

Perjanjian Layanan Khusus Keuntungan Paspor Internasional

Perjanjian Layanan Khusus Keuntungan Paspor Internasional IBM (“Perjanjian”) ini, termasuk setiap Lampiran, Syarat Penggunaan, dan Dokumen Transaksi yang berlaku mengatur transaksi ini di mana Pelanggan memperoleh Produk-produk yang Memenuhi Syarat tertentu dari IBM atau pengecer. Perjanjian ini adalah perjanjian yang lengkap terkait dengan transaksi ini yang atas dasarnya Pelanggan memperoleh Produk(-produk) yang Memenuhi Syarat, dan menggantikan setiap perjanjian, komunikasi, pernyataan, rancangan usulan, kesepakatan, jaminan, janji, persetujuan, komitmen atau kesepakatan lisan atau tertulis sebelumnya antara Pelanggan dan IBM terkait dengan Layanan Khusus Keuntungan Paspor.

Jika terdapat konflik antara syarat Perjanjian, Lampiran-lampiran, Syarat-syarat Penggunaan, dan Dokumen-dokumen Transaksi ini, maka, suatu Lampiran lebih berlaku dari Perjanjian ini, Syarat Penggunaan lebih berlaku dari suatu Lampiran, dan Perjanjian ini dan syarat Dokumen Transaksi lebih berlaku dari Perjanjian, Syarat Penggunaan dan suatu Lampiran.

Pada saat Perjanjian ini diterima, 1) kecuali dilarang oleh hukum yang berlaku atau dinyatakan sebaliknya, setiap reproduksinya atau Dokumen Transaksi yang dibuat dengan alat yang dapat diandalkan (misalnya, gambar elektronik, fotokopi atau faksimili) dianggap asli 2) semua Produk yang Memenuhi Syarat yang dipesan sesuai dengan Perjanjian ini tunduk kepadanya.

1. Umum

1.1 Struktur Perjanjian

Perjanjian ini diatur dalam enam Bagian:

Bagian 1 – Umum termasuk syarat-syarat yang terkait dengan Susunan Perjanjian, Lampiran-lampiran, dan Dokumen-dokumen Transaksi, Definisi, Penerimaan Syarat, Penyerahan, Pembayaran, Pajak, Produk-produk yang Memenuhi Syarat, Para Mitra Bisnis dan Pengecer IBM, Perlindungan terhadap Kekayaan Intelektual, Batasan Kewajiban, Prinsip-prinsip Umum tentang Hubungan Kami, Pengakhiran Perjanjian, Verifikasi terhadap Kepatuhan serta Cakupan Geografis dan Undang-undang yang Berlaku.

Bagian 2 - Jaminan termasuk syarat terkait Jaminan untuk Program IBM, Jaminan untuk Langganan Perangkat Lunak IBM dan Dukungan serta Dukungan Terpilih, Jaminan untuk Komponen Mesin IBM dari Peralatan IBM, Jaminan untuk SaaS IBM, dan Perpanjangan Jaminan.

Bagian 3 – Program serta Langganan dan Dukungan termasuk syarat terkait Program IBM, Program pada Lingkungan Virtualisasi, Pemberian Lisensi dengan Syarat Tetap, Kategori Produk CEO, serta Langganan Perangkat Lunak dan Dukungan serta Dukungan Terpilih.

Bagian 4 – Peralatan termasuk syarat-syarat yang terkait dengan Peralatan Virtual, Peralatan yang Terdiri Atas Baik Komponen Program Maupun Komponen Mesin, Komponen Program, dan Komponen Mesin.

Bagian 5 – SaaS IBM termasuk syarat terkait Kepemilikan, Hak Pelanggan atas Penggunaan, Langganan SaaS IBM, Dukungan Teknis SaaS IBM, Konten, dan Pemutusan IBM..

Bagian 6 – Syarat Khusus Tiap Negara.

1.2 Lampiran dan Dokumen Transaksi

Syarat tambahan untuk Produk yang Memenuhi Syarat terdapat pada Dokumen yang disebut “Lampiran” dan “Dokumen Transaksi” yang disediakan oleh IBM. Bergantung pada penggunaan di negara mereka, Lampiran dapat memiliki nama-nama yang berbeda. Pada umumnya, Lampiran-lampiran dan Dokumen-dokumen Transaksi (seperti suplemen, lampiran, tagihan, tambahan atau adendum) berisi rincian-rincian dan syarat-syarat yang spesifik yang terkait dengan transaksi ini. Pelanggan dapat menerima satu atau lebih Dokumen Transaksi untuk suatu transaksi tunggal. Lampiran dan Dokumen Transaksi merupakan bagian dari Perjanjian ini hanya untuk transaksi-transaksi di mana hal tersebut berlaku. Setiap transaksi terpisah dan independen dari transaksi lain.

1.3 Definisi-definisi

Hari Jadi – hari pertama dari bulan yang menjadi hari jadi dari Tanggal Efektif, kecuali Tanggal Efektif adalah hari pertama dalam suatu bulan, di mana peringatan Tanggal Efektif adalah Hari Jadi tersebut.

Peralatan – Produk yang memenuhi Syarat, dirancang untuk fungsi tertentu dan bukan untuk tujuan umum tugas komputasi, yang mungkin berupa Program (dalam hal “Peralatan Virtual”) atau terdiri dari Komponen Program, Komponen Mesin, dan Komponen Kode Mesin yang IBM sediakan bagi Pelanggan.

Laporan Audit – satu set laporan yang tersedia dalam Alat Metrik Lisensi IBM (IBM License Metric Tool/“ILMT”), atau dengan metode lain yang dapat diterima bagi IBM sebagaimana dijelaskan pada <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> . Laporan ini memberikan persyaratan lisensi Unit Nilai Prosesor (Processor Value Unit /“PVU”) berdasarkan Kapasitas Virtualisasi yang tersedia untuk Produk Sub-Kapasitas yang Memenuhi Syarat.

Pengguna CEO – seorang individu yang menjadi tujuan penugasan sebuah mesin yang dapat membuat salinan, menggunakan, atau memperpanjang penggunaan Program dalam Kategori Produk CEO.

Konten – informasi, perangkat lunak, dan data, termasuk, namun tidak terbatas pada, setiap Data Pribadi, berkas bahasa tolok ukur hiperteks, skrip, program, pencatatan, suara, musik, grafik, gambar, aplet, atau servlet yang diciptakan, disediakan, diunggah, atau dipindahkan oleh Pelanggan dan pengguna manapun yang diberi wewenang oleh Pelanggan.

Pelanggan – Perusahaan Usaha pelanggan yang memesan Produk yang Memenuhi Syarat.

Komponen Mesin Pengaturan Pelanggan – sebuah Komponen Mesin IBM dengan Pelanggan sebagai penanggung jawab untuk menginstal sesuai dengan petunjuk yang diberikan bersamanya.

Tanggal Instalasi –

- a. Untuk Komponen Mesin Pengaturan Pelanggan, tanggal pada faktur pembelian Pelanggan atau tanda terima penjualan untuk Peralatan adalah Tanggal Instalasi, kecuali IBM atau pengecer IBM Pelanggan menginformasikan hal lain kepada Pelanggan.
- b. Untuk Komponen Mesin IBM yang menjadi tanggung jawab IBM dalam menginstal, hari kerja setelah hari penginstalan oleh IBM atau, jika Pelanggan menunda instalasi, membuat tersedia bagi Pelanggan untuk instalasi berikutnya oleh IBM;

Tanggal Mulai Berlaku – tanggal pada saat IBM menerima pemesanan untuk Produk-produk yang Memenuhi Syarat dari Pelanggan, apakah secara langsung dari Pelanggan atau dari pengecer Pelanggan.

Teknologi Sistem Operasi yang Memenuhi Syarat – sebuah sistem pengoperasian yang menjadi tujuan penyediaan dan penjelasan Lisensi Sub-Kapasitas pada <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> .

Teknologi Prosesor yang Memenuhi Syarat – sebuah teknologi prosesor yang menjadi tujuan penyediaan dan penjelasan Lisensi Sub-Kapasitas pada <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> .

Produk-produk yang Memenuhi Syarat – Program IBM yang tersedia secara komersil, Program Bukan IBM, Dukungan Terpilih, wewenang untuk meningkatkan penggunaan Pelanggan atas sebuah Program, Tukar Tambah IBM, Tukar Tambah Kompetitif, Pembaruan Langganan dan Dukungan Perangkat Lunak IBM Tahunan, Pengembalian Langganan dan Dukungan Perangkat Lunak IBM, Pembaruan Langganan dan Dukungan Perangkat Lunak Pihak Ketiga Tahunan, Pengembalian Langganan dan Dukungan Perangkat Lunak Pihak Ketiga, Pembaharuan Dukungan Terpilih, SaaS IBM, dan Peralatan.

Produk Sub-Kapasitas yang Memenuhi Syarat – sebuah Produk yang menjadi tujuan penyediaan dan penjelasan Lisensi Sub-Kapasitas pada <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> .

Lingkungan Virtualisasi yang Memenuhi Syarat – sebuah server atau kelompok server yang bekerja sama sebagai badan komputasi tunggal yang terdiri atas Teknologi Prosesor yang Memenuhi Syarat, sebuah Teknologi Sistem Operasi yang Memenuhi Syarat, dan Teknologi Virtualisasi yang Memenuhi Syarat.

Teknologi Virtualisasi yang Memenuhi Syarat – sebuah teknologi virtualisasi yang menjadi tujuan penyediaan dan penjelasan Lisensi Sub-Kapasitas pada <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> . Teknologi Virtualisasi yang Memenuhi Syarat dapat membatasi kapasitas prosesor menjadi subset dari kapasitas fisik total, terkadang dirujuk sebagai partisi, LPAR, atau mesin virtual.

Perubahan Teknik – pembaharuan untuk memodifikasi aspek tertentu dari rancangan Komponen Mesin yang diinstal, termasuk tanpa batasan pada rancangan atas bagian Komponen Mesin tertentu atau Komponen Kode Mesin.

Perusahaan – setiap badan hukum yang, lebih dari 50%, memiliki, dimiliki oleh atau berada di bawah kendali bersama dengan "Lokasi" penyimpanan informasi Pelanggan.

Jangka Waktu Tetap – periode yang pasti yang dijelaskan oleh Dokumen Transaksi IBM, misalnya, dalam PoE Program.

Kapasitas Penuh – jumlah total dari inti prosesor fisik yang diaktifkan dan tersedia untuk penggunaan pada sebuah server.

IBM – perusahaan Usaha IBM yang menyediakan Produk yang Memenuhi Syarat.

Mitra Bisnis IBM – sebuah organisasi yang bersamanya IBM telah menandatangani perjanjian untuk meningkatkan, memasarkan, dan untuk beberapa contoh, mendukung Produk tertentu yang Memenuhi Syarat.

Komponen Mesin IBM – sebuah Komponen Mesin yang melambangkan logo IBM.

Program IBM – sebuah program yang diperoleh berdasarkan Perjanjian ini dan tunduk kepada PLA, termasuk LI-nya.

Perangkat Lunak sebagai Layanan IBM (“SaaS IBM”) – tawaran-tawaran yang disediakan oleh IBM untuk Pelanggan dari jarak jauh melalui Internet yang memberikan akses ke (i) fungsionalitas Program-program, (ii) infrastruktur, dan (iii) dukungan teknis. SaaS IBM bukan suatu Program namun dapat meminta Pelanggan untuk mengunduh perangkat lunak yang tersedia agar dapat menggunakannya. SaaS IBM merupakan Produk yang Memenuhi Syarat.

Pengguna SaaS IBM – mereka yang mengakses SaaS IBM dengan menggunakan identifikasi akun pengguna dan kata sandi yang terkait dengan akun SaaS IBM Pelanggan dan diberikan oleh Pelanggan.

Langganan Dukungan Perangkat Lunak IBM – langganan dan dukungan perangkat lunak yang disediakan untuk Program IBM berlisensi berdasarkan IPLA. Lihat **3.5.1 Lihat Langganan dan Dukungan Perangkat Lunak IBM** untuk penjelasan lebih lanjut.

IPLA – Perjanjian Lisensi Program Internasional IBM (IBM’s International Program License Agreement). IPLA termasuk dalam setiap Program IBM dalam direktori Program, pada perpustakaan diidentifikasi sebagai “Lisensi”, buklet, atau pada sebuah CD. Tersedia juga di Internet pada <http://www.ibm.com/software/sla> dan dari IBM dan pengeceranya.

Informasi Lisensi (License Information/ “LI”) – sebuah dokumen yang memberikan informasi dan syarat tambahan tertentu pada sebuah Program. LI Program tersedia pada <http://www.ibm.com/software/sla>. LI juga dapat ditemukan di direktori Program, dengan menggunakan perintah sistem, atau sebagai buklet yang termasuk dengan Program.

Komponen Kode Mesin – kode mikro, kode sistem input/output (disebut “BIOS”), program utilitas, driver perangkat, diagnostic, dan kode lainnya (semua tunduk pada setiap pengecualian dalam lisensi yang disediakan bersamanya) dikirimkan dengan sebuah Komponen Mesin IBM untuk tujuan pengadaan fungsi Komponen Mesin, sebagaimana dinyatakan dalam Spesifikasinya.

Komponen Mesin – perangkat keras, fitur, konversi, peningkatan, elemen, atau aksesori, atau kombinasinya. Istilah “Komponen Mesin” termasuk sebuah Komponen Mesin IBM dan bukan Komponen Mesin IBM (termasuk perlengkapan lain) yang IBM sediakan bagi Pelanggan.

Program Bukan IBM – sebuah program yang diatur oleh persyaratan perjanjian lisensi pengguna akhir pihak ketiga yang menemaninya. IBM bukan merupakan pihak bagi perjanjian lisensi pengguna akhir pihak ketiga dan tidak memiliki kewajiban berdasarkan perjanjian tersebut.

Data Pribadi – setiap informasi yang dapat digunakan untuk mengidentifikasi individu tertentu, seperti nama, alamat surel, alamat rumah, atau nomor telepon yang disediakan bagi IBM untuk disimpan, diproses, atau dipindahkan atas nama Pelanggan.

Keping Prosesor – Sirkuit elektronik yang terdiri atas satu atau lebih Inti Prosesor yang dicolokkan ke Soket Prosesor.

Inti Prosesor – sebuah unit fungsional fisik dalam sebuah perangkat komputasi yang menginterpretasikan dan melaksanakan instruksi program dan terdiri atas setidaknya satu unit kontrol instruksi dan satu atau lebih unit logis dan aritmatika. Teknologi inti-banyak memungkinkan dua atau lebih Inti Prosesor menjadi aktif pada sebuah Keping Prosesor tunggal. Sebuah Fasilitas terintegrasi z sistem untuk mesin Linux (IFL) dianggap Inti Prosesor tunggal.

Soket Prosesor – sirkuit elektronik yang menerima Keping Prosesor.

Unit Nilai Prosesor (Processor Value Unit/“PVU”) – sebuah metrik yang digunakan oleh IBM untuk menetapkan nilai untuk Inti Prosesor. Model yang melisensikan Unit Nilai Prosesor dijelaskan pada http://www.ibm.com/software/lotus/passportadvantage/pvu_licensing_for_customers.html.

Program – berikut ini, termasuk salinan sebagian atau seluruhnya dan asli: 1) instruksi mesin yang dapat di baca dan data, 2) komponen, 3) konten audio-visual (seperti imej, teks, pencatatan, atau gambar), 4) material berlisensi terkait, dan 5) dokumen penggunaan dokumen atau kunci, dan dokumentasi.

Komponen Program – sebuah Program IBM atau Program Bukan IBM yang diinstal sebelumnya pada Komponen Mesin.

Bukti Kepemilikan (Proof of Entitlement/“PoE”) – dokumen yang di dalamnya oleh IBM dijelaskan sebuah tingkat Produk yang Memenuhi Syarat yang penggunaannya resmi. PoE ini, didukung oleh faktur atau tanda terima pembayaran yang sesuai milik Pelanggan, merupakan bukti tingkat penggunaan resmi Pelanggan.

Program Terpilih – Program Non-IBM atau Program IBM yang dilisensikan berdasarkan syarat-syarat Perjanjian Lisensi IBM untuk Program Tanpa Garansi.

Dukungan Terpilih – Dukungan untuk Program Terpilih yang dijelaskan.

Penyedia Layanan – suatu badan yang menyediakan layanan teknologi informasi untuk pelanggan pengguna akhir, baik secara langsung maupun melalui seorang pengecer.

Lokasi – setiap badan yang ditentukan, seperti lokasi fisik atau unit organisasi, sebagai contoh, departemen, divisi, anak perusahaan atau bagian akunting yang disediakan oleh Pelanggan kepada IBM atau pengecer dan yang untuknya IBM mengalihkan Nomor Lokasi Keuntungan Paspors.

Spesifikasi – informasi tertentu mengenai Komponen Mesin. Spesifikasi Komponen Mesin IBM terdapat dalam dokumen yang berjudul “Spesifikasi yang Diterbitkan Resmi”.

Pemberian Lisensi Sub-Kapasitas – Pemberian Lisensi untuk Produk Sub-Kapasitas yang Memenuhi Syarat berdasarkan pada Kapasitas Virtualisasi.

Periode Berlangganan – waktu selama SaaS IBM tersedia bagi Pelanggan sebagaimana dijelaskan dalam Dokumen Transaksi yang berlaku.

Jangka Waktu – periode yang dimulai baik pada tanggal IBM menerima pesanan awal Pelanggan (dalam hal Jangka Waktu awal) maupun pada saat Hari Jadi (dalam hal Jangka Waktu berikutnya), dan akhir dari hari segera sebelum Hari Jadi berikutnya.

Syarat Penggunaan (“ToU”) – syarat-syarat tambahan yang atas dasarnya IBM menyediakan tawaran-tawaran SaaS IBM untuk Pelanggan dan dilihat di <http://www.ibm.com/software/sla/sladb.nsf/sla/tou/>.

Langganan dan Dukungan Perangkat Lunak Pihak Ketiga – langganan dan dukungan perangkat lunak yang disediakan berdasarkan syarat pihak ketiga untuk Program Bukan IBM. Lihat **3.5.1**

Langganan dan Dukungan Perangkat Lunak untuk penjelasan lebih lanjut.

