la jurisdicción del país en el que se está utilizando el programa, y que no fuera posible su limitación o renuncia expresa; o 3) sublicenciar, alquilar o arrendar el Programa.

IBM puede terminar su licencia si Vd. no cumple con los términos de este Acuerdo. En caso de que IBM lo haga, Vd. deberá destruir todas las copias del Programa y su PoE.

Garantía de devolución

Si por cualquier razón Vd. no estuviera satisfecho con el Programa y es el licenciatario original, podrá obtener un reembolso por la cantidad que ha pagado por ello, si devolviera el Programa y su PoE a la parte donde lo adquirió antes de los 30 días siguientes a la fecha de la factura. Si Vd. bajó el Programa, puede contactar con la parte donde lo adquirió para obtener instrucciones sobre cómo obtener el reembolso.

Transferencia del Programa

Vd. puede transferir un Programa y todos sus derechos de licencia y obligaciones a un tercero, sólo si esa parte acepta los términos de este Acuerdo. Cuando Vd. transfiera el Programa, deberá transferir también una copia de este Acuerdo, incluido el PoE del Programa. Después de la transferencia, Vd. no podrá utilizar el Programa.

2. Cargos

El importe total a pagar por una licencia de Programa se realizará en un sólo pago.

Los cargos únicos se basan en el nivel de uso que haya adquirido, el cual se especifica en el PoE. IBM no ofrece créditos o reembolsos para cargos ya devengados o pagados, a no ser que se especifique de otra manera en este Acuerdo.

Si Vd. deseara incrementar el nivel de uso, deberá notificarlo a IBM o a la parte donde lo adquirió y pagar cualquier cargo aplicable.

Si cualquier autoridad impusiera un impuesto, arancel, gravamen o tarifa sobre el Programa, excluidos aquellos en los que IBM ostente la condición de sujeto pasivo, Vd. acepta pagar la cantidad correspondiente a los mismos o presentar la documentación de exención. Vd. es responsable de cualquier impuesto que grave o pudiera gravar cada producto desde la fecha en la que lo adquirió.

3. Sin Garantía

EXCEPTO CUALQUIER GARANTÍA ESTATUTARIA QUE NO PUDIERA EXCLUIRSE, IBM NO OTORGA NINGÚN TIPO DE GARANTÍA NI CONDICIÓN, EXPLÍCITA NI IMPLÍCITA, INCLUYENDO, PERO SIN LIMITARSE A ÉSTAS, LAS GARANTÍAS Y CONDICIONES IMPLÍCITAS DE COMERCIABILIDAD E IDONEIDAD PARA UNA FINALIDAD DETERMINADA Y DE NO INCUMPLIMIENTO, EN RELACIÓN CON EL PROGRAMA O EL SOPORTE TÉCNICO, SI LO HUBIERA.

Esta exclusión también se aplica a cualquiera de los desarrolladores y proveedores del Programa de IBM.

Los fabricantes, proveedores o publicadores de Programas no IBM pueden proporcionar sus propias garantías.

IBM no proporciona soporte técnico, a menos que IBM lo indique de otra forma.

4. Limitación de Responsabilidad

Pueden presentarse circunstancias en las cuales, debido a un fallo en una pieza de IBM o por otra causa, Vd. tuviera derecho a reclamar daños de IBM. Cualesquiera que sean las bases sobre las cuales Usted pueda legalmente reclamar daños y perjuicios a IBM, la responsabilidad de IBM en caso de cualquier reclamación (incluyendo la de incumplimiento total, negligencia, falsificación o cualquier otra), sólo abarcará a 1) daños a las personas físicas (incluida muerte) y daños a la propiedad, incluyendo efectos personales y 2) la cantidad de cualquier otro daño directo real hasta el precio del Programa que es objeto de reclamación.

Esta limitación de responsabilidad también se aplica a los desarrolladores y proveedores del Programa de IBM. Es el máximo por el que IBM y sus proveedores son colectivamente responsables.

