

License Agreement for Machine Code

THE POSSESSOR OF THE MACHINE ON WHICH THE MACHINE CODE IS INSTALLED RECEIVES CERTAIN RIGHTS AND AUTHORIZATIONS TO USE THE MACHINE CODE AND ACCEPTS THE DUTIES AND OBLIGATIONS WITH RESPECT TO SUCH MACHINE CODE SET FORTH IN THIS LICENSE AND APPLICABLE ATTACHMENTS AND ADDENDA (THE LICENSE), THUS BECOMING THE LICENSEE, ONLY BY ENTERING INTO AN AGREEMENT WITH IBM FOR THE MACHINE OR BY USE OF THE MACHINE. IF LICENSEE ACCEPTS THE LICENSE BY USE OF THE MACHINE, THEN LICENSEE SHALL, AT IBM'S REQUEST AND AS AN EXPRESS CONDITION OF LICENSEE'S CONTINUING RIGHTS UNDER THIS LICENSE, DELIVER TO IBM A SIGNED COPY OF THIS LICENSE WITHIN THIRTY (30) DAYS AFTER SUCH REQUEST TO CONFIRM ACCEPTANCE. IF LICENSEE FAILS TO PROVIDE SUCH ACCEPTANCE WITHIN SUCH THIRTY DAY PERIOD, THEN LICENSEE'S RIGHT TO USE THE MACHINE CODE TERMINATES.

1. License Grant

Machine Code (MC) is computer instructions, fixes, replacements and related materials, such as data and passwords relied on, provided, used with or generated by MC, that permit the operation of processors, storage or other functionality of a machine containing MC (MC Machine). MC is copyrighted and licensed (not sold). IBM only provides copies, fixes or replacements for MC for MC Machines under warranty or IBM maintenance, or under a separate written agreement which may be subject to additional charges. Licensee agrees that all copies, fixes or replacements for MC will be obtained solely as authorized by IBM. IBM grants Licensee a nonexclusive license to use MC only (i) on the MC Machine for which IBM provided it, and (ii) to access and use Built-in Capacity (BIC) only to the extent paid for by Licensee, activated by IBM and subject to the "IBM Authorized Use Table for Machines" (AUT) available from IBM and at: http://www.ibm.com/systems/support/machine_warranties/machine_code/aut.html. BIC is computing resource (e.g., processors, storage and other functionality) that IBM provides for a MC Machine. Use of BIC may be restricted by contract, technological or other measures. Licensee agrees to IBM's implementation of technological and other measures that restrict, monitor and report on use of BIC or MC, and to install any changes IBM provides. Licensee may not alter, reverse assemble, reverse compile, translate or reverse engineer the MC, or circumvent or interfere, by any means, with IBM's contractual, technological or other measures that restrict, monitor or report on use of BIC or MC. Use of BIC in excess of authorizations from IBM is subject to additional charges.

While this License is in effect, Licensee may transfer possession of the entire MC along with all of Licensee's rights and obligations hereunder, only with a corresponding transfer of the MC Machine and a hardcopy of this License, and only if the transferee agrees to the terms of this License. Licensee's MC license terminates immediately upon transfer.

This License applies to all MC provided for an MC Machine regardless of the party from whom the MC Machine is acquired. With respect to MC provided for an upgrade, replacement, patch or fix, this License replaces all license(s) for MC previously provided for the MC Machine receiving the upgrade.

2. Termination

IBM may terminate Licensee's license to use MC if Licensee fails to comply with this License. Licensee will promptly destroy all copies of the MC after the license terminates.

3. Verification

Licensee will (i) maintain, and provide upon request, records, system tools output, and access to Licensee's premises, as reasonably necessary for IBM and its independent auditor to verify Licensee's compliance with this License, and (ii) promptly order and pay for required entitlements (including associated maintenance or software subscription and support) at IBM's then current rates and for other charges and liabilities determined as a result of such verification, as IBM specifies in an invoice. These compliance verification obligations remain in effect during the term of this License and for two years thereafter.

4. Warranties

Any IBM warranties for the MC Machine also include the MC. IBM does not offer separate warranties for the MC.

IBM does not warrant uninterrupted or error-free operation of MC or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access. Any IBM warranties for the MC Machine under a separate agreement are the exclusive warranties from IBM and

replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose.

If Licensee's jurisdiction does not allow the exclusion of express or implied warranties, such warranties are limited in duration to the minimum period required by law. Licensee may have other rights that vary from jurisdiction to jurisdiction.