Peningkatan – suatu perubahan terhadap Komponen Mesin untuk memodifikasi, menambahkan, menghilangkan, mengadakan, atau meniadakan sumber atau fungsi Komponen Mesin tertentu. Setiap perubahan tersebut dapat diselesaikan melalui konversi Komponen Mesin, atau melalui konversi, penambahan, penghilangan, atau penukaran fitur Komponen Mesin, namun hanya untuk perpanjangan yang diumumkan dan didukung oleh IBM untuk Komponen Mesin.

Kapasitas Virtualisasi – kapasitas prosesor puncak tertinggi yang tersedia bagi Produk Sub-Kapasitas yang Memenuhi Syarat ketika disebarkan di Lingkungan Virtualisasi yang Memenuhi Syarat sesuai dengan peraturan yang dijelaskan pada <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html>.

1.4 Penerimaan Syarat

Pelanggan menerima Perjanjian ini tanpa modifikasi dengan memperoleh Produk(-produk) yang Memenuhi Syarat dari IBM atau pengecer. Syarat tambahan atau berbeda dalam bentuk apapun atau komunikasi tertulis dari Pelanggan tidak sah. Produk yang Memenuhi Syarat menjadi pokok Perjanjian ini pada saat IBM menerima pemesanan dari Pelanggan dengan i) mengirimkan Dokumen Transaksi kepada Pelanggan, ii) menyediakan Program atau SaaS IBM kepada Pelanggan atau, apabila berlaku, mengirimkan Alat-alat atau iii) memberi dukungan, layanan atau solusi.

Setiap Lampiran atau Dokumen Transaksi akan ditandatangani oleh kedua belah pihak jika diminta oleh salah satu pihak.

1.5 Pengantaran

Biaya Transportasi, jika berlaku, akan dijelaskan dalam Dokumen Transaksi. Untuk Program, IBM menyediakan bagi Pelanggan dalam formulir yang nyata dan jelas, IBM memenuhi kewajiban pengiriman

dan pengantarannya atas pengantaran Program tersebut kepada kurir yang ditunjuk oleh IBM, kecuali disepakati secara tertulis sebaliknya oleh Pelanggan dan IBM.

1.6 Pembayaran

- a. Ketika Pelanggan memperoleh Produk yang Memenuhi Syarat dari pengecer, Pelanggan langsung membayar pengecer tersebut.
- b. Ketika Pelanggan memperoleh Produk yang Memenuhi Syarat dari IBM, Pelanggan setuju untuk membayar sebagaimana IBM menjelaskannya dalam faktur atau dokumen setara, termasuk setiap biaya pembayaran terlambat; dan
- c. Jumlah yang dapat dibayarkan untuk lisensi Program dapat merupakan biaya satu waktu atau biaya untuk Jangka Waktu Tetap, bergantung pada jenis lisensi.

1.7 Pajak-pajak

Jika, sebagai akibat dari Pelanggan memindahkan, mengakses, atau menggunakan Produk yang Memenuhi Syarat melewati batas negara, pihak berwenang membebankan bea cukai, pajak, retribusi atau biaya (termasuk pajak pemotongan untuk impor dan ekspor Produk yang Memenuhi Syarat tersebut), kemudian Pelanggan menyetujui bahwa mereka bertanggung jawab untuk, dan akan membayar, segala bea cukai, pajak, retribusi atau biaya tersebut. Memenuhi Syarat melewati batas negara, pihak berwenang membebankan bea cukai, pajak, retribusi atau biaya (termasuk pajak pemotongan untuk impor dan ekspor Produk yang Memenuhi Syarat tersebut), kemudian Pelanggan menyetujui bahwa mereka bertanggung jawab untuk, dan akan membayar, segala bea cukai, pajak, retribusi atau biaya tersebut. Ini tidak termasuk pajak-pajak berdasarkan pendapatan bersih IBM.

1.8 Produk-produk yang Memenuhi Syarat

IBM dapat menambah atau menarik Produk-produk yang Memenuhi Syarat sewaktu-waktu.

Jika IBM menarik sebuah Program atau versi dari Program dari pemasaran, Pelanggan tidak dapat meningkatkan tingkat penggunaannya, di luar wewenang yang telah diperoleh, pada atau setelah tanggal efektif penarikan tanpa persetujuan tertulis dari IBM sebelumnya, di mana IBM tidak akan menahannya tanpa alasan.

1.9 Mitra Bisnis IBM dan Pengecer

Selain memperoleh Produk-produk yang Memenuhi Syarat dari IBM, Pelanggan dapat memperoleh Produk-produk yang Memenuhi Syarat tersebut dari para Mitra Bisnis dan pengecer IBM. Akan tetapi, tidak semua pengecer diberi hak untuk mengecer semua Produk yang Memenuhi Syarat.

Ketika Pelanggan memesan Produk yang Memenuhi Syarat dari Mitra Bisnis IBM Pelanggan atau Pengecer, IBM tidak bertanggung jawab atas 1) tindakan-tindakan mereka, 2) setiap kewajiban tambahan yang mereka miliki terhadap Pelanggan, atau 3) setiap produk atau layanan yang mereka sediakan bagi Pelanggan berdasarkan pengaturan mereka. Pada saat Pelanggan memperoleh Produk-produk yang Memenuhi Syarat dari Mitra Bisnis atau pengecer IBM, Mitra Bisnis atau pengecer IBM menetapkan biaya-biaya dan syarat-syarat pembayaran.

1.10 Perlindungan Kekayaan Intelektual

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

1.10.1 Klaim Pihak Ketiga

Apabila pihak ketiga mengajukan klaimnya terhadap Pelanggan bahwa suatu Produk melanggar hak paten atau hak cipta pihak ketiga tersebut, IBM akan membela Pelanggan terhadap klaim tersebut atas tanggungan IBM dan membayar semua biaya, ganti rugi, dan biaya pengacara yang pada akhirnya diputuskan oleh pengadilan terhadap Pelanggan atau yang termasuk dalam penyelesaian yang disetujui terlebih dahulu oleh IBM, dengan ketentuan bahwa Pelanggan:

- a. segera memberitahu IBM secara tertulis mengenai klaim tersebut;
- b. mengizinkan IBM untuk mengontrol, dan bekerja sama dengan IBM dalam, pembelaan dan setiap negosiasi penyelesaian terkait lainnya; dan
- c. tetap patuh terhadap lisensi Produk dan persyaratan lain dan kewajiban Pelanggan sesuai dengan Perbaikan berikut.

1.10.2 Perbaikan-perbaikan

Apabila klaim tersebut dilakukan atau kemungkinan besar akan dilakukan, Pelanggan setuju untuk mengizinkan IBM, menurut kebijakan IBM, untuk: i) memperbolehkan Pelanggan untuk tetap menggunakan Produk; ii) memodifikasi Produk tersebut; atau iii) mengganti Produk tersebut dengan produk lain yang setidaknya memiliki fungsi yang sama. Jika IBM menentukan bahwa tidak ada dari alternatif ini yang tersedia secara wajar, Pelanggan setuju untuk segera menghentikan penggunaan Produk tersebut dan mengembalikannya beserta semua salinan kepada IBM dalam permintaan tertulis IBM. IBM kemudian akan memberikan Pelanggan kredit sesuai dengan jumlah yang Pelanggan bayarkan untuk pengembalian Produk (jika Produk tersebut adalah SaaS IBM atau tunduk pada Biaya Jangka Waktu Tetap, sampai dengan biaya dua belas bulan).

1.10.3 Klaim di mana IBM Tidak Bertanggung jawab

IBM tidak memiliki kewajiban berkenaan dengan setiap klaim yang muncul dari atau terkait dengan hal-hal berikut:

- a. setiap hal apa pun yang diberikan oleh Pelanggan atau pihak ketiga atas nama Pelanggan yang dimasukkan ke dalam Produk atau kepatuhan IBM terhadap setiap desain, spesifikasi atau instruksi yang diberikan oleh Pelanggan atau pihak ketiga atas nama Pelanggan;
- b. Modifikasi suatu Produk oleh Pelanggan atau pihak ketiga atas nama Pelanggan;
- c. Penggunaan suatu Produk selain yang sesuai dengan lisensinya yang berlaku dan larangannya atau penggunaan versi yang bukan baru atau merilis suatu produk, ketika suatu klaim dapat dihindari atau risiko klaim dikurangi dengan menggunakan versi atau rilis baru;
- d. kombinasi, operasi atau penggunaan Produk dengan setiap program, alat perangkat keras, data, apparatus, metode atau proses;
- e. Distribusi, operasi, atau penggunaan Produk di luar Usaha Pelanggan atau untuk keuntungan pihak ketiga manapun; atau
- f. Kode Berlisensi Terpisah, jika ada, sebagaimana diidentifikasi dalam LI untuk Produk tersebut.

LI untuk Produk atau dokumen lain dapat mengizinkan Pelanggan untuk menyalin, memodifikasi atau mendistribusikan ulang semua atau sebagian Produk tanpa membayar biaya lisensi tambahan kepada IBM. Kewajiban penggantian rugi sesuai Perjanjian ini hanya berlaku untuk salinan Produk yang disediakan oleh IBM untuk Pelanggan dan salinan tambahan yang disahkan secara jelas pada suatu PoE. IBM tidak berkewajiban atas klaim-klaim yang terkait dengan salinan-salinan Produk yang tidak diberikan oleh IBM atau tidak disahkan secara khusus oleh PoE (Bukti Kepemilikan), bahkan apabila diizinkan oleh LI untuk Produk atau dokumen-dokumen lainnya.

Pasal Perlindungan terhadap Kekayaan Intelektual ini menyebutkan seluruh kewajiban IBM dan upaya hukum eksklusif Pelanggan terkait dengan setiap klaim kekayaan intelektual pihak ketiga. ini menyebutkan seluruh kewajiban IBM dan upaya hukum eksklusif Pelanggan terkait dengan setiap klaim kekayaan intelektual pihak ketiga. Bagian Kekayaan Intelektual ini tidak mewajibkan dalam cara apapun penyedia pihak ketiga manapun atas kode (termasuk Kode Berlisensi Terpisah) termasuk dengan atau bagian Produk tersebut.

1.11 Batasan Kewajiban

Batasan-batasan dan pengecualian-pengecualian dalam **Pasal 1.11 (Batasan Kewajiban)** ini berlaku sepanjang batasan-batasan dan pengecualian-pengecualian tersebut tidak dilarang oleh undang-undang yang berlaku tanpa adanya kemungkinan pelepasan kontrak.

1.11.1 Item yang mungkin menjadi tanggung jawab IBM

Kondisi dapat muncul ketika, karena kelalaian pada bagian IBM atau tanggung jawab lain, Pelanggan berhak untuk memulihkan kerusakan dari IBM. Tanpa menghiraukan dasar yang membuat Pelanggan berhak untuk mengklaim kerusakan dari IBM (termasuk pelanggaran fundamental, kelalaian, kekeliruan, atau kontrak atau kesalahan lain), seluruh tanggung jawab IBM untuk semua klaim dalam agregat/keseluruhan yang muncul dari atau terkait dengan setiap Produk yang Memenuhi Syarat atau sebaliknya muncul berdasarkan Perjanjian ini tidak akan melebihi jumlah setiap kerusakan langsung yang sebenarnya hingga sebesar \$100.000 AS (atau setara dengan mata uang lokal) atau biaya (jika Produk yang Memenuhi Syarat adalah SaaS IBM atau tunduk pada Biaya Jangka Waktu Tetap, hingga biaya 12 bulan) yang Pelanggan bayarkan untuk Produk yang Memenuhi Syarat yang dikenakan pada klaim tersebut.

Batasan ini juga berlaku untuk setiap pengembang dan penyedia Produk yang Memenuhi Syarat IBM. Ini merupakan jumlah maksimum di mana IBM dan pengembang serta penyedia Produk yang Memenuhi Syaratnya secara bersama-sama bertanggung jawab. Kerusakan untuk yang menyebabkan cedera tubuh (termasuk kematian) dan kerusakan terhadap properti riil dan properti pribadi yang nyata dan jelas di mana IBM secara hukum berkewajiban tidak dikenakan batasan atas jumlah kerusakan tersebut.

1.11.2 Item di mana IBM tidak bertanggung jawab

DALAM SITUASI APAPUN IBM, PENGEMBANG PRODUK YANG MEMENUHI SYARAT, ATAU PENYEDIA TIDAK BERKEWAJIBAN UNTUK SETIAP HAL BERIKUT, BAHKAN JIKA DIBERITAHU MENGENAI KEMUNGKINANNYA:

- a. **KEHILANGAN AKAN, ATAU KERUSAKAN TERHADAP, DATA;**
- b. **KERUSAKAN KHUSUS, INSIDENTAL, CONTOH, ATAU KERUSAKAN TIDAK LANGSUNG, ATAU UNTUK SETIAP KERUSAKAN YANG MENYEBABKAN KONSEKUENSI EKONOMI; ATAU**
- c. **KEHILANGAN KEUNTUNGAN, BISNIS, PENDAPATAN, NAMA BAIK, ATAU TABUNGAN YANG DIANTISIPASI.**

1.12 Umur Prinsip-prinsip Umum dari Hubungan Kami

1.12.1 Pemberitahuan dan Komunikasi

Sejauh diizinkan oleh hukum yang berlaku, para pihak setuju untuk menggunakan alat elektronik dan transmisi faksimili untuk mengirim dan menerima komunikasi dalam hubungannya dengan hubungan bisnis kami yang muncul dari Perjanjian ini, dan komunikasi tersebut dapat diterima jika ditandatangani secara tertulis. Kode identifikasi (disebut "ID pengguna") yang terdapat dalam sebuah dokumen elektronik cukup untuk memverifikasi identitas pengirim dan keotentikan dokumen.

1.12.2 Pengalihan dan Penjualan kembali

Tidak ada satu pihak pun yang dapat mengalihkan Perjanjian ini, baik secara keseluruhan maupun sebagian, tanpa persetujuan tertulis sebelumnya dari pihak lainnya. Segala bentuk usaha untuk mengalihkan tanpa persetujuan adalah tidak sah. Pengalihan dari Perjanjian ini, baik secara keseluruhan maupun sebagian, dalam Usaha di mana salah satu pihak merupakan bagian atau ke organisasi penerus dengan penggabungan atau akuisisi tidak memerlukan persetujuan yang lainnya. IBM juga diizinkan untuk mengalihkan haknya untuk pembayaran tanpa memperoleh persetujuan Pelanggan. Hal ini tidak dianggap sebuah pengalihan untuk IBM untuk melepaskan bagian dari bisnisnya dengan cara yang sama halnya mempengaruhi Pelanggannya.

Pelanggan menyetujui bahwa Produk yang Memenuhi Syarat adalah hanya untuk penggunaan dalam Usaha Pelanggan dan tidak dapat dijual kembali, disewakan, atau dipindahkan kepada para pihak ketiga. Segala bentuk upaya untuk melakukan hal tersebut merupakan pelanggaran dari ketentuan ini dan tidak sah.

1.12.3 Kepatuhan terhadap Hukum

IBM akan menaati hukum yang berlaku untuk IBM secara umum sebagai penyedia produk dan layanan teknologi informasi. IBM tidak bertanggung jawab untuk menentukan persyaratan atas hukum yang berlaku terhadap bisnis Pelanggan, termasuk hal-hal yang berkaitan dengan Produk yang Memenuhi Syarat yang diperoleh Pelanggan berdasarkan Perjanjian ini, atau ketentuan IBM atau tanda terima Pelanggan atas Produk tertentu yang Memenuhi Syarat berdasarkan Perjanjian ini untuk memenuhi persyaratan hukum tersebut. Meskipun segala sesuatu dalam Perjanjian ini terjadi sebaliknya, tidak ada satu pihak pun yang berkewajiban untuk melakukan tindakan yang akan melanggar hukum yang berlaku bagi pihak tersebut.

Masing-masing pihak setuju untuk menaati semua hukum dan peraturan ekspor dan impor yang berlaku termasuk tanpa batasan embargo Amerika Serikat dan peraturan sanksi dan larangan untuk mengeksport penggunaan akhir tertentu atau pengguna tertentu.

1.12.4 Resolusi Perselisihan

Masing-masing pihak akan mengizinkan pihak lainnya suatu kesempatan yang wajar untuk menaati sebelum mengklaim bahwa pihak lain tidak memenuhi kewajibannya sesuai dengan Perjanjian ini. Para pihak akan mengupayakan dengan niat baik untuk menyelesaikan segala perselisihan, ketidaksetujuan, atau tuntutan antara para pihak terkait Perjanjian ini. Kecuali dalam hal lain diperlukan oleh hukum yang berlaku tanpa kemungkinan pengabaian kontrak atau batasan, i) tidak ada satu pihak pun yang akan mengajukan tindakan hukum, tanpa menghiraukan bentuk, yang muncul atau terkait dengan Perjanjian

ini atau transaksi apapun sesuai Perjanjian ini lebih dari dua tahun setelah penyebab tindakan muncul; dan ii) setelah batas waktu tersebut, segala bentuk klaim tersebut dan hak masing-masing terkait dengan klaim tersebut selang waktu klaim.