BAJO NINGUNA CIRCUNSTANCIA, IBM NI NINGUNO DE SUS DESARROLLADORES DE PROGRAMAS O PROVEEDORES SERÁN RESPONSABLES DE LO SIGUIENTE, INCLUSO EN EL CASO DE QUE HUBIESEN SIDO ADVERTIDOS DE SU POSIBILIDAD:

- 1. DAÑOS O PÉRDIDAS DE DATOS;**
- 2. DAÑOS INDIRECTOS, ESPECIALES, FORTUITOS O DAÑOS DERIVADOS ECONÓMICOS DE NINGÚN TIPO; O**
- 3. PÉRDIDAS DE BENEFICIOS, DE NEGOCIO, DE INGRESOS, DE RESULTADOS O DE AHORROS.**

ALGUNAS JURISDICCIONES NO PERMITEN LA EXCLUSIÓN O LIMITACIÓN DE DAÑOS FORTUITOS O DERIVADOS, EN CUYO CASO PODRÍA SER QUE LA LIMITACIÓN O EXCLUSIÓN ANTERIOR NO LE FUERA APLICABLE.

5. General

1. Ningún derecho estatutario de los consumidores podrá ser cancelado o limitado por este Acuerdo.
2. En el supuesto de que alguna cláusula de este Acuerdo no fuera válida o bien no se pudiera hacer cumplir, el resto de cláusulas permanecerán en vigor y efecto plenos.
3. Vd. se compromete a cumplir todas las disposiciones legales sobre exportación que fueran aplicables.
4. Vd. acuerda permitir a IBM almacenar y utilizar la información de contacto, incluidos los nombres, los números de teléfono y las direcciones de correo electrónico, dondequiera que realicen negocios. Dicha información se procesará y utilizará en relación con la relación comercial con IBM y puede ser ofrecida a los contratistas, Business Partners, y cesionarios de IBM para que la puedan utilizar en las actividades de negocio conjuntas, incluida la comunicación con Vd. (por ejemplo, para los pedidos de procesos, promociones y estudios de mercado).
5. Ninguna de las partes podrá interponer acción alguna a que pudiera dar lugar este Acuerdo transcurridos más de dos años desde que se produjo su causa, salvo que la Ley lo establezca de manera distinta y no sea posible su limitación o renuncia expresa.
6. Ninguna de las partes será responsable del incumplimiento de sus obligaciones cuando sea debido a causas de fuerza mayor.
7. Este Acuerdo no creará ningún derecho ni causa de acción a ningún proveedor, ni IBM será responsable de las reclamaciones contra Vd. excepto, según lo permitido por la sección de Limitación de Responsabilidad anterior, por daño personal (incluida muerte) o daño a propiedad personal tangible o real para la cual IBM es legalmente responsable.

6. Ley aplicable, Jurisdicción y Arbitraje

Ley aplicable

Ambas partes se someten a la aplicación de las leyes del país en las que Vd. haya adquirido la licencia de Programa para regular, interpretar e implementar todos sus derechos, deberes y obligaciones y los de IBM que surjan de este Acuerdo, o estén relacionados en alguna manera con él, sin tener en cuenta el conflicto de los principios legales.

No se aplica la Convención de las Naciones Unidas sobre Contratos para la Venta Internacional de Bienes.

Jurisdicción

Todos los derechos, deberes y obligaciones de IBM están sujetos a los tribunales del país donde Vd. adquirió la licencia de Programa.

Parte 2 - Condiciones exclusivas de cada país

AMÉRICA

ARGENTINA: Ley aplicable, Jurisdicción y Arbitraje (Sección 6): *Se añade la siguiente excepción a esta sección:*

Cualquier litigio que surja de este Acuerdo se establecerá exclusivamente por el Tribunal de lo comercial ordinario de la ciudad de Buenos Aires.

PERÚ: Limitación de responsabilidad (Sección 4): *Se añade lo siguiente al final de esta sección:*

De acuerdo con el Artículo 1328 del Código Civil Peruano, las limitaciones y exclusiones especificadas en esta sección no se aplicarán a los daños causados por la mala conducta deliberada de IBM ("dolo") o negligencia ("culpa inexcusable").

EUROPA, ORIENTE MEDIO, ÁFRICA (EMEA)

Sin Garantía (Sección 3): *En la Unión Europea, se añade lo siguiente al principio de esta sección:*

En la Unión Europea, los consumidores tienen derechos legales bajo la legislación nacional aplicable que regula la venta de bienes a los consumidores. Dichos derechos no se ven afectados por las estipulaciones de esta Sección 3.