5. Limitation of Liability

IBM's entire liability for all claims related to the License will not exceed the amount of any actual direct damages incurred by Licensee up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the MC Machine that is the subject of the claim, regardless of the basis of the claim. This limit applies collectively to IBM, its subsidiaries, contractors, and suppliers. IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.

The following amounts, if a party is legally liable for them, are not subject to the above cap: (i) damages for body injury (including death); (ii) damages to real property and tangible personal property; and (iii) damages that cannot be limited under applicable law.

6. General

- a. If any provision of this License is held to be invalid or unenforceable, the remaining provisions of this License remain in full force and effect.
- b. Licensee agrees to comply with all applicable export and import laws and regulations, including U.S. embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users.
- c. No right or cause of action for any third party is created by this License.
- d. In entering into this License, neither party is relying on any representation not specified in this License, including but not limited to any representation concerning the performance or function of the MC; the experiences or recommendations of other parties; or any results or savings that Licensee may achieve.
- e. If Licensee accepted the terms of this License through a transaction under the IBM Client Relationship Agreement or equivalent master agreement (Base Agreement), the terms in the Base Agreement prevail over the following sections of the License to the extent that they conflict: Warranties, Limitation of Liability, Governing Law, and Jurisdiction.

7. Governing Law

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

Both parties agree to the application of the laws of the country in which Licensee obtained the MC Machine, without regard to conflict of law principles, except that in the following jurisdictions both parties instead agree to application of the identified laws:

- a. in **Canada**: the laws of the Province of Ontario;
- b. in **Hong Kong SAR** and **Macau SAR**: the laws of Hong Kong Special Administrative Region ("SAR");
- c. in **Anguilla, Antigua/Barbuda, Aruba, British Virgin Islands, Cambodia, Cayman Islands, Dominica, Grenada, Guyana, Laos, Saint Kitts and Nevis, Saint Lucia, Saint Maarten, Saint Vincent and the Grenadines, and the United States**: the laws of the State of New York, United States;
- d. in **Australia**: the laws of the State or Territory in which the transaction is performed;
- e. in **Liechtenstein**: the laws of Switzerland;
- f. in **Algeria, Andorra, Benin, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis and Futuna**: the laws of France;

- g. in **Angola, Bahrain, Botswana, Egypt, Eritrea, Ethiopia, Gambia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe**: the laws of England;
- h. in **Estonia, Latvia, and Lithuania**: the laws of Finland; and
- i. in **South Africa, Namibia, Lesotho, and Swaziland**: the Republic of South Africa.

8. Jurisdiction

All rights, duties, and obligations are subject to the courts of the country in which Licensee obtained the MC Machine, except in the following jurisdictions:

- a. in **Cambodia, Laos, Philippines, and Vietnam**: disputes will be finally settled by arbitration in Singapore under the Arbitration Rules of the Singapore International Arbitration Center ("SIAC Rules");
- b. in **Hong Kong SAR and Macau SAR**: the courts of Hong Kong Special Administrative Region ("SAR");
- c. in **People's Republic of China**: either party has the right to submit the dispute to the China International Economic and Trade Arbitration Commission in Beijing, the PRC, for arbitration;
- d. in **Korea**: disputes are subject to the Seoul Central District Court of the Republic of Korea;
- e. in **Indonesia**: disputes will be finally settled by arbitration in Jakarta, Indonesia, under the rules of the Board of the Indonesian National Board of Arbitration (Badan Arbitrase Nasional Indonesia or "BANI"); and
- f. in **Malaysia**: disputes will be finally settled by arbitration in Kuala Lumpur, under the Arbitration Rules of the Kuala Lumpur Regional Centre for Arbitration ("KLRCA Rules").

In the following countries, all disputes will be brought before and subject to the exclusive jurisdiction of the following court:

- a. in **Andorra**: the Commercial Court of Paris;
- b. in **Austria**: the court of Vienna, Austria (Inner City);
- c. in **Greece**: the competent court of Athens;
- d. in **Israel**: the courts of Tel Aviv Jaffa;
- e. in **Italy**: the courts of Milan;
- f. in **Portugal**: the courts of Lisbon;
- g. in **Spain**: the courts of Madrid; and
- h. in **Turkey**: the Istanbul Central (Çağlayan) Courts and Execution Directorates of Istanbul, the Republic of Turkey.