1.12.5 Prinsip-prinsip lain dalam Hubungan Kami

- a. Tidak ada satu pihak pun yang menjamin hak pihak lainnya untuk menggunakannya (atau Usahanya yang manapun) merek dagang, nama dagang, atau sebutan lain dalam setiap promosi atau publikasi tanpa persetujuan tertulis sebelumnya.
- b. Pertukaran segala informasi rahasia akan dibuat dalam perjanjian kerahasiaan terpisah, yang ditandatangani. Namun, sejauh informasi tersebut ditukar dalam hubungannya dengan Produk yang Memenuhi Syarat berdasarkan Perjanjian ini, perjanjian rahasia yang berlaku tergabung dalam, dan tunduk pada, Perjanjian ini.
- c. Perjanjian ini dan segala transaksi berdasarkan Perjanjian ini tidak menciptakan suatu lembaga, perusahaan patungan, atau hubungan kemitraan antara Pelanggan dan IBM. Masing-masing pihak bebas untuk masuk ke dalam perjanjian serupa dengan yang lainnya untuk mengembangkan, memperoleh, atau memberikan produk dan layanan yang bersaing.
- d. Pelanggan mengizinkan Korporasi International Business Machines (Mesin Bisnis Internasional) dan anak perusahaannya (dan penerus serta yang bertugas, kontraktor, Mitra Bisnis IBM, dan para pengecer) untuk menyimpan dan menggunakan informasi kontak bisnis Pelanggan di manapun mereka berbisnis, sehubungan dengan Produk yang Memenuhi Syarat IBM atau dalam kemajuan hubungan bisnis IBM dengan Pelanggan.
- e. Tidak ada hak atau dasar tuntutan untuk pihak ketiga yang diciptakan oleh Perjanjian ini atau setiap transaksi berdasarkan Perjanjian ini, dan IBM tidak bertanggung jawab atas klaim-klaim pihak ketiga terhadap Pelanggan, kecuali apabila diizinkan dalam Pasal 1.11 (Batasan Kewajiban) di atas karena cedera badan (termasuk kematian) atau kerusakan terhadap properti pribadi yang bersifat tetap atau berwujud yang merupakan tanggung jawab IBM secara sah kepada pihak ketiga tersebut.
- f. Pelanggan bertanggung jawab untuk memilih Produk yang Memenuhi Syarat yang sesuai dengan kebutuhannya dan untuk hasil yang diperoleh dari penggunaan Produk yang Memenuhi Syarat tersebut, termasuk keputusan Pelanggan untuk melaksanakan rekomendasi apapun mengenai praktik bisnis dan operasi Pelanggan.
- g. Produk yang Memenuhi Syarat tidak dapat digunakan untuk memberikan host komersil atau layanan teknologi informasi lain kepada para pihak ketiga.
- h. Ketika persetujuan, penerimaan, izin, atau tindakan serupa lain oleh salah satu pihak diperlukan sesuai dengan Perjanjian ini, tindakan tersebut tidak akan ditunda atau ditahan tanpa alasan.
- i. Tidak ada satu pihak pun yang bertanggung jawab atas kegagalan untuk memenuhi segala kewajiban bukan moneter karena peristiwa di luar kendalinya.
- j. Pelanggan setuju bahwa penggunaan mereka atas Saas IBM akan menaati kebijakan penggunaan IBM yang dapat diterima di <http://www.ibm.com/services/us/imc/html/aup.html> dan hukum perlindungan data yang berlaku.
- k. Sebagaimana sewajarnya diperlukan oleh IBM untuk memenuhi kewajibannya berdasarkan Perjanjian ini, Pelanggan setuju untuk memberikan IBM akses yang cukup dan aman (termasuk akses jarak jauh) terhadap fasilitas, sistem, informasi, personil, dan sumber daya Pelanggan, semuanya tanpa biaya bagi IBM. IBM tidak bertanggung jawab untuk setiap keterlambatan dalam pelaksanaan atau kegagalan untuk melaksanakan yang disebabkan oleh keterlambatan Pelanggan dalam menyediakan akses tersebut atau pelaksanaan tanggung jawab Pelanggan lain berdasarkan Perjanjian ini.
- l. Dalam melakukan Perjanjian ini, termasuk setiap Lampiran, ToU, dan Dokumen Transaksi, tidak ada satu pihak pun yang mengandalkan pada representasi yang tidak disebutkan dalam Perjanjian ini, termasuk namun tidak terbatas kepada segala representasi mengenai: i) kinerja atau fungsi Produk yang Memenuhi Syarat manapun, selain yang secara tegas dijamin dalam Perjanjian ini; ii) pengalaman atau rekomendasi pihak-pihak lain; atau iii) segala hasil atau tabungan yang mungkin didapat Pelanggan.

1.13 Pengakhiran Perjanjian

IBM dapat mengakhiri Perjanjian ini sewaktu-waktu, dengan atau tanpa adanya penyebab, dengan segera dan tanpa pemberitahuan, setelah jangka waktu langganan dan dukungan perangkat lunak yang

pertama atau Periode Langganan Saas IBM telah selesai. Apabila Pelanggan telah memperbarui Langganan dan Dukungan Perangkat Lunak IBM untuk setiap Program IBM atau Saas IBM sebelum adanya pemberitahuan tentang pengakhiran, IBM, atas kebijakannya semata-mata, dapat tetap memberikan Langganan dan Dukungan Perangkat Lunak IBM kepada Pelanggan untuk Program-program tersebut atau tawaran-tawaran Saas IBM tersebut selama sisa jangka waktu yang sedang berjalan atau memberikan pengembalian uang secara prorata kepada Pelanggan. Apabila Pelanggan telah memperbarui Langganan dan Dukungan Perangkat Lunak Pihak Ketiga untuk setiap Program Non-IBM sebelum adanya pemberitahuan tentang pengakhiran, pihak ketiga dapat tetap memberikan Langganan dan Dukungan Perangkat Lunak Pihak Ketiga kepada Pelanggan untuk lisensi Program Non-IBM tersebut selama sisa jangka waktu yang sedang berjalan. Jika pihak ketiga tidak melakukan hal tersebut, Pelanggan dapat memperoleh pengembalian dana prorata.

Pelanggan akan dianggap telah mengakhiri Perjanjian ini apabila pelanggan tersebut tidak memiliki langganan dan dukungan perangkat lunak yang berlaku. Salah satu dari kami dapat mengakhiri Perjanjian ini apabila pihak lainnya tidak mematuhi setiap syarat Perjanjiannya, dengan ketentuan bahwa pihak yang tidak mematuhi mendapatkan pemberitahuan tertulis dan waktu yang wajar untuk mematuhi.

Segala persyaratan dari Perjanjian ini yang karena sifatnya melampaui pengakhiran ini akan tetap berlaku hingga terpenuhi, dan berlaku bagi penerusnya masing-masing dan para wakilnya.

1.14 Verifikasi terhadap Kepatuhan

Untuk tujuan-tujuan **Pasal 1.14 (Verifikasi terhadap Kepatuhan)** ini, "Syarat-syarat Keuntungan Paspor" adalah 1) Perjanjian ini dan Lampiran-lampiran, Dokumen-dokumen Transaksi, dan Syarat Penggunaan yang berlaku yang diberikan oleh IBM, dan 2) kebijakan-kebijakan perangkat lunak IBM yang dapat dilihat di situs web Kebijakan Perangkat Lunak IBM (<http://www.ibm.com/softwarepolicies/>), termasuk tetapi tidak terbatas pada kebijakan-kebijakan tersebut yang terkait dengan cadangan, penetapan harga subkapasitas, dan migrasi.

Hak-hak dan kewajiban-kewajiban yang tercantum dalam **Pasal 1.14** ini tetap berlaku selama periode pada saat Produk yang Memenuhi Syarat dimiliki atau dikendalikan oleh Pelanggan, dan selama dua tahun berikutnya.

1.14.1 Proses Verifikasi

Pelanggan setuju untuk membuat, menyimpan, dan memberikan kepada IBM dan akuntannya catatan tertulis, keluaran alat sistem, dan informasi sistem lainnya yang akurat yang cukup untuk memberikan verifikasi yang dapat diaudit di mana penggunaan Pelanggan atas Produk yang Memenuhi Syarat sesuai dengan Persyaratan Keuntungan Paspor, termasuk, namun tidak terbatas kepada, semua pemberian lisensi IBM yang berlaku dan persyaratan kualifikasi harga. Pelanggan bertanggung jawab untuk 1) memastikan bahwa mereka tidak melampaui penggunaan yang diizinkan, dan 2) tetap patuh terhadap Persyaratan Keuntungan Paspor.

Atas pemberitahuan yang wajar, IBM dapat memverifikasi kepatuhan Pelanggan terhadap Persyaratan Keuntungan Paspor pada semua situs dan bagi lingkungan di mana Pelanggan menggunakan (untuk tujuan apapun) Produk yang Memenuhi Syarat yang tunduk pada Persyaratan Keuntungan Paspor. Verifikasi tersebut akan dilaksanakan dengan cara yang meminimalisir gangguan terhadap bisnis Pelanggan, dan dapat dilaksanakan di bangunan dan tanah Pelanggan, selama jam kerja normal. IBM dapat menggunakan akuntan independen untuk membantu verifikasi tersebut, asalkan IBM memiliki perjanjian rahasia tertulis di tempat dengan akuntan tersebut.

1.14.2 Resolusi

IBM akan memberitahu Pelanggan secara tertulis jika verifikasi tersebut mengindikasikan bahwa Pelanggan telah menggunakan Produk yang Memenuhi Syarat yang manapun melampaui penggunaan yang diizinkan atau sebaliknya tidak mematuhi Persyaratan Keuntungan Paspor. Pelanggan setuju untuk segera membayar secara langsung kepada IBM denda yang IBM nyatakan dalam sebuah faktur untuk 1) kelebihan penggunaan tersebut, 2) langganan perangkat lunak dan dukungan untuk kelebihan penggunaan tersebut untuk durasi paling sedikit dari kelebihan penggunaan tersebut atau dua tahun, dan 3) setiap biaya tambahan dan kewajiban lain yang ditentukan sebagai akibat dari verifikasi tersebut.

1.15 Ruang Lingkup Geografis dan Undang-undang yang Mengatur

1.15.1 Cakupan Geografis

Persyaratan Perjanjian ini berlaku di negara-negara di mana 1) IBM memasarkan Produk yang Memenuhi Syaratnya secara langsung atau 2) Produk yang Memenuhi Syaratnya telah diumumkan tersedia.

1.15.2 Undang-undang yang Berlaku

Hak, tugas, dan kewajiban masing-masing pihak hanya berlaku hanya di negara di mana transaksi dilakukan atau, jika IBM setuju, negara di mana Produk yang Memenuhi Syarat tersebut ditempatkan dalam penggunaan produktif, kecuali bahwa semua lisensi berlaku serta dijamin secara khusus.

Kedua belah pihak setuju terhadap penerapan undang-undang negara di mana transaksi dilakukan untuk mengatur, menginterpretasikan, dan menyelenggarakan semua hak, tugas dan kewajiban Pelanggan dan IBM masing-masing yang muncul dari, atau terkait dengan segala cara terhadap, isi Perjanjian ini, tanpa menyebabkan konflik dengan prinsip-prinsip hukum.

Jika ketentuan apa pun dari Perjanjian ini dinyatakan tidak berlaku dan tidak dapat diterapkan, ketentuan lain yang ada pada Perjanjian ini tetap berlaku dan dapat diterapkan.

Tidak ada ketentuan dalam Perjanjian ini yang memengaruhi hak konsumen yang tidak dapat diabaikan atau dibatasi oleh kontrak.

Konvensi Perserikatan Bangsa-bangsa atas Kontrak untuk Penjualan Internasional Barang-barang tidak berlaku.

2. Jaminan-jaminan

Kecuali IBM menyatakan sebaliknya, jaminan-jaminan berikut berlaku hanya di negara akuisisi.

2.1 Jaminan untuk Program IBM

Jaminan untuk Program IBM dinyatakan dalam perjanjian lisensinya.

2.2 Jaminan untuk Langganan dan Dukungan Perangkat Lunak IBM dan Dukungan Terpilih

IBM menjamin bahwa pihaknya menyediakan Langganan dan Dukungan Perangkat Lunak IBM dan Dukungan Terpilih dengan menggunakan perawatan dan keahlian yang semestinya.

2.3 Jaminan untuk Komponen Mesin IBM atas Peralatan IBM

IBM menjamin bahwa setiap Komponen Mesin IBM bebas dari kerusakan material dan pengerjaan serta sesuai dengan Spesifikasinya.

Periode jaminan untuk Komponen Mesin IBM adalah periode tetap yang dimulai pada Tanggal Instalasi (juga disebut "Tanggal Mulai Jaminan") dan dinyatakan dalam sebuah Dokumen Transaksi. Selama periode jaminan, IBM menyediakan layanan perbaikan dan penukaran untuk Komponen Mesin IBM, tanpa biaya, sesuai dengan jenis layanan yang IBM tetapkan dalam sebuah Dokumen Transaksi untuk Komponen Mesin IBM. Jika Komponen Mesin IBM tidak berfungsi sebagaimana dijamin selama jangka waktu jaminan dan IBM tidak dapat untuk i) membuatnya berfungsi atau ii) menggantinya dengan produk yang setidaknya berfungsi sama, Pelanggan dapat mengembalikannya kepada pihak dari mana Pelanggan memperolehnya untuk mendapatkan pengembalian pembayaran.

Untuk sebuah Komponen Mesin IBM dimana IBM bertanggung jawab untuk menginstal, jika Pelanggan memilih untuk menginstal Komponen Mesin IBM sendiri atau pihak ketiga menginstal Komponen Mesin IBM, IBM dapat menginspeksi Komponen Mesin IBM atas biaya ditanggung Pelanggan sebelum memberikan layanan jaminan pada Komponen Mesin IBM. Jika Komponen Mesin IBM tidak pada kondisi yang dapat diterima untuk layanan jaminan, sebagaimana ditentukan oleh IBM sendiri, Pelanggan dapat meminta IBM untuk memperbaikinya ke kondisi yang sesuai/dapat diterima untuk layanan jaminan atau Pelanggan dapat menarik permintaannya untuk layanan jaminan. IBM atas kebijakannya sendiri, akan menentukan jika perbaikan mungkin dilakukan. Perbaikan disediakan sebagai layanan berbayar.

Jika Komponen Mesin IBM tidak berfungsi seperti yang dijamin selama periode jaminan, merujuk pada dokumentasi layanan yang dikirimkan dengan Komponen Mesin IBM untuk mendukung bantuan dan prosedur penentuan masalah.

Jika Pelanggan tidak dapat menyelesaikan masalah dengan dokumentasi layanan, hubungi IBM atau pengecer untuk memperoleh layanan jaminan. Informasi kontak untuk IBM disediakan dalam "Informasi Jaminan" yang terkirim bersama Komponen Mesin IBM. Jika Pelanggan tidak mendaftarkan Komponen

Mesin IBM dengan IBM, Pelanggan mungkin harus menyajikan bukti pembelian sebagai bukti kepemilikan Pelanggan terhadap layanan jaminan.

2.4 Jaminan untuk SaaS IBM

Jaminan untuk SaaS IBM dinyatakan dalam Syarat Penggunaan.

2.5 Cakupan Jaminan

JAMINAN-JAMINAN INI ADALAH JAMINAN EKSKLUSIF PELANGGAN DAN MENGGANTIKAN SEMUA JAMINAN ATAU KETENTUAN, SECARA TERSIRAT MAUPUN TERSURAT, TERMASUK, NAMUN TIDAK TERBATAS PADA, SETIAP JAMINAN ATAU KETENTUAN TERSIRAT DARI YANG DIPERDAGANGKAN, KEPUASAN, MUTU, DAN KESESUAIAN UNTUK TUJUAN TERTENTU, DAN SETIAP JAMINAN ATAU KETENTUAN YANG BUKAN PELANGGARAN.

Jaminan yang dinyatakan dalam Bagian 2.3 tidak akan berlaku jika telah terdapat kesalahan penggunaan (termasuk, namun tidak terbatas pada, penggunaan kapasitas atau kemampuan Komponen Mesin apapun, selain yang diizinkan oleh IBM secara tertulis), kecelakaan, modifikasi, lingkungan fisik maupun operasi yang tidak sesuai, operasi selain dari Lingkungan Operasi Yang Terspesifikasi, pemeliharaan oleh Pelanggan atau pihak ketiga yang tidak tepat, atau kegagalan atau kerusakan yang disebabkan oleh produk yang mana IBM tidak bertanggung jawab. Jaminan untuk Komponen Mesin IBM tidak sah dengan penghilangan atau perubahan Komponen Mesin atau label identifikasi suku cadang.

Item yang tidak tercakup dalam Jaminan

IBM tidak menjamin operasi tidak terinterupsi atau bebas error dari Produk yang Memenuhi Syarat atau bahwa IBM akan memperbaiki semua kerusakan.

IBM akan mengidentifikasi Produk yang Memenuhi Syarat IBM yang IBM tidak memberikan jaminan.

Kecuali dinyatakan sebaliknya dalam Lampiran atau Dokumen Transaksi, IBM menyediakan Produk yang Memenuhi Syarat bukan IBM, **DALAM SEGALA BENTUK TANPA JAMINAN ATAU KETENTUAN**. Namun, produsen, pengembang, penyedia, atau penerbit yang bukan IBM dapat memberikan jaminan mereka sendiri kepada Pelanggan.

3. Program serta Langganan dan Dukungan

3.1 Program-program IBM

Program-program IBM yang diperoleh berdasarkan Perjanjian ini diatur oleh persyaratan IPLA.

3.1.1 Versi dan Platform:

Pelanggan dapat menggunakan Program dan dokumentasi pengguna mereka yang terkait sesuai dengan persyaratan Perjanjian ini dalam segala versi bahasa nasional yang tersedia secara komersial hingga tingkat penggunaan yang diizinkan dalam PoE. Pelanggan diizinkan untuk menggunakan Program yang Pelanggan peroleh sesuai Perjanjian ini pada platform apapun atau sistem operasi dimana IBM baru-baru ini membuat kode Program tersedia sesuai Perjanjian ini kecuali Program tersebut ditetapkan sebagai platform atau sistem operasi tertentu pada saat Pelanggan memperolehnya.

3.1.2 Tukar tambah IBM:

Lisensi-lisensi untuk program-program tertentu yang menggantikan Program IBM yang memenuhi syarat dapat diperoleh untuk mengurangi biaya. Pelanggan setuju untuk mengakhiri penggunaan Pelanggan atas Program IBM yang digantikan jika Pelanggan menginstal Program pengganti.

3.1.3 Tukar tambah bersaing:

Lisensi-lisensi untuk Program-program tertentu yang menggantikan Program bukan IBM yang memenuhi syarat dapat diperoleh untuk mengurangi biaya. Pelanggan setuju untuk mengakhiri penggunaan Pelanggan atas Program yang bukan IBM yang digantikan jika Pelanggan menginstal Program pengganti.

3.2 Program di Lingkungan Virtualisasi

3.2.1 Kewenangan

- a. PoE harus diperoleh untuk jumlah total PVU yang terkait dengan Kapasitas Virtualisasi yang tersedia untuk Produk Sub-Kapasitas yang Memenuhi Syarat.
- b. Sebelum peningkatan pada Kapasitas Virtualisasi Produk Sub-Kapasitas yang Memenuhi Syarat, Pelanggan harus terlebih dahulu memperoleh otorisasi tambahan yang cukup, termasuk Langganan dan Dukungan Perangkat lunak IBM, jika berlaku, untuk menanggung peningkatan tersebut.