Limitación de Responsabilidad (Sección 4): *En España, lo siguiente reemplaza los términos de esta sección en su totalidad:*

Excepto si se especificara de otra manera obligatoriamente en la ley:

1. La responsabilidad de IBM por cualesquiera daños o pérdidas puede surgir como consecuencia del cumplimiento de sus obligaciones surgidas de este Acuerdo o en relación con él, o debido a cualquier otra causa relacionada con el mismo, está limitada a la compensación de sólo aquellos daños y pérdidas que se demuestren que verdaderamente han surgido como consecuencia inmediata y directa del incumplimiento de dichas obligaciones (si IBM es la culpable) o en tal circunstancia, por una cantidad máxima igual a los cargos que Vd. pagó por el Programa.

La limitación anterior no se aplicará a daños corporales (incluida la muerte) ni daños a bienes inmuebles y a la propiedad personal tangible por la que IBM sea legalmente responsable.

2. EN NINGÚN CASO, NI IBM NI LOS DESARROLLADORES DEL PROGRAMA SE HACEN RESPONSABLES DE NINGUNA DE LAS SIGUIENTES CIRCUNSTANCIAS, AUNQUE SE LES HUBIERA INFORMADO DE SU POSIBILIDAD: 1) DAÑOS O PÉRDIDA DE DATOS; 2) DAÑOS FORTUITOS O INDIRECTOS O DAÑOS ECONÓMICOS DERIVADOS DE NINGÚN TIPO; 3) PÉRDIDA DE BENEFICIOS,

AUNQUE SURJAN COMO CONSECUENCIA INMEDIATA DEL HECHO QUE GENERÓ LOS DAÑOS; O 4) PÉRDIDA DE NEGOCIOS, DE INGRESOS, DE PLUSVALÍA O DE AHORROS.

3. La limitación y exclusión de la responsabilidad acordada en este documento no sólo se aplica a las actividades realizadas por IBM sino también a las actividades que realizan sus proveedores y desarrolladores del Programa, y representa la cantidad máxima por la que IBM así como sus proveedores y desarrolladores del Programa, son responsables colectivamente.

Ley aplicable, Jurisdicción y Arbitraje (Sección 6)

Jurisdicción

Las siguientes excepciones se añaden a esta sección:

En España, cualquier procedimiento que pudiera surgir en virtud de este Acuerdo o relacionado con él, se someterá a la jurisdicción de los Tribunales y Juzgados de Madrid capital.

Garanti Verilmeyen Programlar İçin Uluslararası Program Lisansı Sözleşmesi

Bölüm 1 - Genel Koşullar

BU PROGRAMI YÜKLEYEREK, KURARAK, KOPYALAYARAK, KULLANARAK YA DA BU PROGRAMI ERİŞEREK, BU SÖZLEŞMENİN KOŞULLARINI KABUL EDİYORSUNUZ. BU KOŞULLARI BİR BAŞKA KİŞİ YA DA ŞİRKET YA DA TÜZEL KİŞİLİK ADINA KABUL EDİYORSANIZ, BU KİŞİ, ŞİRKET YA DA TÜZEL KİŞİNİN BU KOŞULLARA UYMASINI SAĞLAMAK İÇİN ELİNİZDE TAM YETKİ BULUNDUĞUNU BEYAN VE GARANTİ EDERSİNİZ. BU KOŞULLARI KABUL ETMİYORSANIZ;

- **BU PROGRAMI YÜKLEMİYİNİZ, KURMAYINIZ, KOPYALAMAYINIZ, KULLANMAYINIZ YA DA BU PROGRAMI ERİŞMEYİNİZ; VE**
- **ÖDEDİĞİNİZ TUTARIN GERİ ÖDENMESİ İÇİN PROGRAMI VE YETKİ BELGESİNİ PROGRAMI ALDIĞINIZ TARAFI HEMEN İADE EDİNİZ. PROGRAMI YÜKLEDİYSENİZ, PROGRAMI ALDIĞINIZ TARAFI GÖRÜŞÜNÜZ.**

"IBM", International Business Machines Corporation ya da yan kuruluşlarından herhangi biri anlamındadır.

"Lisans Bilgileri" ("LB") bir Programa ilişkin özel bilgiler sağlayan bir belge anlamındadır. Programın LB'si <http://www.ibm.com/software/sla/> adresinde bulunabilir. LB'si aynı zamanda, bir sistem komutu kullanılarak erişilen Program dizinindeki bir kütükte bulunabilir ya da Programla birlikte bir kitapçık biçiminde gönderilebilir.