9. Arbitration

- a. In **Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kosovo, Kyrgyzstan, Moldova, Montenegro, Romania, Russia, Serbia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan**: All disputes shall be finally settled by the International Arbitral Centre of the Austrian Federal Economic Chamber, under the Rules of Arbitration of that Arbitral Centre (Vienna Rules), in Vienna, Austria, with English as the official language.
- b. In **Algeria, Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Congo Republic, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Guinea, Guinea-Bissau, Ivory Coast, Mali, Mauritania, Morocco, Niger, Senegal, Togo, and Tunisia**: All disputes shall be finally settled by the ICC International Court of Arbitration, in Paris, under its arbitration rules, in Paris, France, with French as the official language.
- c. In **Afghanistan, Angola, Bahrain, Botswana, Burundi, Cape Verde, Djibouti, Egypt, Eritrea, Ethiopia, Gambia, Ghana, Iraq, Jordan, Kenya, Kuwait, Lebanon, Liberia, Libya, Madagascar, Malawi, Mauritius, Mozambique, Nigeria, Oman, Pakistan, Palestinian Territory, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Seychelles, Sierra Leone, Somalia, South Sudan, Tanzania, Uganda, United Arab Emirates, Western Sahara, Yemen, Zambia, and**

Zimbabwe: All disputes shall be finally settled by the London Court of International Arbitration (LCIA), under its arbitration rules, in London, UK, with English as the official language.

- d. In **Estonia, Latvia, and Lithuania:** All disputes shall be finally settled by the Arbitration Institute of the Finland Chamber of Commerce (FAI), under its arbitration rules, in Helsinki, Finland, with English as the official language.
- e. In **South Africa, Namibia, Lesotho, and Swaziland:** All disputes shall be finally settled by the Arbitration Foundation of Southern Africa (AFSA), under its arbitration rules, in Johannesburg, South Africa, with English as the official language.

In the countries listed in this Arbitration section, arbitration shall be by three impartial arbitrators appointed in accordance with the identified arbitration rules. Each party will nominate one arbitrator, who will jointly appoint an independent chairman within 30 days or else the chairman will be appointed by the identified arbitration body under its rules. The arbitrators will have no authority to award injunctive relief or damages excluded by or exceeding limits in this Agreement. Nothing in this Agreement will prevent either party from resorting to judicial proceedings for (i) interim relief to prevent material prejudice or a breach of confidentiality provisions or intellectual property rights, (ii) determining the validity or ownership of any copyright, patent or trademark, or (iii) debt collection in amounts below USD 500.000,00 (USD250.000,00 for arbitration before the ICC International Court of Arbitration in Paris or AFSA).

10. Country Specific Terms

Canada

In Province of Quebec: Both parties agree to write this document in English. Les parties ont convenu de rédiger le présent document en langue anglaise.

Czech Republic

The parties exclude any liability of IBM for defects.

Pursuant to Section to Section 1801 of Act No. 89/2012 Coll. (the "Civil Code"), Section 1799 and Section 1800 of the Civil Code as amended, do not apply to transactions under this Agreement. Licensee accepts the risk of a change of circumstances under Section 1765 of the Civil Code.

Estonia and Lithuania

The parties exclude any liability of IBM for defects.

France

UNDER NO CIRCUMSTANCES IS IBM LIABLE FOR DAMAGES TO REPUTATION.

Insert "the greater of €500,000 (five hundred thousand euro) or" before the phrase "the amount of any" in the Limitation of Liability section.

Germany

IBM's liability may include loss or damage caused by a breach of guarantee assumed by IBM or caused intentionally or by gross negligence.

Insert "the greater of €500,000 (five hundred thousand euro) or" before the phrase "the amount of any" in the Limitation of Liability section.

Hungary

Tangible personal property is excluded from the amount in the Limitation of Liability section.

Ireland

Insert "125% of" before the phrase "the amounts paid" and delete "ECONOMIC" in the Limitation of Liability section.

Italy

Insert "the greater of €500,000 (five hundred thousand euro) or" before the phrase "the amount of any" in the Limitation of Liability section.

Lithuania

The parties exclude any liability of IBM for defects.

Malta

Insert "the greater of €500,000 (five hundred thousand euro) or" before the phrase "the amount of any" in the Limitation of Liability section.

Portugal

Insert "the greater of €500,000 (five hundred thousand euro) or" before the phrase "the amount of any" in the Limitation of Liability section.

Russia

UNDER NO CIRCUMSTANCES IS IBM LIABLE FOR FOREGONE BENEFIT.

Slovakia

The total foreseeable damage shall not exceed the price paid by Licensee to IBM for the MC Machine.

Spain

UNDER NO CIRCUMSTANCES IS IBM LIABLE FOR DAMAGES TO REPUTATION.

Insert "the greater of €500,000 (five hundred thousand euro) or" before the phrase "the amount of any" in the Limitation of Liability section.

United Kingdom

Insert "125% of" before the phrase "the amounts paid" and delete "ECONOMIC" in the Limitation of Liability section.