- c. IBM tidak memberikan kredit atau pengembalian pembayaran untuk biaya yang sudah jatuh tempo atau dibayarkan jika penggunaan sebuah Produk yang Memenuhi syarat jatuh di bawah tingkat penggunaan yang diizinkan.

3.2.2 Tanggung jawab IBM

IBM akan menyediakan dan mengizinkan Pelanggan untuk menggunakan:

- a. ILMT tanpa biaya, jika dipesan oleh Pelanggan atau Pelanggan Pengecer IBM. IBM menyediakan ILMT untuk Pelanggan untuk kepatuhan Pelanggan terhadap persyaratan Pemberian Lisensi Sub-Kapasitas ini; dan
- b. Pusat informasi termasuk ILMT untuk membantu kepatuhan Pelanggan terhadap persyaratan Pemberian Lisensi Sub-Kapasitas ini.

Pelanggan dapat membuat salinan ILMT dan pusat informasi untuk kepatuhan Pelanggan dengan persyaratan Pemberian Lisensi Sub-Kapasitas ini.

3.2.3 Tanggung Jawab Pelanggan berdasarkan Persyaratan Pemberian Lisensi Sub-Kapasitas

Pelanggan setuju untuk:

- a. Menginstal dan mengkonfigurasi versi terbaru ILMT sesuai dengan pusat informasi ILMT, dalam 90 hari pertama Pelanggan dalam penyebaran Produk Sub-Kapasitas yang Memenuhi Syarat atas Lingkungan Virtualisasi yang Memenuhi Syarat, untuk memungkinkan Pelanggan mengumpulkan data Kapasitas Virtualisasi dengan Produk Sub-Kapasitas yang Memenuhi Syarat dan menghasilkan Laporan Audit sesuai dengan persyaratan Pemberian Lisensi Sub-Kapasitas ini. Pengecualian untuk persyaratan ini adalah:
 - (1) Jika ILMT belum menyediakan dukungan untuk Lingkungan Virtualisasi yang Memenuhi Syarat
 - (2) Jika Usaha Pelanggan memiliki lebih sedikit dari 1.000 karyawan dan kontraktor, Pelanggan bukan Penyedia Layanan, dan Pelanggan belum memiliki kontrak dengan Penyedia Layanan untuk mengelola Lingkungan Virtualisasi yang Memenuhi Syarat Pelanggan
 - (3) Jika kapasitas fisik total server Usaha Pelanggan dengan Lingkungan Virtualisasi yang Memenuhi Syarat, diukur pada basis Kapasitas Penuh, namun berlisensi menggunakan persyaratan sub-kapasitas kurang dari 1.000 PVU.
 - (4) Jika server Pelanggan dengan Produk Sub-Kapasitas yang Memenuhi Syarat berlisensi hingga server Kapasitas Penuh.

Untuk pengecualian ini, penggunaan ILMT, saat direkomendasikan, tidak diperlukan untuk pemberian Lisensi Sub-Kapasitas. Sebagai pengganti ILMT, Pelanggan diharuskan untuk secara manual mengelola dan melacak Lingkungan Virtualisasi yang Memenuhi Syarat Pelanggan, dan secara manual mempersiapkan Laporan Audit yang mendokumentasikan Kapasitas Virtualisasi dengan Lingkungan Virtualisasi yang Memenuhi Syarat Produk Sub-Kapasitas yang Memenuhi Syarat Pelanggan selama masing-masing kalender atau seperempat fiskal. Laporan Audit ini harus terdiri dari informasi yang terdapat dalam contoh Laporan Audit di <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> . Laporan Audit ini harus disiapkan sesering mungkin untuk menjaga riwayat peningkatan Kapasitas Virtualisasi, namun tidak kurang sering dari sekali per seperempat, dan harus dipertahankan setidaknya dua tahun untuk menunjukkan kepatuhan yang sedang berlangsung dengan persyaratan Pemberian Lisensi Sub-Kapasitas ini;

- b. Segera instal versi, rilis, modifikasi, atau perbaikan kode (“memperbaiki”) baru dari ILMT yang disediakan IBM. Pelanggan harus berlangganan pemberitahuan Dukungan Tivoli melalui <http://www.ibm.com/support/mynotifications> untuk diberitahukan jika tersedia;
- c. Tidak mengubah, memodifikasi, menghilangkan, menghapus, atau juga salah menggambarkan, dengan cara apapun, secara langsung atau tidak langsung :
 - (1) Laporan audit ILMT;
 - (2) ILMT, kecuali untuk perubahan yang disediakan oleh IBM; atau
 - (3) Laporan Audit yang Pelanggan serahkan pada IBM.
- d. menghasilkan, dengan menggunakan ILMT atau dengan cara manual, Laporan-laporan Audit setidaknya setiap kuartal kalender atau fiskal dan menyimpan Laporan-laporan Audit selama periode

tidak kurang dari dua tahun dan menyediakan laporan-laporan ini kepada IBM setelah adanya pemberitahuan sebagaimana ditetapkan dalam Pasal 1.14. Kegagalan untuk menghasilkan Laporan Audit atau menyediakan Laporan Audit bagi IBM akan menyebabkan pendendaan untuk Produk Sub-kapasitas yang Memenuhi Syarat sesuai dengan Persyaratan Kapasitas Penuh;

- e. Menunjuk seseorang dalam organisasi Pelanggan dengan wewenang untuk mengelola dan segera menyelesaikan segala pertanyaan pada Laporan Audit atau ketidak konsistenan antara konten Laporan Audit, hak milik lisensi, atau konfigurasi ILMT;
- f. Segera melakukan pemesanan dengan IBM atau pengecer IBM Pelanggan jika Laporan Audit mencerminkan penggunaan Produk Sub-Kapasitas yang Memenuhi Syarat melampaui tingkat yang diijinkan Pelanggan. Langganan dan cakupan Dukungan Perangkat Lunak IBM akan ditentukan untuk mulai pada saat Pelanggan melebihi tingkat yang diijinkan Pelanggan.

3.2.4 Persyaratan Tambahan

Penyebaran produk yang tidak dapat memenuhi persyaratan Pemberian Lisensi Sub-Kapasitas harus dilisensikan menggunakan persyaratan Kapasitas Penuh.

3.3 Pemberian Lisensi Jangka Waktu Tetap

Lisensi-lisensi Jangka Waktu Tetap memiliki jangka waktu yang dimulai pada tanggal saat IBM menerima pemesanan dari Pelanggan atau tanggal kalender setelah selesainya Jangka Waktu Tetap sebelumnya.

3.3.1 Pembaharuan Otomatis untuk Lisensi Jangka Waktu Tetap

Pelanggan dapat memperbaharui Lisensi Jangka Waktu Tetap Pelanggan yang habis masa berlakunya dengan ijin tertulis untuk memperbaharui (misalnya, formulir pemesanan, surat pemesanan, pemesanan pembelian), sebelum tanggal habis masa berlakunya, sesuai dengan persyaratan Perjanjian ini.

JIKA IBM TIDAK MENERIMA WEWENANG TERSEBUT PADA SAAT TANGGAL HABIS MASA BERLAKUNYA, LISENSI JANGKA WAKTU TETAP YANG HABIS MASA BERLAKUNYA AKAN SECARA OTOMATIS DIPERHABARUI UNTUK DURASI YANG SEPERTI JANGKA WAKTU YANG HABIS MASA BERLAKUNYA BERDASARKAN PERSYARATAN PERJANJIAN INI DAN PADA BIAYA PEMBAHARUAN SAAT INI UNTUK LISENSI PROGRAM TERSEBUT, KECUALI, SEBELUM TANGGAL HABIS MASA BERLAKUNYA, IBM MENERIMA, BAIK SECARA LANGSUNG DARI PELANGGAN MAUPUN MELALUI PENGECEK PELANGGAN, SEBAGAIMANA BERLAKU, PEMBERITAHUAN TERTULIS PELANGGAN BAHWA PELANGGAN TIDAK MAU MEMPERBAHARUI. PELANGGAN SETUJU UNTUK MEMBAYAR PEMBAHARUAN TERSEBUT.

Jika Pelanggan memilih untuk tidak memperbaharui Lisensi Jangka Waktu Tetap, pelanggan setuju untuk tidak meneruskan penggunaan Program tersebut pada tanggal habis masa berlakunya.

Jika, setelah tanggal habis masa berlaku, Pelanggan memilih untuk melanjutkan penggunaan Program, Pelanggan harus membayar biaya sesuai dengan Lisensi Jangka Waktu Tetap Pertama dan bukan pembaharuan Lisensi Jangka Waktu Tetap.

3.3.2 Penarikan Lisensi Jangka Waktu Tetap untuk Program tertentu

Jika IBM menarik pemberian lisensi Jangka Waktu Tetap untuk Program IBM tertentu, Pelanggan memahami bahwa:

- a. Pelanggan tidak dapat memperbaharui Lisensi Jangka Waktu Tetap untuk Program IBM tersebut; dan
- b. Jika Pelanggan memperbaharui Lisensi Jangka Waktu Tetap untuk Program IBM tersebut sebelum pemberitahuan penarikan, Pelanggan dapat (a) meneruskan untuk menggunakan Program sesuai dengan persyaratan Lisensi Jangka Waktu Tetap hingga akhir Jangka Waktu Tetap terbaru atau (b) memperoleh pengembalian pembayaran prorata.

3.4 Kategori Produk CEO

“Kategori Produk CEO” (mengelompokkan Produk yang Memenuhi Syarat) diperoleh pada basis per-pengguna. Pelanggan harus memperoleh Kategori Produk CEO terlebih dahulu (“Kategori Produk Primer”) untuk semua Pengguna CEO dalam Usaha Pelanggan dan untuk tidak kurang dari jumlah pengguna CEO yang dinyatakan dalam Tabel Kategori Produk CEO di <http://www.ibm.com/software/passportadvantage> .

Pelanggan dapat memperoleh Kategori Produk CEO tambahan jika Pelanggan memenuhi jumlah minimum dari persyaratan pengguna CEO yang dinyatakan dalam Kategori Produk CEO pada Tabel

Kategori Produk CEO di <http://www.ibm.com/software/passportadvantage> . Namun, Pelanggan tidak perlu memperoleh Kategori Produk CEO untuk semua pengguna CEO dalam UsahaPelanggan.

Seorang Pengguna CEO dapat menggunakan setiap atau semua Program termasuk dalam Kategori Produk CEO terpilih. Namun semua Program IBM yang digunakan untuk akses klien harus diperoleh dari Kategori Produk yang sama seperti Program server yang mereka akses.

Kategori Produk CEO: Penambahan dan Penghapusan

IBM dapat menambahkan Produk yang Memenuhi Syarat pada atau menghapus Produk yang Memenuhi Syarat dari setiap Kategori Produk CEO kapanpun. Jika IBM menghapus sebuah Produk yang Memenuhi Syarat dari Kategori Produk CEO, Pelanggan dapat meneruskan untuk menggunakan Produk yang Memenuhi Syarat yang dihapus tersebut namun Pelanggan tidak dapat melebihi jumlah Pengguna CEO yang terdaftar sebelum penghapusan.

Peningkatan jumlah pengguna CEO

Dalam hal Pelanggan meningkatkan jumlah Pengguna CEO, Pelanggan harus memperoleh ijin untuk menggunakan Kategori Produk CEO untuk setiap pengguna CEO.

Penurunan jumlah Pengguna CEO

Pelanggan akan memberitahu IBM secara tertulis sebelum Hari Jadi Pelanggan berikutnya dalam hal jumlah total Pengguna CEO yang menurun. Penurunan dapat merupakan akibat dari reorganisasi, restrukturisasi, atau menjual satu atau lebih Situs Pelanggan. Pengurangan jumlah Pengguna CEO sementara atau musiman tidak termasuk sebagai penurunan. Jika tingkat penggunaan yang diizinkan atas Kategori Produk CEO jatuh di bawah jumlah minimum Pengguna CEO yang berlaku terhadap Kategori CEO tersebut, Pelanggan tidak dapat memperbaharui Langganan dan Dukungan Perangkat Lunak IBM pada basis Kategori Produk CEO.

3.5 Langganan dan Dukungan Perangkat Lunak serta Dukungan Terpilih

3.5.1 Langganan dan Dukungan Perangkat Lunak

- a. Untuk tujuan Perjanjian ini, “langganan dan dukungan perangkat lunak” berarti Langganan dan Dukungan Perangkat Lunak IBM dan Langganan dan Dukungan Perangkat Lunak Pihak Ketiga. IBM menyediakan Langganan dan Dukungan Perangkat Lunak IBM dengan tiap Program IBM berlisensi berdasarkan IPLA. Langganan dan Dukungan Perangkat Lunak IBM merupakan penawaran tunggal yang tidak tersedia sebagai komponen terpisah. IBM tidak menyediakan Langganan dan Dukungan Perangkat Lunak IBM untuk (i) Program bukan IBM atau untuk (ii) Program yang berlisensi berdasarkan Perjanjian Lisensi IBM untuk Program yang Tidak Dijamin (bersama-sama “Program Terpilih”).
- b. Langganan dan Dukungan Perangkat Lunak IBM dimulai pada tanggal akuisisi dan berakhir pada tanggal terakhir bulan yang bersangkutan pada tahun berikutnya, kecuali apabila tanggal akuisisi adalah tanggal pertama dalam bulan, dalam hal mana cakupan berakhir pada tanggal terakhir bulan sebelumnya pada tahun berikutnya.
- c. Saat Langganan dan Dukungan Perangkat Lunak IBM berlaku bagi sebuah lisensi Program IBM:
 - (1) IBM akan menyediakan bagi Pelanggan perbaikan kerusakan Program IBM, batasan, jalan pintas, jika ada, yang dikembangkannya.
 - (2) IBM akan menyediakan bagi Pelanggan dan Pelanggan resmi untuk menggunakan versi terbaru yang tersedia secara komersil, merilis, atau memperbaharui, apapun agar tersedia.
 - (3) IBM menyediakan bantuan Pelanggan untuk i) instalasi pendek, rutin dan pertanyaan penggunaan (bagaimana untuk); ii) pertanyaan terkait kode (bersama-sama “Dukungan”) pelanggan. Dukungan tersebut untuk versi tertentu atau rilis sebuah Program IBM tersedia hanya hingga IBM atau pihak ketiga, sebagaimana berlaku, menarik Dukungan untuk versi atau rilis Program IBM tersebut. Ketika Dukungan ditarik, Pelanggan harus meningkatkan versi atau rilis yang didukung atas Program IBM tersebut agar dapat terus menerima Dukungan. Kebijakan “Siklus hidup Dukungan Perangkat Lunak” IBM tersedia di <http://www.ibm.com/software/info/supportlifecycle/> .
 - (4) IBM memberikan Dukungan melalui akses elektronik dan, jika tersedia, telepon, hanya untuk personil dukungan teknis sistem informasi (SI) Pelanggan selama jam bisnis normal (jam giliran kerja utama yang dikeluarkan) atas pusat dukungan IBM Pelanggan. (Bantuan ini tidak tersedia bagi pengguna akhir Pelanggan). IBM menyediakan Derajat 1 bantuan 24 jam sehari, setiap

hari dalam setahun. Konsultasikan Buku Manual Dukungan Perangkat Lunak IBM secara lebih rinci di <http://www.ibm.com/software/support> .

- (5) IBM dapat meminta Pelanggan mengijinkannya ke sistem akses jarak jauh Pelanggan untuk membantu Pelanggan dalam mengisolasi penyebab masalah perangkat lunak. Pelanggan tetap bertanggung jawab untuk sistem Perlindungan yang memadai Pelanggan dan semua data yang terdapat di dalamnya kapanpun IBM mengaksesnya dari jarak jauh atas ijin Pelanggan.
- d. Langganan dan Dukungan Perangkat lunak IBM tidak termasuk bantuan untuk 1) rancangan dan pengembangan aplikasi, 2) Penggunaan Pelanggan atas Program IBM selain dari lingkungan operasi mereka yang dinyatakan atau 3) kegagalan yang disebabkan oleh produk untuk apa IBM tidak bertanggung jawab berdasarkan Perjanjian.

UNTUK PENGGUNAAN YANG DIJINKAN DARI SETIAP PROGRAM IBM YANG DIINSTAL DAN DALAM LAYANAN PADA SITUS PELANGGAN, PELANGGAN MEMILIKI PILIHAN UNTUK MEMPERTAHKAN LANGGANAN DAN DUKUNGAN PERANGKAT LUNAK IBM UNTUK (a) SEMUA PENGGUNAAN YANG DIJINKAN ATAU (b) TIDAK ADA SATUPUN DARI PENGGUNAAN YANG DIJINKAN.

TIDAK ADA PILIHAN UNTUK MEMPERTAHKAN LANGGANAN PERANGKAT LUNAK IBM DAN CAKUPAN DUKUNGAN HANYA UNTUK BAGIAN PENGGUNAAN YANG DIJINKAN YANG DIINSTAL DAN DALAM LAYANAN UNTUK SEBUAH PROGRAM IBM PADA SITUS PELANGGAN.

PELANGGAN TIDAK BOLEH MENGGUNAKAN SEGALA KEUNTUNGAN LANGGANAN DAN DUKUNGAN PERANGKAT LUNAK IBM YANG DINYATAKAN DALAM SUB BAGIAN C BAGIAN INI 3.5.1, TERMASUK APLIKASI UNTUK PENGGUNAAN ATAS PERBAIKAN, PEMBAHARUAN, PROGRAM IBM MANAPUN YANG PELANGGAN BELUM MEMBAYARNYA SECARA PENUH ATAS LANGGANAN PERANGKAT LUNAK IBM DAN DUKUNGAN. JIKA PELANGGAN MENGGUNAKAN KEUNTUNGAN INI YANG BELUM MEREKA BAYAR PENUH, MAKA PELANGGAN SETUJU UNTUK MEMPEROLEH PEMULIHAN LANGGANAN DAN DUKUNGAN PERANGKAT LUNAK IBM YANG CUKUP UNTUK MENANGGUNG SEMUA PENGGUNAAN YANG TIDAK DIJINKAN ATAS KEUNTUNGAN TERSEBUT PADA HARGA YANG BARU BERLAKU KEMUDIAN.