"Program", orijinalleri ve onun tüm kısmi veya tam kopyaları da dahil olmak üzere, aşağıdakiler anlamındadır: 1) makinede okunabilir komutlar ve veriler, 2) bileşenleri, 3) işitsel-görsel içerik (örneğin, görüntüler, metinler, kayıtlar ya da resimler), 4) ilişkili lisanslı malzeme, ve 5) lisans kullanımı belgeleri veya anahtarları ve dokümantasyonu,

"Yetki Belgesi" (Proof of Entitlement - "POE"), bir Programı belirli bir düzeyde kullanmaya yetkiniz olduğunu gösteren bir delil anlamındadır. Bu düzey, örneğin işlemci ya da kullanıcı sayısı ile ölçülebilir. POE, aynı zamanda varsa gelecekteki yükseltme ücretleri ve olası özel olanaklar ya da promosyon olanaklarından yararlanmaya uygun olduğunuzu gösterir. IBM Size bir POE sağlamazsa, üzerinde Programın adının ve kullanım düzeyinin belirtilmesi koşuluyla, Programı edindiğiniz tarafın verdiği (IBM ya da satıcısı) orijinal satış makbuzu ya da diğer satış kayıtları IBM tarafından kabul edilebilir.

"Siz" ve "Sizin" sözcükleri, tek bir kişi ya da tek bir tüzel kişilik için kullanılır.

Bu Sözleşme Bölüm 1 - Genel Koşullar, Bölüm 2 - Ülkeye Özgü Koşullar (varsa), Lisans Bilgileri ve Yetki Belgesini içerir ve bu Programın kullanımına ilişkin Sizle IBM arasındaki sözleşmenin tamamını oluşturur. Bu Sözleşme, Programı kullanmanızla ilgili olarak IBM'le aranızda daha önce gerçekleştirilen her türlü sözlü ve yazılı iletişimin yerine geçer. Bölüm 2'de ve Lisans Bilgilerinde yer alan koşullar, Bölüm 1'dekilerin yerine geçebilir veya bunları değiştirebilir. Bu Sözleşme ile IBM Uluslararası Passport Olanaklı Sözleşmesinin koşulları arasında bir çelişki olduğunda, IBM Uluslararası Passport Olanaklı Sözleşmesinin koşulları bu Sözleşme koşullarının önüne geçer.

1. Yetki

Lisans

Programın sahibi IBM ya da bir IBM sağlayıcısıdır. Program telif hakkına tabidir ve lisanslanır, satılmaz.

Programı kanuni yollarla edindiğinizde, IBM, Programı kullanmanız için Size münhasır olmayan bir lisans verir.

1) Programı POE'de belirtilen düzeye kadar kullanabilir ve 2) bu tür bir kullanımı desteklemek için kopyalarını ve yedek kopyalarını çıkarabilir ve kurabilirsiniz. Bu lisansın koşulları, çıkardığınız her kopya için geçerlidir. Programın her bir tam ya da kısmi kopyasına, telif hakkı bildirimini ve mülkiyeti belirleyen diğer tüm işaretleri eklemelisiniz.

Programı bir program yükseltmesi olarak edindiyseniz, yükseltmeyi kurduktan sonra, yükseltme yaptığınız eski Programı kullanamaz ya da başka bir tarafa devredemezsiniz.

Bu Programı kullanan herkesin (yerel ya da uzaktan erişim ile) , yalnızca Sizin yetkilendirildiğiniz kullanımınız kapsamında Programı kullanmasını ve bu Sözleşmenin koşullarına uymasını sağlamayı kabul etmiş sayılırsınız.

1) Programı bu Sözleşmede belirtilenler dışında başka bir biçimde kullanamaz, kopyalayamaz, değiştiremez ya da dağıtamazsınız; 2) geçerli yasaların sözleşme ile değiştirilmesine olanak tanımayarak açıkça izin verdiği durumlar dışında, Programı ters çeviremez, ters derleyemez veya başka yöntemlerle çevirisini yapamazsınız; ya da 3) Programı alt lisanslayamaz, Programı kiralayamaz ya da kiraya veremezsiniz.

Bu Sözleşmenin koşullarına uymamanız durumunda, IBM lisansınızı sona erdirebilir. IBM lisansınızı sona erdirirse, Programın tüm kopyalarını ve POE'sini imha etmeniz gerekir.