3.5.2 Dukungan Terpilih

Program Terpilih yang memenuhi syarat untuk Dukungan Terpilih terdapat di <http://www.ibm.com/lotus/PASelectedSupportPrograms> .

Dukungan Terpilih dimulai pada tanggal pada saat IBM menerima pesanan untuk dukungan tersebut dari Pelanggan dan berakhir pada tanggal terakhir bulan yang bersangkutan pada tahun berikutnya, kecuali apabila IBM menerima pesanan dari Pelanggan pada tanggal pertama bulan kalender, di mana cakupan berakhir pada tanggal terakhir bulan kalender tepat sebelumnya pada tahun berikutnya.

Saat Dukungan Terpilih berlaku untuk Program terpilih:

- a. IBM akan menyediakan bagi Pelanggan perbaikan kerusakan Program Terpilih, jika ada, yang dikembangkannya.
- b. IBM menyediakan Pelanggan bantuan untuk 1) instalasi singkat, rutin Pelanggan dan pertanyaan penggunaan (bagaimana untuk); dan 2) pertanyaan terkait kode Pelanggan. Dukungan Terpilih untuk versi terkait atau rilis suatu Program tersedia hanya hingga IBM menarik Dukungan Terpilih untuk versi Program tersebut, rilis, atau modifikasi. Ketika Program Terpilih tersebut ditarik, Pelanggan harus meningkatkan versi atau rilis yang didukung dari Program tersebut agar dapat terus menerima dukungan. Kebijakan "Siklus hidup Dukungan Perangkat Lunak" tidak berlaku untuk Dukungan Terpilih.
- c. IBM dapat menyediakan bantuan bagi Pelanggan dalam merancang dan mengembangkan aplikasi berdasarkan tingkat langganan Pelanggan.
- d. IBM dapat menyediakan bantuan melalui akses elektronik dan, jika tersedia, telepon, tergantung pada lokasi Pelanggan dan tingkat langganan yang Pelanggan peroleh. Bantuan tersebut disediakan hanya bagi personil dukungan teknis sistem informasi (SI) Pelanggan selama jam bisnis normal (jam giliran kerja utama yang dikeluarkan) dari Pusat Dukungan IBM. Konsultasi Buku Manual Perangkat Lunak IBM untuk rincian yang berlaku atas Dukungan Terpilih di <http://www.ibm.com/software/support> .
- e. IBM dapat meminta Pelanggan mengijinkannya ke sistem akses jarak jauh Pelanggan untuk membantu Pelanggan dalam mengisolasi penyebab masalah perangkat lunak. Pelanggan tetap

bertanggung jawab untuk sistem Perlindungan yang memadai Pelanggan dan semua data yang terdapat di dalamnya kapanpun IBM mengaksesnya dari jarak jauh atas ijin Pelanggan.

IBM tidak menyediakan lisensi berdasarkan Perjanjian ini untuk Program Terpilih.

3.5.3 Data dan Basis Data Pelanggan

Untuk membantu Pelanggan dalam mengisolasi penyebab masalah dengan Program berdasarkan Langganan dan Dukungan Perangkat lunak IBM atau Dukungan Terpilih, IBM dapat meminta Pelanggan untuk 1) mengizinkan IBM untuk mengakses dari jarak jauh sistem Pelanggan atau 2) mengirim informasi Pelanggan atau data sistem ke IBM. IBM menggunakan informasi mengenai galat dan masalah untuk memperbaiki produk dan layanannya, dan membantu dengan ketentuannya terkait penawaran dukungan. Untuk tujuan ini, IBM dapat menggunakan entitas dan subkontraktor IBM (termasuk dalam satu atau lebih negara selain dari negara di mana Pelanggan berlokasi), dan Pelanggan mengizinkan IBM untuk melakukan hal tersebut.

Pelanggan tetap bertanggung jawab untuk 1) setiap data dan konten dari basis data yang Pelanggan sediakan untuk IBM, 2) pemilihan dan pelaksanaan prosedur mengendalikan akses terkait, keamanan, enkripsi, penggunaan, dan transmisi data (termasuk setiap data yang dapat diidentifikasi secara pribadi), dan 3) cadangan dan pemulihan setiap basis data dan setiap data yang disimpan. Pelanggan tidak akan mengirimkan atau menyediakan IBM akses ke informasi yang dapat diidentifikasi secara pribadi, baik dalam data maupun bentuk lain, dan akan bertanggung jawab untuk biaya yang seharusnya dan jumlah lain yang mungkin IBM kenakan terkait untuk informasi apapun yang atas kesalahan disediakan bagi IBM atau kerugian atau pengungkapan informasi tersebut oleh IBM, termasuk yang muncul dari tuntutan pihak ketiga.

3.5.4 Pembaharuan Tahunan Otomatis untuk Langganan dan Dukungan Perangkat Lunak dan Dukungan Terpilih

Pelanggan dapat memperbaharui langganan dan dukungan perangkat lunak Pelanggan yang habis masa berlakunya atau Dukungan Terpilih melalui ijin tertulis untuk memperbaharui (misalnya formulir pemesanan, surat pemesanan, pesanan pembelian), sebelum tanggal habis masa berlaku, sesuai dengan persyaratan Perjanjian ini.

JIKA IBM TIDAK MENERIMA WEWENANG TERSEBUT PADA TANGGAL HABIS MASA BERLAKU, LANGGANAN DAN DUKUNGAN PERANGKAT LUNAK SERTA DUKUNGAN TERPILIH YANG HABIS MASA BERLAKUNYA SECARA OTOMATIS DIPERBAHARUI HINGGA HARI JADI BERIKUTNYA BERDASARKAN PERSYARATAN PERJANJIAN INI DAN ATAS BIAYA PEMBAHARUAN YANG BARU KECUALI, SEBELUM TANGGAL HABIS MASA BERLAKU, IBM MENERIMA, SECARA LANGSUNG DARI PELANGGAN ATAU MELALUI PENGECEK PELANGGAN, SEBAGAIMANA BERLAKU, PEMBERITAHUAN TERTULIS PELANGGAN BAHWA PELANGGAN TIDAK MAU MEMPERBAHARUI. PELANGGAN SETUJU UNTUK MEMBAYAR BIAYA PEMBAHARUAN TERSEBUT.

Untuk memulihkan langganan perangkat lunak dan cakupan dukungan apapun, Pelanggan harus memperoleh Pemulihan Langganan dan Dukungan Perangkat lunak IBM atau Pemulihan Langganan dan Dukungan Perangkat lunak Pihak Ketiga, sebagaimana berlaku.

3.5.5 Penarikan Langganan dan Dukungan Perangkat lunak atau Dukungan Terpilih untuk Program Tertentu

Jika IBM atau pihak ketiga, sebagaimana berlaku, menarik Langganan dan Dukungan Perangkat lunak atau Dukungan Terpilih untuk suatu Program tertentu, Pelanggan memahami bahwa

- a. IBM tidak akan menyediakan pembaharuan Langganan dan Dukungan Perangkat lunak atau Dukungan terpilih untuk Program tersebut; dan
- b. Jika Pelanggan memperbaharui Langganan dan Dukungan Perangkat lunak IBM untuk lisensi Program IBM atau Dukungan Terpilih tersebut untuk lisensi Program Terpilih sebelum pemberitahuan penarikan, IBM dapat terus menyediakan Langganan dan Dukungan Perangkat lunak IBM atau Dukungan Terpilih bagi Pelanggan untuk lisensi Program tersebut hingga akhir dari jangka waktu saat ini atau Pelanggan dapat memperoleh pengembalian pembayaran prorata. Jika Pelanggan memperbaharui Langganan Perangkat Lunak Pihak Ketiga dan Dukungan untuk Program bukan IBM tersebut sebelum pemberitahuan, pihak ketiga dapat terus menyediakan Langganan Perangkat Lunak Pihak Ketiga dan Dukungan untuk Pelanggan untuk lisensi Bukan Program IBM tersebut hingga akhir jangka waktu saat ini. Jika pihak ketiga tidak melakukan hal tersebut, Pelanggan dapat memperoleh pengembalian dana prorata.

4. Peralatan

4.1 Peralatan Virtual

Pelanggan diberi lisensi untuk menggunakan Program tersebut sesuai dengan persyaratan Perjanjian ini.

4.2 Peralatan terdiri dari Program dan Komponen Mesin

IBM menyediakan Peralatan yang terdiri dari Komponen Program dan Komponen Mesin sebagai produk tunggal. Pelanggan tidak boleh menggunakan komponen dari Peralatan tersebut secara independen di mana hal tersebut merupakan bagian dari tujuan apapun.

4.3 Komponen Program

Pelanggan diberi lisensi untuk menggunakan Komponen Program sesuai dengan persyaratan Perjanjian ini, namun hanya Komponen Mesin yang disediakan oleh IBM atau pengecer resmi atau penggantinya apapun dari Komponen Mesin yang disediakan untuk Pelanggan oleh IBM atau pengecer resmi. Pelanggan tidak dapat memindahkan lisensinya untuk menggunakan Komponen Program kepada Usaha lain.

4.4 Komponen Mesin

4.4.1 Status Produksi

Setiap Komponen Mesin IBM diproduksi dari suku cadang yang baru atau bekas. Dalam beberapa kasus, sebuah Komponen Mesin IBM mungkin tidak baru dan mungkin sebelumnya telah diinstal. Bagaimanapun juga, syarat jaminan IBM yang berlaku yang dijelaskan dalam Pasal 2.3 berlaku.

4.4.2 Hak Milik dan Risiko Kerugian

Pada saat Pelanggan memperoleh Komponen Mesin secara langsung dari IBM, IBM memindahkan hak milik Komponen Mesin ke Pelanggan atau, jika berlaku, penyewa Pelanggan, atas pembayaran dari semua pembayaran jatuh tempo. Untuk fitur, konversi, atau jenis peningkatan lain yang diperoleh untuk Komponen Mesin, IBM berhak memindahkan hak milik hingga menerima pembayaran untuk semua jumlah jatuh tempo, sebagaimana berlaku, semua suku cadang yang dipindahkan, yang menjadi properti IBM.

Untuk setiap Komponen Mesin, IBM menanggung risiko kerugian atau kerusakan hingga waktu pengantarannya ke kurir yang ditugaskan IBM untuk pengiriman ke Pelanggan atau lokasi yang ditetapkan Pelanggan. Setelah itu, Pelanggan mengasumsikan risiko. Setiap Komponen Mesin akan ditanggung oleh asuransi, diatur dan dibayar untuk IBM untuk Pelanggan, mencakup jangka waktu hingga diantar ke Pelanggan dan lokasi yang ditetapkan Pelanggan. Untuk setiap kerugian atau kerusakan, Pelanggan harus i) melaporkan kerugian atau kerusakan secara tertulis kepada IBM dalam 10 hari bisnis dari pengiriman dan ii) mengikuti prosedur klaim yang berlaku.

4.4.3 Instalasi

a. Instalasi Komponen Mesin

- (1) Pelanggan setuju untuk menyediakan sebuah lingkungan yang memenuhi persyaratan untuk Komponen Mesin yang dinyatakan dalam dokumentasinya yang diterbitkan.
- (2) Pelanggan bertanggung jawab untuk menginstal Komponen Mesin pengatur Pelanggan dan Komponen Mesin bukan IBM sesuai dengan instruksi yang disediakan IBM atau pabrik Komponen Mesin.
- (3) Untuk Komponen Mesin di mana IBM bertanggung jawab untuk menginstal, IBM memiliki standar prosedur instalasi. IBM akan menyelesaikan prosedur ini sebelum menganggap sebuah Komponen Mesin (selain dari Komponen Mesin yang Pelanggan tunda instalasinya atau Komponen Mesin pengatur Pelanggan) terinstal. Untuk sebuah Komponen Mesin IBM di mana IBM bertanggung jawab untuk menginstal, jika Komponen Mesin IBM tidak tersedia bagi IBM untuk menginstalnya dalam enam bulan pengiriman, instalasi akan dikenakan biaya instalasi.

b. Biaya Teknis dan Peningkatan

- (1) IBM menjual Peningkatan untuk instalasi Komponen Mesin, dan dalam keadaan tertentu, hanya instalasi pada Komponen Mesin bernomor seri yang ditetapkan. Dalam 30 hari pengiriman suatu Peningkatan, Pelanggan setuju untuk menginstal Peningkatan tersebut atau, jika IBM bertanggung jawab untuk instalasi, untuk mengizinkan IBM untuk menginstal Peningkatan tersebut. Pesanan Peningkatan tertentu dapat diakhiri atas kebijakan IBM jika tidak tersedia bagi IBM untuk menginstalnya dalam 30 hari pengiriman, pada kasus tersebut Pelanggan harus

mengembalikan Peningkatan tersebut atas biaya ditanggung oleh Pelanggan. Dalam semua kasus, jika Peningkatan tidak tersedia bagi IBM untuk menginstal dalam enam bulan dari tanggal IBM mengirimkan Peningkatan tersebut, instalasi akan dikenakan biaya instalasi.

- (2) Pelanggan setuju untuk mengizinkan IBM menginstal perubahan rekayasa wajib (seperti yang dipersyaratkan untuk keselamatan) pada Komponen Mesin dalam 30 hari atas pemberitahuan IBM kepada Pelanggan kecuali dalam hal lain disepakati oleh para pihak.

Banyak Peningkatan dan Perubahan Rekayasa memerlukan penghilangan suku cadang dan pemindahan kepemilikan dan kepemilikan atas suku cadang yang dihilangkan tersebut kepada IBM. Pelanggan bertanggung jawab untuk pengembalian semua suku cadang yang dihilangkan kepada IBM pada saat instalasi Peningkatan atau Perubahan Rekayasa. Sebagaimana berlaku, Pelanggan menyatakan bahwa Pelanggan memiliki izin dari pemilik dan pemegang hak gadai untuk i) menginstal Peningkatan dan Perubahan Rekayasa dan ii) memindahkan kepemilikan dan kepemilikan suku cadang yang dihilangkan kepada IBM. Pelanggan lebih lanjut menyatakan bahwa semua suku cadang yang dihilangkan adalah asli, tidak berubah, dan dalam susunan kerja yang baik. Sebuah suku cadang yang menggantikan suku cadang yang dihilangkan akan mengasumsikan jaminan atau status layanan pemeliharaan dari bagian yang digantikan.

4.4.4 Komponen Kode Mesin

Sebuah Komponen Kode Mesin diberi lisensi berdasarkan syarat dan batasan perjanjian lisensi Kode Mesin (misalnya, Perjanjian Lisensi IBM untuk Kode Mesin, Perjanjian IBM untuk Kode Internal Berlisensi, atau yang serupa) disediakan dengan Komponen Kode Mesin. Pelanggan menerima persyaratan Perjanjian ini termasuk penerimaan akan perjanjian lisensi Kode Mesin IBM, versi saat ini yang tersedia pada URL berikut: http://www.ibm.com/servers/support/machine_warranties/support_by_product.html atau dengan menghubungi perwakilan IBM. Perjanjian lisensi Kode Mesin dapat diubah oleh IBM dari waktu ke waktu. Persyaratan lisensi yang diubah berikut hanya akan berlaku untuk Komponen Kode Mesin yang disediakan setelah jangka waktu yang diubah tersebut berlaku.

Komponen Kode Mesin hanya diberi lisensi untuk penggunaan untuk mengadakan sebuah Komponen Mesin a Pelanggan setuju untuk menggunakan Komponen Kode Mesin hanya seperti yang dinyatakan dalam Perjanjian ini dan sejauh yang diizinkan atau dilarang pada perjanjian lisensinya yang berlaku. Tanpa membatasi larangan tambahan dalam lisensi yang berlaku, Pelanggan tidak dapat

- a. Dalam keadaan lain menyalin, memamerkan, memindahkan, mengadaptasi, memodifikasi, atau mendistribusikan (secara elektronik atau yang lainnya) Komponen Kode Mesin, kecuali seperti yang diizinkan IBM dalam dokumentasi pengguna Komponen Mesin atau secara tertulis kepada Pelanggan;
- b. Memasang balik, mengkompilasi balik, jika menerjemahkan, atau rekayasa balik Komponen Kode Mesin kecuali secara tegas diizinkan oleh hukum yang berlaku tanpa kemungkinan pembebasan kontrak;
- c. Sublisensi atau menetapkan lisensi untuk Komponen Kode Mesin; atau
- d. Menyewakan Komponen Kode Mesin atau salinannya.

International Business Machines Corporation (Korporasi Mesin Bisnis Internasional), salah satu anak perusahaannya, atau pihak ketiga memiliki Komponen Kode Mesin termasuk semua hak cipta pada Komponen Kode Mesin dan semua salinan Komponen Kode Mesin (ini termasuk Komponen Kode Mesin, salinan Komponen Kode Mesin asli, dan salinan dari salinan). Komponen Kode Mesin dihak ciptakan dan dilisensikan (tidak dijual).

Hak milik tidak akan dipindahkan pada saat IBM menyediakan fitur, konversi, atau peningkatan yang terdiri semata-mata Komponen Kode Mesin.

Kapasitas Komponen Mesin tertentu dapat dibatasi dengan ukuran teknologi pada Komponen Kode Mesin. Pelanggan setuju untuk pelaksanaan IBM atas ukuran teknologi tersebut untuk membatasi kapasitas Komponen Mesin.

4.4.5 Pengantaran

Tanggal pengantaran untuk Peralatan dengan Komponen Mesin diperkirakan kecuali jika disetujui secara khusus dalam Dokumen Transaksi. Biaya Transportasi, jika berlaku, akan dinyatakan dalam Dokumen Transaksi.

5. Saas IBM

Pelanggan setuju bahwa IBM tidak menyediakannya dengan akses ke Internet agar dapat menggunakan SaaS IBM dan bahwa Pelanggan tetap bertanggung jawab untuk akses Internet.

Pelanggan mengakui bahwa Korporasi Mesin Bisnis Internasional dan anak perusahaannya (1) tidak mengendalikan pemindahan data melalui fasilitas telekomunikasi, termasuk Internet, dan (2) pada lingkungan Internet publik tidak dapat menjalankan kewajiban rahasia tertentu.

Pertukaran informasi rahasia yang dibuat berdasarkan perjanjian kerahasiaan secara terpisah dan yang ditandatangani, berdasarkan 1.12.5b Perjanjian ini tidak berlaku untuk Konten. IBM tidak memiliki kewajiban rahasia terkait Konten, tanpa mengindahkan persyaratan atas perjanjian rahasia terpisah manapun antara Pelanggan dan IBM.

5.1 Kepemilikan

IBM dan penyediaanya memiliki SaaS IBM. Pelanggan setuju bahwa hak milik terhadap, kepemilikan atas semua hak pada dan untuk mematenkan, hak cipta, merek dagang, dan semua hak kekayaan intelektual dalam SaaS IBM, dan salinan apapun atau bagian dari SaaS IBM akan tetap dengan IBM dan penyediaanya. IBM dapat mensubkontrak SaaS IBM, atau bagian daripadanya, termasuk dukungan teknis, untuk subkontraktor yang dipilih oleh IBM.

5.2 Hak Penggunaan Pelanggan

Pelanggan dapat menggunakan penawaran SaaS IBM sesuai dengan Syarat Penggunaannya, hingga tingkat penggunaan yang dinyatakan yang diizinkan dalam Bukti Hak Kepemilikan, dengan ketentuan bahwa:

- a. Pelanggan menerima Syarat Penggunaan tawaran SaaS IBM;
- b. Pelanggan memastikan bahwa siapapun yang menggunakan penawaran SaaS IBM tidak hanya atas nama Pelanggan dan menaati syarat dari Perjanjian ini dan Syarat Penggunaan yang Berlaku; dan
- c. Pelanggan tidak
 - (1) Menggunakan, menyalin, memodifikasi, atau membuat penawaran SaaS IBM tersedia, secara keseluruhan atau sebagian, kepada pihak ketiga kecuali secara tegas diizinkan dalam Perjanjian ini dan Syarat Penggunaan yang berlaku;
 - (2) Memasang balik, mengkompilasi balik, jika menerjemahkan, atau rekayasa balik penawaran SaaS IBM, kecuali secara tegas diizinkan oleh hukum yang berlaku tanpa kemungkinan pembebasan kontrak;
 - (3) Penggunaan komponen penawaran SaaS IBM, berkas, modul, konten audio-visual, atau material berlisensi terkait secara terpisah dari penawaran SaaS IBM;
 - (4) Menyewakan, mensublisensikan, atau mengontrakkan penawaran SaaS IBM;
 - (5) Menciptakan "tautan" Internet untuk atau dari penawaran SaaS IBM; atau
 - (6) "kerangka" atau "cermin" konten apapun yang membentuk bagian dari penawaran SaaS IBM, selain daripada intranet Pelanggan sendiri sehubungan dengan penggunaan Pelanggan yang diizinkan atas penawaran SaaS IBM.

5.3 Berlangganan SaaS IBM

5.3.1 Persyaratan untuk penawaran SaaS IBM tertentu

Persyaratan untuk penawaran SaaS IBM tertentu disediakan dalam Syarat Penggunaannya dan dapat termasuk tanpa batasan definisi, deskripsi langganan dan layanan, metrik biaya, dan batasan.

5.3.2 Periode Berlangganan SaaS IBM

Suatu Periode Berlangganan SaaS IBM dimulai pada tanggal di mana IBM memberitahukan Pelanggan bahwa Pelanggan memiliki akses untuk penawaran berlangganan. Tanggal berakhir Jangka Waktu Berlangganan dinyatakan dalam Dokumen Transaksi adalah pada tanggal terakhir dari suatu bulan.

Selama Periode Berlangganan SaaS IBM, Pelanggan dapat meningkatkan tingkat berlangganan Pelanggan atas penawaran SaaS IBM.

Pelanggan tidak boleh menurunkan tingkat berlangganan Pelanggan untuk penawaran SaaS IBM selama Periode Berlangganan namun dapat menurunkannya pada Periode Berlangganan berikutnya.

5.3.3 Pembaharuan Jangka Waktu Berlangganan SaaS IBM

Pelanggan dapat memperbaharui penawaran SaaS IBM pada akhir Periode Berlangganan, kecuali jika dinyatakan lain dalam Syarat Penggunaan penawaran. Beberapa penawaran SaaS IBM, seperti dinyatakan dalam Syarat Penggunaan penawaran SaaS IBM atau Dokumen Transaksi, secara otomatis memperbaharui pada akhir Jangka Waktu Berlangganan kecuali, sebelum akhir Jangka Waktu Berlangganan, IBM menerima, secara langsung atau melalui pengecer Pelanggan, sebagaimana berlaku, pemberitahuan tertulis Pelanggan untuk tidak memperbaharui.

5.4 Dukungan Teknis SaaS IBM

Selama Jangka Waktu Berlangganan SaaS IBM:

- a. IBM memberikan bantuan, sebagaimana ditentukan dalam ToU, untuk pertanyaan-pertanyaan yang dikhususkan untuk tawaran dan berorientasi pada tugas dari Pelanggan terkait dengan penggunaan SaaS IBM; dan
- b. Dukungan teknis SaaS IBM tersedia hanya untuk versi yang didukung baru-baru ini dari SaaS IBM, sistem operasi klien, peramban Internet, dan perangkat lunak. Dukungan teknis IBM tersedia selama jam bisnis normal (jam giliran kerja yang dikeluarkan) atas pusat dukungan SaaS IBM. Konsultasi Syarat Penggunaan untuk rincian yang berlaku untuk penawaran SaaS IBM.

5.5 Konten

IBM hanya menyediakan layanan untuk Konten. IBM bukan merupakan penerbit dari Konten yang ditransmisi dalam SaaS IBM.

Pelanggan memiliki tanggung jawab tunggal untuk hal-hal berikut:

- a. Memastikan SaaS IBM memadai untuk memuaskan setiap persyaratan Pelanggan;
- b. Semua Konten termasuk, namun tidak terbatas pada, pilihan, kreasi, rancangan, pemberian lisensi, instalasi, ketepatan, pemeliharaan, pengujian, cadangan dan dukungannya;
- c. memiliki semua pengesahan yang diperlukan untuk memperbolehkan IBM dan para subkontraktornya untuk menyelenggarakan, menyimpan, mencatat, menyalin, dan menampilkan Konten, dan Konsumen menyatakan bahwa pihaknya memiliki dan akan tetap memberlakukan, selama pihaknya menggunakan SaaS IBM, semua pengesahan dan persetujuan tersebut yang diperlukan untuk memberikan hak-hak ini kepada IBM dan para subkontraktornya, dan bahwa hak-hak tersebut diberikan tanpa adanya biaya yang dikenakan kepada IBM. Pelanggan menguasai semua hak, hak milik, dan kepentingan dalam dan untuk Kontennya; dan
- d. Pemilihan dan pelaksanaan prosedur dan kendali terkait akses, keamanan, enkripsi, penggunaan, transmisi, dan cadangan dan pemulihan Konten.

Pelanggan memberikan IBM dan subkontraktornya lisensi yang tidak eksklusif, tidak dapat dibatalkan, mendunia, bebas royalti, dibayar penuh, dapat dipindahkan, untuk menyelenggarakan, menyimpan, mencatat, menyalin, dan menampilkan Konten, semata-mata untuk tujuan penyediaan SaaS IBM.

5.6 Pengakhiran Saas IBM

IBM dapat menarik SaaS IBM secara keseluruhan dengan 12 bulan pemberitahuan tertulis kepada seluruh Pelanggan saat ini melalui surat atau surel/email.

Meskipun segala sesuatu dalam Perjanjian ini terjadi sebaliknya, jika IBM mengakhiri akses Pelanggan ke Saas IBM karena pelanggaran Pelanggan terhadap segala persyaratan yang diterapkan dalam Perjanjian ini, IBM tidak berkewajiban untuk memberi pengembalian atau kredit untuk bagian mana pun yang tidak digunakan dari SaaS IBM.

6. Syarat Khusus Tiap Negara

Untuk transaksi-transaksi yang dilakukan di negara-negara yang ditetapkan di bawah ini, syarat-syarat berikut ini menggantikan atau memodifikasi syarat-syarat yang dijadikan acuan dalam Bagian 1 sampai Bagian 5. Semua persyaratan pada Bagian 1 sampai Bagian 5 yang tidak diubah oleh amandemen-amandemen ini tetap tidak berubah dan tetap berlaku. Bagian 6 ini disusun sebagai berikut:

- Pasal 6.1 berisi amandemen-amandemen terhadap Pasal 1.15 (Cakupan Geografis dan Undang-undang yang Mengatur) untuk beberapa negara;
- Pasal 6.2 berisi amandemen-amandemen terhadap syarat-syarat Perjanjian lainnya untuk negara-negara Amerika;

- Pasal 6.3 berisi amandemen-amandemen terhadap syarat-syarat Perjanjian lainnya untuk negara-negara Asia Pasifik; dan
- Pasal 6.4 berisi amandemen-amandem terhadap syarat-syarat Perjanjian lainnya untuk negara-negara Eropa, Timur Tengah, dan Afrika.

6.1 Amandemen-amandemen terhadap Pasal 1.15 (Cakupan Geografis dan Undang-undang yang Mengatur) untuk beberapa negara

6.1.1 Cakupan Geografis

EUROPE, MIDDLE EAST, AND AFRICA

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

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

6.1.2 Undang-undang yang Berlaku

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

AMERICAS

- in **Canada**: the laws in the Province of Ontario;
- in **Mexico**: the federal laws of the Republic of Mexico;
- in the **United States, Anguilla, Antigua/Barbuda, Aruba, British Virgin Islands, Cayman Islands, Dominica, Grenada, Guyana, Saint Kitts and Nevis, Saint Lucia, Saint Maarten, and Saint Vincent and the Grenadines**: the laws of the State of New York, United States;
- in **Venezuela**: the laws of the Bolivarian Republic of Venezuela;

ASIA PACIFIC

- in **Cambodia and Laos**: the laws of the State of New York, United States;
- in **Australia**: the laws of the State or Territory in which the transaction is performed;
- in **Hong Kong SAR and Macau SAR**: the laws of Hong Kong Special Administrative Region (“SAR”);
- in **Taiwan**: the laws of Taiwan;

EUROPE, MIDDLE EAST, AND AFRICA

- in **Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan**: the laws of Austria;
- in **Algeria, Andorra, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis and Futuna**: the laws of France;
- in **Estonia, Latvia, and Lithuania**: the laws of Finland;
- in **Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe**: the laws of England; and
- in **South Africa, Namibia, Lesotho and Swaziland**: the laws of the Republic of South Africa.

6.1.3 Jurisdiction

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

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

AMERICAS

- a. in **Argentina**: the Ordinary Commercial Court of the city of Buenos Aires,
- b. in **Brazil**: the court of Rio de Janeiro, RJ;
- c. in **Chile**: the Civil Courts of Justice of Santiago;
- d. in **Colombia**: the judges and courts of general jurisdiction of Bogota, Colombia;
- e. in **Ecuador**: the civil judges of Quito for executory or summary proceedings (as applicable);
- f. in **Mexico**: the courts located in Mexico City, Federal District;
- g. in **Peru**: the judges and tribunals of the judicial district of Lima, Cercado;
- h. in **Uruguay**: the courts of the city of Montevideo;
- i. in **Venezuela**: the courts of the metropolitan area of the city of Caracas;

EUROPE, MIDDLE EAST, AND AFRICA

- j. in **Austria**: the court of law in Vienna, Austria (Inner-City);
- k. in **Algeria, Andorra, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, France, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Monaco, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis and Futuna**: the Commercial Court of Paris;
- l. in **Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe**: the English courts;
- m. in **South Africa, Namibia, Lesotho and Swaziland**: the High Court in Johannesburg;
- n. in **Greece**: the competent court of Athens;
- o. in **Israel**: the courts of Tel Aviv-Jaffa;
- p. in **Italy**: the courts of Milan;
- q. in **Portugal**: the courts of Lisbon;
- r. in **Spain**: the courts of Madrid; and
- s. in **Turkey**: the Istanbul Central Courts and Execution Directorates of Istanbul, the Republic of Turkey.

6.1.4 Arbitration

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

ASIA PACIFIC

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

The number of arbitrators will be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties will appoint a third arbitrator who will act as chairman of the proceedings. Vacancies in the post of chairman will be filled by the president of the SIAC. Other vacancies will be filled by the respective nominating party. Proceedings will continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator will be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings will be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

- b. in the People's Republic of China: In the event of a dispute, in case no settlement can be reached, the disputes will be submitted to China International Economic and Trade Arbitration Commission for arbitration according to the then effective rules of the said Arbitration Commission. The arbitration will take place in Beijing and be conducted in Chinese. The arbitration award will be final and binding on both parties. During the course of arbitration, this Agreement will continue to be performed except for the part that the parties are disputing and which is undergoing arbitration.
- c. di Indonesia: Masing-masing pihak akan memberikan kesempatan yang wajar kepada pihak lainnya untuk mematuhi sebelum pihaknya mengajukan tuntutan bahwa pihak lainnya belum memenuhi kewajiban-kewajibannya berdasarkan Perjanjian ini. Para pihak akan mengupayakan dengan niat baik untuk menyelesaikan segala perselisihan, ketidaksetujuan, atau tuntutan antara para pihak terkait Perjanjian ini. U Kecuali apabila diwajibkan lain oleh undang-undang yang berlaku tanpa adanya kemungkinan pelepasan atau batasan kontrak, i) tidak ada satu pihak pun yang akan mengambil tindakan hukum, tanpa memperhatikan bentuknya, yang timbul dari atau terkait dengan Perjanjian ini atau setiap transaksi berdasarkan Perjanjian ini dalam jangka waktu lebih dari dua tahun setelah timbulnya dasar tuntutan; dan ii) setelah batas waktu tersebut, setiap tindakan hukum yang timbul dari Perjanjian ini atau setiap transaksi berdasarkan Perjanjian ini dan semua hak masing-masing yang terkait dengan tindakan tersebut berakhir.

>Sengketa-sengketa yang timbul dari atau terkait dengan Perjanjian ini pada akhirnya akan diselesaikan melalui arbitrase yang akan diadakan di Jakarta, Indonesia sesuai dengan aturan Badan Arbitrase Nasional Indonesia ("BANI") yang berlaku pada saat itu. Putusan arbitrase akan bersifat final dan mengikat para pihak tanpa adanya banding dan akan dibuat secara tertulis serta mencantumkan temuan-temuan fakta dan kesimpulan undang-undang.

Arbiter akan berjumlah tiga orang, dengan masing-masing pihak dalam sengketa tersebut berhak menunjuk seorang arbiter. Kedua arbiter yang ditunjuk oleh para pihak akan menunjuk arbiter ketiga yang akan bertindak sebagai ketua proses hukum. Lowongan dalam jabatan ketua akan diisi oleh ketua BANI. Lowongan-lowongan lainnya akan diisi oleh masing-masing pihak yang mencalonkan. Proses-proses hukum akan berlanjut dari tahap proses-proses hukum sebelumnya pada saat terdapat lowongan.

Apabila salah satu pihak menolak atau dengan cara lain, tidak menunjuk arbiter dalam jangka waktu 30 hari sejak tanggal pada saat pihak lainnya menunjuk arbiternya, arbiter yang ditunjuknya pertama kali akan menjadi arbiter tunggal, dengan ketentuan bahwa arbiter tersebut ditunjuk dengan cara yang sah dan tepat.

Semua proses hukum akan dilaksanakan, termasuk semua dokumen yang disampaikan dalam proses-proses hukum tersebut akan dibuat, dalam bahasa Inggris dan/atau Indonesia.

EUROPE, MIDDLE EAST, AND AFRICA

- d. in Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan: All disputes arising out of this Agreement or related to its violation, termination or nullity will be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Center of the Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with these rules. The arbitration will be held in Vienna, Austria, and the official language of the proceedings will be English. The decision of the arbitrators will be final and binding upon both parties. Therefore, pursuant to paragraph 598 (2) of the Austrian Code of Civil Procedure, the parties expressly waive

the application of paragraph 595 (1) figure 7 of the Code. IBM may, however, institute proceedings in a competent court in the country of installation; and

- e. in Estonia, Latvia, and Lithuania: All disputes arising in connection with this Agreement will be finally settled in arbitration that will be held in Helsinki, Finland in accordance with the arbitration laws of Finland then in effect. Each party will appoint one arbitrator. The arbitrators will then jointly appoint the chairman. If arbitrators cannot agree on the chairman, then the Central Chamber of Commerce in Helsinki will appoint the chairman.

6.2 AMERICAS COUNTRY AMENDMENTS

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

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

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

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

3.3.1 Automatic Renewal of Fixed Term Licenses

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

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

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

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

1.6 Payment

The following replaces 1.6b:

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

1. As long as the country operates in a free currency exchange market, Customer and IBM agree that IBM will accept payment in the applicable country national currency calculated at the country official exchange rate published by the bank specified in a Transaction Document on the date payment is made.
2. If the government of a country establishes any restriction or limitation on its free currency exchange markets, Customer agrees to make payments to IBM in US dollars to a bank account in New York, NY, USA, designated by IBM in the Transaction Document, provided that such payment is not illegal under country law. If such method of payment is forbidden by country law, Customer agrees to pay the amount indicated in the Transaction Document in country national currency, calculated at the official exchange rate that is in use for the remittance of dividends and net earnings to foreign investors outside the country.

Customer agrees to pay accordingly, including any late payment fee. The late payment fee is calculated and payable in US dollars at two percent (or the maximum rate allowed by local law if such is less than two percent) of the delinquent amount due per each thirty day period during which any delinquent balance remains unpaid.

LATIN AMERICA

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

1.4 Penerimaan Syarat

The following replaces the first sentence:

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

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

3.3.1 Pembaharuan Otomatis untuk Lisensi Jangka Waktu Tetap dan 3.5.4 Pembaharuan Tahunan Otomatis untuk Langganan dan IBM Dukungan Perangkat Lunak dan Dukungan Terpilih

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

BRAZIL AND COLOMBIA

1.13 Pengakhiran Perjanjian

The following is added after the fourth paragraph:

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

ARGENTINA

1.4 Penerimaan Syarat

The following replaces the second sentence:

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

1.7 Taxes

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

BRAZIL

1.4 Penerimaan Syarat

The following replaces the second paragraph in this section:

Suatu Produk yang Memenuhi Syarat tunduk pada Perjanjian ini ketika IBM menerima pesanan Pelanggan dengan mengirimkan kepada Pelanggan suatu Dokumen Transaksi.