Para İadesi Garantisi

Herhangi bir nedenle Programdan memnun kalmazsanız ve orijinal lisans sahibiyse, fatura tarihinden itibaren 30 gün içinde Programı ve POE'sini Programı edindiğiniz tarafa iade etmeniz durumunda, Program için ödediğiniz ücreti geri alabilirsiniz. Programı bir yerden yüklediyseniz, paranızın iade edilmesine ilişkin yönergeler için Programı aldığımız tarafla temasa geçebilirsiniz.

Programın Devredilmesi

Programı ve tüm lisans haklarınızı, bu Sözleşmenin koşullarını kabul etmesi koşuluyla başka bir tarafa devredebilirsiniz. Programı devrettiğinizde, Programın POE'si de içinde olmak üzere bu Sözleşmenin bir kopyasını da devretmeniz gerekir. Devretme işlemi gerçekleştiikten sonra, Programı Siz kullanamazsınız.

2. Ücretler

Bir Program lisansı için ödenmesi gereken ücret bir kerelik bir ücrettir.

Bir kerelik ücretler, POE'de belirtilen, edinilen kullanım düzeyine bağlıdır. IBM, bu Sözleşmenin başka bir yerinde aksi belirtilenler dışında, muaccel olmuş ya da ödenmiş ücretler için Size bir kredi vermez ya da geri ödeme yapmaz.

Kullanım düzeyini yükseltmek istediğinizde, IBM'e ya da Programı edindiğiniz tarafa bunu bildiriniz ve varsa uygulanabilir ücretleri ödeyiniz.

Herhangi yetkili bir makam, Programla ilgili olarak, IBM'in net gelirine dayananlar hariç olmak üzere bir vergi, resim, harç veya başkaca mali yükün ödenmesini zorunlu kılırsa, belirtilen bu tutarı ödemeyi veya bunlardan muafsanız, bu belgeyi IBM'e sağlamayı kabul edersiniz. Programla ilgili olarak, o Programı edindiğiniz tarihten sonraki tüm kişisel mülkiyet vergilerinden Siz sorumlusunuz.

3. Garanti Yoktur

TABİ BULUNDUĞU KANUNLARIN GARANTİ KAPSAMI DIŞINDA TUTULAMAYACAĞINI BELİRTTİĞİ GARANTİLER DIŞINDA IBM, PROGRAMA VEYA TENİK DESTEĞE İLİŞKİN OLARAK, İHLAL YAPILMAYACAĞINA DAİR GARANTİLER İLE TİCARİLİK VE BELİRLİ BİR AMACA UYGUNLUK İÇİN ZİMNİ GARANTİLER DE DAHİL, VE FAKAT BUNLARLA SINIRLI OLMAKSIZIN, AÇIK VEYA ZİMNİ HİÇBİR GARANTİ VERMEZ VEYA KOŞUL ÖNE SÜRMEZ

Yukarıdaki ifade, IBM'in tüm program geliştiricileri ve sağlayıcıları için de geçerlidir.

IBM dışı ürünlerin üreticileri, sağlayıcıları ya da yayımcıları kendi garantilerini sağlayabilir.

IBM aksini belirtmedikçe, teknik destek sağlamaz.

4. Sorumlulukların Sınırı

IBM'in bir kusuru veya sorumluluklarını yerine getirmemesinden kaynaklanan zararlarınızı IBM'den talep etmeye hak kazandığınız durumlar olabilir. Bu tür her durumda, zararınızı IBM'den talep etmenize olanak

sağlayan yasal dayanak (Sözleşmenin esaslı ihlali, ihmal, yanlış beyan, diğer ahdi iddialar veya haksız fiil iddiaları dahil olmak üzere) her ne olursa olsun, IBM yalnızca: 1) ölüm dahil cismani zarar ile taşınmaz ve taşınabilir kişisel mallara verilen zararlardan; ve 2) iddiaya konu olan Programa ilişkin ücreti, aşmamak koşuluyla, herhangi diğer gerçek doğrudan zararlardan sorumlu olur.

Sorumlulukların bu sınırı ,IBM'in Program geliştiricileri ve sağlayıcıları için de geçerli olup, IBM'in, Program geliştiricilerinin ve sağlayıcılarının toplu olarak sorumlu oldukları azami tutardır.

Olasılıkları önceden bildirilmiş olsa bile IBM, IBM'in Program geliştiricileri veya sağlayıcıları:

1. verilerdeki kayıp veya hasardan;
2. 2) özel, arızı veya dolaylı zararlardan veya sonuçta ortaya çıkan ekonomik zararlardan; veya
3. 3) kar kaybı, iş kaybı, gelir kaybı, itibar kaybı veya tahmin edilen tasarrufun kaybindan hiçbir koşul altında sorumlu olmak.