1.6 Payment

The following replaces 1.6b:

Amounts due are expressed in local currency.

Amounts are due upon receipt of invoice and payable in local currency as IBM specifies in a Transaction Document. Customer agrees to pay accordingly, including any late payment fee. Delinquent amounts are subject to monetary correction based on the inflation index called the "General Price Index" calculated by Getulio Vargas Foundation (IGP-M/FGV), plus interest at the rate of one percent per month, both calculated "pro rata die." The late payment fee is calculated against the resultant delinquent amount at the following rates:

1. two percent of the delinquent amount due per the first thirty day period during which any delinquent balance remains unpaid, plus
2. ten percent for each successive thirty day period during which any delinquent balance remains unpaid.

1.12.1 Notices and Communications

The following replaces 1.12.1:

Each of us may communicate with the other by electronic means and such communication is acceptable as a signed writing. Kode identifikasi (disebut "ID pengguna") yang terdapat dalam sebuah dokumen elektronik cukup untuk memverifikasi identitas pengirim dan keotentikan dokume;

1.8 Eligible Products

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

IBM dapat menambah atau menarik Produk-produk yang Memenuhi Syarat sewaktu-waktu. IBM's ability to increase such charges, rates, and minimums will be subject to the requirements of Brazilian law.

3.3.1 Pembaharuan Otomatis untuk Lisensi Jangka Waktu Tetap dan 3.5.4 Pembaharuan Tahunan Otomatis untuk Langganan dan IBM Dukungan Perangkat Lunak dan Dukungan Terpilih

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

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

3.5.4 Pembaharuan Tahunan Otomatis untuk IBM Langganan dan Dukungan Perangkat Lunak dan Dukungan Terpilih

The following is added to this section

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

COLOMBIA

1.7 Taxes

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

MEXICO

1.6 Payment

The following replaces 1.6b:

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

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

Customer agrees to pay accordingly, including any late payment fee. The late payment fee is calculated and payable in US dollars at two percent (or the maximum rate allowed by local law if such is less than two percent) of the delinquent amount due per each thirty day period during which any delinquent balance remains unpaid.

PERU

1.11 Limitation of Liability

The following is added to the end of this section:

Except as expressly required by law without the possibility of contractual waiver, Customer and IBM intend that the limitation of liability in this Limitation of Liability section applies to damages caused by all types of claims and causes of action. If any limitation on or exclusion from liability in this section is held by a court of competent jurisdiction to be unenforceable with respect to a particular claim or cause of action, the parties intend that it nonetheless apply to the maximum extent permitted by applicable law to all other claims and causes of action. In accordance with Article 1328 of the Peruvian Civil Code, the limitations and exclusions specified in this section will not apply to damages caused by IBM's willful misconduct ("dolo") or gross negligence ("culpa inexcusable").

NORTH AMERICA

CANADA

1.11 Limitation of Liability

1.11.1 Items for which IBM May be Liable

The following replaces the last sentence in this section 1.11.1:

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

1.4 General Principles of Our Relationship

1.12.3 Compliance with Laws

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

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

1.12.5 Other Principles of Our Relationship

The following replaces item 1.12.5e:

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

The following subsection is added:

1.14.6 Data Privacy

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

a. General

- (1) Each party is responsible for complying with any obligations applying to it under applicable Canadian data privacy laws and regulations ("Laws").
- (2) Neither party will request Personal Data beyond what is necessary to fulfill the purpose(s) for which it is requested. The purpose(s) for requesting Personal Data must be reasonable. Each party will agree in advance as to the type of Personal Data that is required to be made available.

b. Security Safeguards

- (1) Each party acknowledges that it is solely responsible for determining and communicating to the other the appropriate technological, physical, and organizational security measures required to protect Personal Data.
- (2) Each party will ensure that Personal Data is protected in accordance with the security safeguards communicated and agreed to by the other.
- (3) Each party will ensure that any third party to whom Personal Data is transferred is bound by the applicable terms of this section.
- (4) Additional or different services required to comply with the Laws will be deemed a request for new services.

c. Use

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

d. Access Requests

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

- (2) Each party agrees to reimburse the other for any reasonable charges incurred in providing each other assistance.
- (3) Each party agrees to amend Personal Data only upon receiving instructions to do so from the other party or its personnel.

e. Retention

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

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

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

UNITED STATES OF AMERICA

1.7 Taxes

The following is added at the end of this section

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

1.12 General Principles of Our Relationship

1.12.4 Dispute Resolution

The following is added to the end of this section:

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

1.12.5 Other Principles of Our Relationship

The following is added as 1.12.5.m:

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

3. Programs and Subscription and Support

The following sentence is added at the end of the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 3.5.4 Automatic Annual Renewal of Software Subscription and Support and Selected Support:

CUSTOMER MAY TERMINATE SOFTWARE SUBSCRIPTION AND SUPPORT FOR A PROGRAM OR SELECTED SUPPORT FOR A SELECTED PROGRAM LICENSE AT ANY TIME AFTER THE FIRST ANNIVERSARY ON ONE MONTH'S WRITTEN NOTICE, EITHER DIRECTLY TO IBM OR THROUGH CUSTOMER'S IBM RESELLER, AS APPLICABLE, IF IBM HAS NOT RECEIVED CUSTOMER'S WRITTEN AUTHORIZATION (e.g., order form, order letter, purchase order) TO RENEW CUSTOMER'S EXPIRING SOFTWARE SUBSCRIPTION AND SUPPORT OR SELECTED SUPPORT. IN SUCH EVENT, CUSTOMER MAY OBTAIN A PRORATED REFUND.

The following sentence is added at the end of the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 3.3.1 Automatic Renewal of Fixed Term Licenses:

CUSTOMER MAY TERMINATE A PROGRAM'S FIXED TERM LICENSE AT ANY TIME AFTER ITS INITIAL TERM ON ONE MONTH'S WRITTEN NOTICE, EITHER DIRECTLY TO IBM OR THROUGH CUSTOMER'S IBM RESELLER, AS APPLICABLE, IF IBM HAS NOT RECEIVED CUSTOMER'S WRITTEN AUTHORIZATION (e.g., order form, order letter, purchase order) TO RENEW CUSTOMER'S EXPIRING FIXED TERM LICENSE. IN SUCH EVENT, CUSTOMER MAY OBTAIN A PRORATED REFUND.

2.3 Extent of Warranty

The following is added as the first paragraph:

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

4.4 Machine Components

4.4.2 Title and Risk of Loss

The following replaces the first paragraph:

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

6.3 ASIA PACIFIC COUNTRY AMENDMENTS

AUSTRALIA

1.3 Definitions - Definition of "Personal Data"

The definition is amended and replaced with the following:

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

1.6 Payment

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

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

1.7 Taxes

The following paragraph replaces 1.7 in its entirety:

If any government or authority imposes a duty, tax (other than income tax), levy, or fee, on this Agreement or on the Eligible Product itself, that is not otherwise provided for in the amount payable, Customer agrees to pay it when IBM invoices Customer. If the rate of GST changes, IBM may adjust the charge or other amount payable to take into account that change from the date the change becomes effective.

1.10 Intellectual Property Protection

1.10.3 Claims for which IBM is Not Responsible

The following replaces the second from last sentence:

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

1.11 Limitation of Liability

The following paragraph is included at the end of 1.11.1:

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

(a) for services:

- (1) the supplying of the services again or
- (2) the payment of the cost of having the services supplied again; and

(b) for goods:

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

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

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

2.5 Extent of Warranty

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

The following paragraph is added after the paragraph that begins “These warranties are customer’s exclusive warranties..”

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

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

Unless otherwise specified in an Attachment or Transaction Document, IBM provides non-IBM Eligible Products, without warranties, conditions, or guarantees of any kind. Namun, produsen, pengembang, penyedia, atau penerbit yang bukan IBM dapat memberikan jaminan mereka sendiri kepada Pelanggan.

5.5 Content

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

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

NEW ZEALAND

1.3 Definitions - Definition of “Personal Data”

The definition is amended and replaced with the following:

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

1.6 Payment

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

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

1.7 Taxes

The following paragraph replaces 1.7 in its entirety:

If any government or authority imposes a duty, tax (other than income tax), levy, or fee, on this Agreement or on the Eligible Product itself, that is not otherwise provided for in the amount payable, Customer agrees to pay it when IBM invoices Customer. If the rate of GST changes, IBM may adjust the charge or other amount payable to take into account that change from the date the change becomes effective.

2.5 Extent of Warranty

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

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

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

Unless otherwise specified in an Attachment or Transaction Document, IBM provides non-IBM Eligible Products, without warranties, conditions, or guarantees of any kind. Namun, produsen, pengembang, penyedia, atau penerbit yang bukan IBM dapat memberikan jaminan mereka sendiri kepada Pelanggan.

BANGLADESH, BHUTAN, AND NEPAL 3.5 Programs and Subscription and Support

The following replaces the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 3.5.4 Automatic Annual Renewal of Software Subscription and Support and Selected Support:

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

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

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

HONG KONG SAR, MACAU SAR, AND TAIWAN

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

- 1) In **Hong Kong SAR**: "Hong Kong SAR"
- 2) In **Macau SAR**: "Macau SAR," except under section 1.15.2 (Governing Law) above; and
- 3) In **Taiwan**: "Taiwan."

INDIA

1.12.4 Dispute Resolution

The following replaces the final sentence in 1.12.4:

If no suit or other legal action is brought, within three years after the cause of action arose, in respect of any claim that either party may have against the other, the rights of the concerned party in respect of such claim will be forfeited and the other party will stand released from its obligations in respect of such claim.

INDONESIA

1.13 Pengakhiran Perjanjian

Ayat berikut ini ditambahkan:

Kedua belah pihak melepaskan ketentuan-ketentuan Pasal 1266 Kitab Undang-undang Hukum Perdata sepanjang pasal mewajibkan keputusan pengadilan tersebut untuk mengakhiri perjanjian yang menciptakan kewajiban-kewajiban bersama.

JAPAN

1.6 Payment

Add the following sentence:

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

1.12.4 Dispute Resolution

The following is inserted at the end of 1.12.4:

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

PEOPLE'S REPUBLIC OF CHINA

1.3 Definitions - Definition of "Date of Installation"

The following replaces the definition of Date of Installation:

Tanggal Instalasi —

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

SINGAPORE

1.12.5 Other Principles of Our Relationship

The following replaces the terms of 1.12.5e:

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

6.4 EUROPE, MIDDLE EAST, AFRICA COUNTRY AMENDMENTS

Amendments Applicable to Many Countries

EUROPE, MIDDLE EAST, AND AFRICA

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

1.11.1 Items for which IBM May be Liable

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

EUR 500,000 (five hundred thousand euro)

EU MEMBER STATES AND ADDITIONAL COUNTRIES SPECIFIED

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

1.12.5 Other Principles of Our Relationship

The following replaces 1.12.5d:

- a. Definitions – For the purposes of 1.12.5d, the following additional definitions shall apply:
 - (1) Business Contact Information – business-related contact information disclosed by Customer to IBM, including names, job titles, business addresses, telephone numbers and email addresses of Customer's employees and contractors.
 - (2) Business Contact Personnel – Customer employees and contractors to whom the Business Contact Information relates. For Austria, Italy, and Switzerland, Business Contact Information also includes information about Customer and its contractors as legal entities (for example, Customer's revenue data and other transactional information).

- (3) Data Protection Authority – the authority established by the Data Protection and Electronic Communications Legislation in the applicable country or, for non-EU countries, the authority responsible for supervising the protection of personal data in that country, or (for any of the foregoing) any duly appointed successor entity thereto.
 - (4) Data Protection & Electronic Communications Legislation – i) the applicable local legislation and regulations in force implementing the requirements of EU Directive 95/46/EC (on the protection of individuals with regard to the processing of personal data and on the free movement of such data) and of EU Directive 2002/58/EC (concerning the processing of personal data and the protection of privacy in the electronic communications sector); or ii) for non-EU countries, the legislation and/or regulations passed in the applicable country relating to the protection of personal data and the regulation of electronic communications involving personal data, including (for any of the foregoing) any statutory replacement or modification thereof.
 - (5) IBM Group – International Business Machines Corporation of Armonk, New York, USA, its subsidiaries, and their respective Business Partners and subcontractors.
- b. Customer authorises IBM:
- (1) to process and use Business Contact Information within IBM Group in support of Customer, including the provision of support services, and for the purpose of furthering the business relationship between Customer and IBM Group, including, without limitation, contacting Business Contact Personnel (by email or otherwise) and marketing IBM Group products and services (the “Specified Purpose”); and
 - (2) to disclose Business Contact Information to other members of IBM Group in pursuit of the Specified Purpose only.
- c. IBM agrees that all Business Contact Information will be processed in accordance with the Data Protection & Electronic Communications Legislation and will be used only for the Specified Purpose.
- d. To the extent required by the Data Protection & Electronic Communications Legislation, Customer represents that it has obtained (or will obtain) any consents from (and has issued (or will issue) any notices to the Business Contact Personnel as are necessary in order to enable IBM Group to process and use the Business Contact Information for the Specified Purpose.
- e. Customer authorizes IBM to transfer Business Contact Information outside the European Economic Area, provided that the transfer is made on contractual terms approved by the Data Protection Authority or the transfer is otherwise permitted under the Data Protection & Electronic Communications Legislation.

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

4.4.6 Disposal of Machines

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

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

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

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

- c. that IBM is not responsible for saving or protecting any funds, programs not provided by IBM with the original equipment, or any data contained in a WEEE that Customer returns to IBM; and
- d. that IBM may ship all or part of the WEEE or its software to other IBM or third party locations around the world to perform its responsibilities under this Agreement, and Customer authorizes IBM to do so.

WESTERN EUROPEAN COUNTRIES

2.3 Warranty for IBM Machine Components of IBM Appliances

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

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

EMEA-WIDE

1.6 Payment

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

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

If payment is not made within 30 days from the date of invoice, (or in the case of quarterly advance billing of recurring charges, within 60 days from the date of invoice), Customer may be subject to late payment charges.

The late payment charges are calculated as follows:

Belgium and Luxembourg:

Replace the first sentence in the second paragraph of the above EMEA-wide text with the following:

Any amounts not paid within the terms stated on the IBM invoice will be subject to a late payment fee that will be equal to 1% per period of 30 days, based on the outstanding balance VAT included, until paid in full. Late payment fees due will have to be paid at the end of each period of 30 days.

Denmark and Sweden:

Interest according to the Late Payment Interest Act apportioned to the number of days of delay.

Estonia, Latvia, and Lithuania:

2% per month apportioned to the number of days of delay.

Finland:

Interest according to the Act on interest rate apportioned to the number of days of delay.

France:

In compliance with article 441-6 of the Code of Commerce, a late payment fee is payable, without any need for IBM to issue a reminder, in respect of the period commencing on the day following the payment due date specified on IBM's invoice, and ending on the date when full payment of the invoiced amount is made; such late payment fee shall be calculated on the basis of a rate equal to the European Central Bank's rate for its most recent refinancing operation, plus 10 points.

Germany:

Late payment fees will be calculated according to the German statutory rate.

In the second paragraph of the above EMEA-wide text replace both usages of "date of invoice" with the following:

due date

Greece:

The following replaces the above EMEA-wide text:

Amounts are due and payable upon receipt of invoice. If payment is not made within 30 days from the date of invoice, Customer may be subject to late payment fees.

The late payment fees will be calculated, per day of actual delay, from the due date of the invoice, based on the maximum rate of late payment fee allowed by law.

Italy:

Replace the final paragraph of the above EMEA-wide text with the following:

The late payment charges will be calculated, per day of actual delay, based on the prime rate published by the Italian Banking Association ABI in effect on the last day of the month the payment has been received by IBM, increased by three points.

In case of no payment or partial payment and following a formal credit claim procedure or trial IBM might initiate, the late payment fee will be calculated from the due date of the invoice based on the prime rate published by the Italian Banking Association ABI in effect on the last day of the month the payment was due, increased by three points. IBM can transfer the credit to a factoring company; if IBM does so, it will advise Customer in writing.

Netherlands:

The following replaces the second and third sentences of the EMEA-wide text:

If payment is not made within 30 days from the date of invoice, Customer will be in default without the necessity of a default notice. In such case Customer will be subject to late payment fees of 1% per month.

Norway:

Interest according to the Late Payment Interest Act apportioned to the number of days of delay.

South Africa, Namibia, Lesotho, Swaziland:

Such charges accrue daily from the date payment must have been received by IBM, and will be equal to 2% (two percent) above the ruling prime rate (of a bank designated by IBM) on any outstanding payment.

Spain:

Such fees will be calculated applying 1% of the charges per month to the number of days of delay.

UK and Ireland:

Such charges will be calculated at a monthly rate of 2% of the invoice amount, or as permitted by applicable law.

UK, Ireland, South Africa, Namibia, Lesotho, Swaziland:

Add the following:

IBM's rights relating to late payment charges shall be in addition to any other right that IBM may have in the event that Customer fails to make any payment due to IBM under this Agreement.

IBM reserves the right to require payment in advance of delivery or other security for payment.

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

The following replaces the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 3.5.4 Automatic Annual Renewal of Software Subscription and Support and Selected Support:

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

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

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

AUSTRIA

1.6 Payment

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

Payment in full is due and payable without deduction upon receipt of invoice. Customer agrees to pay accordingly, including any late payment fees. If the invoice amount is not received on IBM's account within 30 days, upon due date, IBM may charge late payment fees at the rate indicated in the Transaction Document.

1.11 Limitation of Liability

The following sentence is added:

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

1.11.1 Items for which IBM May Be Liable

The following replaces the first sentence:

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

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

1.11.2 Items for which IBM Is Not Liable

The following replaces 1.11.2b:

indirect damages or consequential damages; or

2.5 Extent of Warranty

The following replaces the last paragraph

Warranty for non-IBM Eligible Products:

- (a) Warranty is provided for a period of twelve months, beginning at the date of delivery. Consumers are at least entitled to claim warranty defects within the limitation period provided by law.
- (b) IBM warrants that each non-IBM Eligible Product, when used in the specified operating environment, relates to its functions and conforms to its specifications. In case a non-IBM Eligible Product is delivered without specifications, IBM only warrants that the non-IBM Eligible Product information correctly describes the non-IBM Eligible Product, and that the non-IBM Eligible Product can be used according to the non-IBM Eligible Product information.
- (c) IBM does not warrant uninterrupted or error-free operation of a non-IBM Eligible Product or that IBM will correct all program defects. The Customer is responsible for the results of the use of a non-IBM Eligible Product. IBM tidak menjamin operasi tidak terinterupsi atau bebas galat dari Produk yang Memenuhi Syarat atau bahwa IBM akan memperbaiki semua.
- (d) At IBM's discretion, warranty may also be provided by the third party provider himself.
- (e) In the event that IBM is unable to remedy a warranty defect within a reasonable period of time - even after an appropriate grace period - the Customer may in respect of this defect (at his discretion) demand a reduction of price, or rescission of contract. In case of minor defects or deviations, the Customer shall not be entitled to demand a rescission of the contract.
- (f) In addition, the limitation of liability provision will apply.