BAZI HUKUK DÜZENLERİ ARIZİ VEYA SONUÇTA ORTAYA ÇIKAN ZARARLARIN HARİÇ TUTULMASINA YA DA SINIRLANMASINA İZİN VERMEZ, BU DURUMDA YUKARIDAKİ SINIRLAMALAR YA DA İSTİSNALAR SİZİN İÇİN GEÇERLİ OLMAYABİLİR.

5. Genel

1. Bu Sözleşmenin hiçbir koşulu, tüketicilerin sözleşme yoluyla vazgeçilemeyen veya sınırlandırılmayan yasal haklarını etkilemez.
2. Bu Sözleşmenin herhangi bir hükmü geçersiz ya da uygulanamaz olduğunda, Sözleşmenin geri kalan hükümleri tam olarak yürürlükte kalmaya ve geçerli olmaya devam eder.
3. Uygulanabilir tüm ihracat ve ithalat yasa ve yönetmeliklerine uymayı kabul edersiniz.
4. IBM'in iş yaptığı her yerde isim, telefon numarası ve e-posta adresi de dahil olmak üzere, Sizin iletişim bilgilerinizi IBM'in saklamasına ve kullanmasına izin vermeyi kabul edersiniz. Bu bilgiler IBM ile Sizin iş ilişkinizi ile bağlantılı olarak işlenecek ve kullanılacak ve IBM'in müteahhitlerine, Çözüm Ortakları'na ve tayin ettiği taraflara, Sizinle iletişim kurmak da dahil olmak üzere, ortaklaşa gerçekleştirdikleri iş faaliyetleri ile tutarlı amaçlarda kullanılmak üzere, verilebilecektir (örneğin siparişlerin işleme konulması için, tanıtımlar için ve pazar araştırması için).
5. Yerel yasaların, sözleşme ile değiştirilmesine veya sınırlandırılmasına olanak tanımayarak aksini belirttiği durumlar dışında, taraflardan hiçbiri, dava nedeninin doğuşundan 2 yıldan fazla bir süre geçtikten sonra yasal bir işleme başvuramaz.
6. Taraflardan hiçbiri, elinde olmayan nedenlerden ötürü yükümlülüklerini yerine getirememekten sorumlu tutulamaz.
7. Bu Sözleşme herhangi bir üçüncü kişi için bir dava hakkı ya da bir dava nedeni yaratmamaktadır ve ayrıca yukarıdaki "Sorumlulukların Sınırı" başlıklı bölümde izin verildiği ölçüde IBM'in yasal olarak sorumlu olduğu (ölüm dahil) cismani zarar veya taşınmaz ve taşınabilir kişisel mallara verilen zararlar hariç olmak üzere, üçüncü kişiler tarafından size yöneltilen iddialar karşısında IBM'in sorumluluğu bulunmamaktadır.

6. Yetkili Hukuk ve Yetkili Mahkeme

Yetkili Hukuk

Taraflar, kanunların ihtilafı prensibine bakılmaksızın, bu Sözleşmenin konusundan doğan veya bir biçimde bu Sözleşmenin konusu ile ilgili olan haklar, görevler ve yükümlülüklerin, Sözleşmenin karşılıklı akdedildiği ülkenin kanunlarına tabi olup, yine bunların yorumlanması ve uygulanmasında bu kanunların geçerli olduğunu kabul ederler.

Birleşmiş Milletler'ın Uluslararası Mal Satışlarına ilişkin Sözleşme Bildirgesi geçerli değildir.

Yetkili Mahkeme

Tarafların tüm hak, görev ve yükümlülükleri, Program lisansını edindiğiniz ülkenin mahkemelerine tabidir.

Bölüm 2 - Ülkeye Özgü Koşullar

Yetkili Hukuk ve Yetkili Mahkeme (Bölüm 6)

Yetkili Mahkeme

Bu bölüme aşağıdaki özel durumlar eklenmiştir:

Türkiye’de bu Sözleşmeden kaynaklanan ya da bu Sözleşmeyle ilgili tüm anlaşmazlıklar Türkiye Cumhuriyeti’nin, İstanbul Merkez (Sultanahmet) Ticaret Mahkemelerinde ve İcra Dairelerinde çözülecektir.