- (g) Namun, produsen, pengembang, penyedia, atau penerbit yang bukan IBM dapat memberikan jaminan mereka sendiri kepada Pelanggan.

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

1.7 Taxes

Delete the last sentence:

Ini tidak termasuk pajak-pajak berdasarkan pendapatan bersih IBM.

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

1.7 Taxes

Delete 1.7.

EGYPT

1.12. General Principles of Our Relationship

Delete 1.12.1.

GERMANY

1.11. Batasan Kewajiban

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

- a. IBM will be liable without limit for 1) loss or damage caused by a breach of an express guarantee; 2) damages or losses resulting in bodily injury (including death); and 3) damages caused intentionally or by gross negligence.
- b. In the event of loss, damage and frustrated expenditures caused by slight negligence or in breach of essential contractual obligations, IBM will be liable, regardless of the basis on which Customer is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), per claim only up to the greater of 500,000 euro or the charges (if the Eligible Product is IBM SaaS or subject to Fixed Term charges, up to 12 months' charges) Customer paid for the Eligible Product that caused the loss or damage. A number of defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one default.
- c. In the event of loss, damage and frustrated expenditures caused by slight negligence, IBM will not be liable for indirect or consequential damages, even if IBM was informed about the possibility of such loss or damage.
- d. In case of delay on IBM's part: 1) IBM will pay to Customer an amount not exceeding the loss or damage caused by IBM's delay and 2) IBM will be liable only in respect of the resulting damages that Customer suffers, subject to the provisions of Items a and b above.

1.12.4. Resolusi Perselisihan

The following replaces the third sentence of 1.12.4:

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

1.12.5 Other Principles of Relationship

The following replaces 1.12.5e:

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

2.2 Warranty for IBM Software Subscription and Support and Selected Support

The following replaces 2.2

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

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

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

2.3 Warranty for IBM Machine Components of IBM Appliances

The following replaces 2.3:

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

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

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

2.5 Extent of Warranty

The second paragraph is deleted.

The following replaces the last paragraph:

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

4.4.6 Disposal of Machines

The following terms are added as a new section 4.4.6:

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

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

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

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

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

- a. Customer is responsible to remove all funds, if any, from WEEE returned to IBM, and to securely erase any data that Customer considers sensitive (including personal data), existing in/on waste machines (e.g. hard disk, storage devices, memory chips, etc.), before making them available for collection by IBM or its designated assignee. In the event that Customer is unable to comply with this obligation due to technical reasons, Customer will inform IBM thereof in writing. In this case, IBM shall be entitled to delete all data stored in/on the waste machines, as instructed and requested by Customer and according to the "IBM Supplementary Terms and Conditions for Processing of Customer Data by Order according to § 11 BDSG";
- b. IBM is not responsible for saving or protecting any funds, programs not provided by IBM with the original equipment, or any data contained in a WEEE that Customer returns to IBM; and

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

NETHERLANDS

1.6. Pembayaran

Add the following paragraphs to 1.6b:

We may apply Customer's payment to Customer's other outstanding invoices.

Our rights relating to late payment charges shall be in addition to any other right that we may have in the event that Customer fails to make any payment due to us under this Agreement.

We reserve the right to also base our decision on the conclusion of an agreement with Customer on Customer's solvency and to require payment in advance of delivery or other security for payment.

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

Replace 1.7 with the following:

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

SOUTH AFRICA, NAMIBIA, LESOTHO, SWAZILAND

1.6 Payment

Add the following additional sentence:

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

SWITZERLAND

1.3 Definitions - Definition of "Non-IBM Program"

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

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

1.12. General Principles of Our Relationship

Delete 1.12.1.

TURKEY

1.6 Payment

The following replaces 1.6b

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

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

Add the following to the end of this section:

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

IRELAND AND UNITED KINGDOM

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

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

1.11 Limitation of Liability

1.11.1 Items for Which IBM May Be Liable

The following replaces the first paragraph of the Subsection:

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

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

1.11.2 Items for Which IBM is Not Liable

The following replaces Items 1.11.2b and 1.11.2c:

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

International Passport Advantage Express Agreement

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

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

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

1. General

1.1 Agreement Structure

This Agreement is organized in six Parts:

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

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

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

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

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

Part 6 – Country-unique Terms.

1.2 Attachments and Transaction Documents

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

1.3 Definitions

Anniversary – the first day of the month that follows the anniversary of the Effective Date, unless the Effective Date is the first day of a month, in which event the anniversary of the Effective Date is the Anniversary.

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

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

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

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

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

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

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

Date of Installation –

- a. for a Customer-set-up Machine Component, the date on Customer’s purchase invoice or sales receipt for the Appliance is the Date of Installation, unless IBM or Customer’s IBM reseller informs Customer otherwise.
- b. for an IBM Machine Component that IBM is responsible for installing, the business day after the day IBM installs it or, if Customer defers installation, makes it available to Customer for subsequent installation by IBM;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Processor Socket – Electronic circuitry that accepts a Processor Chip.

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

Program – the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, 3) audio-visual content (such as images, text, recordings, or pictures), 4) related licensed materials, and 5) license use documents or keys, and documentation.

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

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

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

Selected Support – Support for specified Selected Programs.

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

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

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

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

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

Term – the period that begins either on the date IBM accepts Customer's initial order (in the case of the initial Term) or on the Anniversary (in the case of subsequent Terms), and ends on the day immediately prior to the next Anniversary.

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

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

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

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

1.4 Acceptance of Terms

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

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

1.5 Delivery

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

1.6 Payment

- a. When Customer acquires Eligible Products from a reseller, Customer pays reseller directly.
- b. When Customer acquires Eligible Products from IBM, Customer agrees to pay as IBM specifies in its invoice or equivalent document, including any late payment fee; and
- c. The amount payable for a Program license may either be a one-time charge or a charge for a Fixed Term, depending on the type of license.

1.7 Taxes

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

1.8 Eligible Products

IBM may add or withdraw Eligible Products at any time.

If IBM withdraws a Program or a version of a Program from marketing, Customer may not increase its level of use, beyond the authorizations already acquired, on or after the effective date of withdrawal without IBM's prior written consent, which IBM will not unreasonably withhold.

1.9 IBM Business Partners and Resellers

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

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

1.10 Intellectual Property Protection

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

1.10.1 Third Party Claims

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

- a. promptly notifies IBM in writing of the claim;
- b. allows IBM to control, and cooperate with IBM in, the defense and any related settlement negotiations; and
- c. is and remains in compliance with the Product's license and other terms and Customer's obligations under Remedies below.

1.10.2 Remedies

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

1.10.3 Claims for Which IBM is Not Responsible

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

- a. anything provided by Customer or a third party on Customer's behalf that is incorporated into a Product or IBM's compliance with any designs, specifications, or instructions provided by Customer or a third party on Customer's behalf;
- b. modification of a Product by Customer or a third party on Customer's behalf;
- c. a Product's use other than in accordance with its applicable licenses and restrictions or use of a non-current version or release of a Product, when a claim could have been avoided or the risk of a claim reduced by using the current version or release;
- d. the combination, operation, or use of the Product with any program, hardware device, data, apparatus, method, or process;
- e. the distribution, operation, or use of the Product outside Customer's Enterprise or for the benefit of any third party; or
- f. Separately Licensed Code, if any, as identified in the LI for the Product.

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

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

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

1.11 Limitation of Liability

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

1.11.1 Items for Which IBM May Be Liable

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

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

1.11.2 Items for Which IBM Is Not Liable

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

- a. LOSS OF, OR DAMAGE TO, DATA;**
- b. SPECIAL, INCIDENTAL, EXEMPLARY, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR**
- c. LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**

1.12 General Principles of Our Relationship

1.12.1 Notices and Communications

To the extent permissible under applicable law, the parties consent to the use of electronic means and facsimile transmissions to send and receive communications in connection with our business relationship arising out of this Agreement, and such communications are acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity.

1.12.2 Assignment and Resale

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other. Any attempt to assign without consent is void. The assignment of this Agreement, in whole or in part, within the Enterprise of which either party is a part or to a successor organization by merger or acquisition does not require the consent of the other. IBM is also permitted to assign its rights to payments without obtaining Customer's consent. It is not considered an assignment for IBM to divest a portion of its business in a manner that similarly affects all of its customers.

Customer agrees that Eligible Products are for use within Customer's Enterprise only and may not be resold, rented, leased, or transferred to third parties. Any attempt to do so in violation of these provisions is void.

1.12.3 Compliance with Laws

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

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

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

1.12.4 Dispute Resolution

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

1.12.5 Other Principles of Our Relationship

- a. Neither party grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent.
- b. The exchange of any confidential information will be made under a separate, signed confidentiality agreement. However, to the extent confidential information is exchanged in connection with any Eligible Product under this Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this Agreement.
- c. This Agreement and any transaction under it do not create an agency, joint venture, or partnership between Customer and IBM. Each party is free to enter into similar agreements with others to develop, acquire, or provide competitive products and services.
- d. Customer authorizes International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors, IBM Business Partners, and resellers) to store and use Customer's business contact information wherever they do business, in connection with IBM Eligible Products or in furtherance of IBM's business relationship with Customer.
- e. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is IBM responsible for any third party claims against Customer except as permitted in Section 1.11 (Limitation of Liability) above for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable to that third party.
- f. Customer is responsible for selecting the Eligible Products that meet its needs and for the results obtained from the use of the Eligible Products, including Customer's decision to implement any recommendation concerning Customer's business practices and operations.
- g. Eligible Products may not be used to provide commercial hosting or other commercial information technology services to third parties.
- h. Where approval, acceptance, consent, or similar action by either party is required under this Agreement, such action will not be unreasonably delayed or withheld.
- i. Neither party is responsible for failure to fulfill any non-monetary obligations due to events beyond its control.
- j. Customer agrees that their use of IBM SaaS will comply with the IBM acceptable use policy at <http://www.ibm.com/services/us/imc/html/aup.html> and applicable data protection laws.
- k. As reasonably required by IBM to fulfill its obligations under this Agreement, Customer agrees to provide IBM with sufficient and safe access (including remote access) to Customer's facilities, systems, information, personnel, and resources, all at no charge to IBM. IBM is not responsible for any delay in performing or failure to perform caused by Customer's delay in providing such access or performing other Customer responsibilities under this Agreement.
- l. In entering into this Agreement, including each Attachment, ToU, and Transaction Document, neither party is relying on any representation that is not specified in this Agreement, including without limitation any representations concerning: i) performance or function of any Eligible Product, other than as expressly warranted in this Agreement; ii) the experiences or recommendations of other parties; or iii) any results or savings that Customer may achieve.

1.13 Agreement Termination

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

Customer will be considered to have terminated this Agreement if it does not have software subscription and support in effect. Either of us may terminate this Agreement if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time to comply.

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

1.14 Compliance Verification

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

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

1.14.1 Verification Process

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

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

1.14.2 Resolution

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

1.15 Geographic Scope and Governing Law

1.15.1 Geographic Scope

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

1.15.2 Governing Law

The rights, duties, and obligations of each party are valid only in the country in which the transaction is performed or, if IBM agrees, the country where the Eligible Product is placed in productive use, except that all licenses are valid as specifically granted.

Both parties agree to the application of the laws of the country in which the transaction is performed to govern, interpret, and enforce all of Customer's and IBM's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

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

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

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

2. Warranties

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

2.1 Warranty for IBM Programs

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

2.2 Warranty for IBM Software Subscription and Support and Selected Support

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

2.3 Warranty for IBM Machine Components of IBM Appliances

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

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

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

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

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

2.4 Warranty for IBM SaaS

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

2.5 Extent of Warranty

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

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

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

Items Not Covered by Warranty

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

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

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

3. Programs and Subscription and Support

3.1 IBM Programs

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

3.1.1 Versions and Platforms:

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

3.1.2 IBM Trade-ups:

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

3.1.3 Competitive Trade-ups:

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

3.2 Programs in a Virtualization Environment

3.2.1 Authorizations

- a. A PoE must be acquired for the total number of PVUs associated with the Virtualization Capacity available to an Eligible Sub-Capacity Product.
- b. Prior to an increase in an Eligible Sub-Capacity Product's Virtualization Capacity, Customer must first acquire sufficient additional authorizations, including IBM Software Subscription and Support, if applicable, to cover that increase.
- c. IBM does not give credits or refunds for charges already due or paid if an Eligible Product's use falls below the authorized level of use.

3.2.2 IBM's Responsibilities

IBM will make available and authorize Customer to use:

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

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

3.2.3 Customer's Responsibilities under Sub-Capacity Licensing Terms

Customer agrees to:

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

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

- (1) when ILMT does not yet provide support for the Eligible Virtualization Environment
- (2) if Customer's Enterprise has fewer than 1,000 employees and contractors, Customer is not a Service Provider, and Customer has not contracted with a Service Provider to manage Customer's Eligible Virtualization Environment
- (3) if the total physical capacity of Customer's Enterprise servers with an Eligible Virtualization Environment, measured on a Full Capacity basis, but licensed using sub-capacity terms is less than 1,000 PVUs.
- (4) when Customer's servers with Eligible Sub-Capacity Products are licensed to the Full Capacity of the servers

For these exceptions, use of ILMT, while recommended, is not required for Sub-Capacity Licensing. In lieu of ILMT, Customer is required to manually manage and track Customer's Eligible Virtualization Environment, and manually prepare Audit Reports documenting the Virtualization Capacity by Eligible Sub-Capacity Product for Customer's Eligible Virtualization Environment during each calendar or fiscal quarter. These Audit Reports must contain the information listed in the example Audit Report available at

<http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> . These Audit Reports must be prepared as frequently as is required to maintain a history of increases to Virtualization Capacity, but not less often than once per quarter, and must be maintained for at least two years to demonstrate ongoing compliance with these Sub-Capacity Licensing terms;

- b. promptly install new versions, releases, modifications, or code corrections ("fixes") of the ILMT that IBM makes available. Customer must subscribe to Tivoli Support notifications via <http://www.ibm.com/support/mynotifications> in order to be notified when these become available;
- c. not alter, modify, omit, delete, or otherwise misrepresent by any means, directly or indirectly, the:
 - (1) ILMT audit records;
 - (2) ILMT, except for changes provided by IBM; or
 - (3) Audit Reports that Customer submits to IBM.
- d. generate, using ILMT or manually, Audit Reports at least each calendar or fiscal quarter and retain for a period of not less than two years the Audit Reports and make these reports available to IBM upon notice as specified in Section 1.14. Failure to generate Audit Reports or make Audit Reports available to IBM will result in charging for Eligible Sub-Capacity Products under Full Capacity terms;
- e. assign a person in Customer's organization with authority to manage and promptly resolve any questions on Audit Reports or inconsistencies between Audit Report contents, license entitlement, or ILMT configuration;
- f. promptly place an order with IBM or Customer's IBM reseller if Audit Reports reflect Eligible Sub-Capacity Product use in excess of Customer's authorized level. IBM Software Subscription and Support coverage will be determined to begin at the time Customer exceeded Customer's authorized level.

3.2.4 Additional Terms

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

3.3 Fixed Term Licensing

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

3.3.1 Automatic Renewal of Fixed Term Licenses

Customer may renew Customer's expiring Fixed Term License by written authorization to renew (e.g., order form, order letter, purchase order), prior to the expiration date, in accordance with the terms of this Agreement.

IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE, EXPIRING FIXED TERM LICENSES ARE AUTOMATICALLY RENEWED FOR THE SAME DURATION AS THE

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

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

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

3.3.2 Withdrawal of Fixed Term License for a particular Program

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

- a. Customer may not renew the Fixed Term License for that IBM Program; and
- b. if Customer renewed the Fixed Term License for that IBM Program prior to the notice of withdrawal, Customer may either (a) continue to use the Program under the Fixed Term License terms until the end of the then current Fixed Term or (b) obtain a prorated refund.

3.4 CEO Product Categories

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

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

A CEO User may use any or all of the Programs included in a chosen CEO Product Category. But all IBM Programs that are used for client access must be acquired from the same CEO Product Category as the server Program they access.

CEO Product Categories: Additions and Deletions

IBM may add Eligible Products to or delete Eligible Products from any CEO Product Category at any time. If IBM deletes an Eligible Product from a CEO Product Category, Customer may continue to use the deleted Eligible Product but Customer may not exceed the number of CEO Users enrolled prior to the deletion.

Increasing the number of CEO Users

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

Decreasing the number of CEO Users

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

3.5 Software Subscription and Support and Selected Support

3.5.1 Software Subscription and Support

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

- b. IBM Software Subscription and Support begins on the date of acquisition and ends on the last day of the corresponding month in the following year, unless the date of acquisition is the first day of the month, in which case coverage ends on the last day of the prior month in the following year.
- c. While IBM Software Subscription and Support is in effect for an IBM Program license:
 - (1) IBM will make available to Customer IBM Program defect corrections, restrictions, and bypasses, if any, that it develops.
 - (2) IBM will make available to Customer and authorize Customer to use the most current commercially available version, release, or update, should any be made available.
 - (3) IBM provides Customer assistance for Customer's i) routine, short duration installation and usage (how-to) questions; and ii) code-related questions (together "Support"). Such Support for a particular version or release of an IBM Program is available only until IBM or the third party, as applicable, withdraws Support for that IBM Program's version or release. When Support is withdrawn, Customer must upgrade to a supported version or release of the IBM Program in order to continue to receive Support. The IBM "Software Support Lifecycle" policy is available at <http://www.ibm.com/software/info/supportlifecycle/> .
 - (4) IBM provides Support via electronic access and, if available, telephone, only to Customer's information systems (IS) technical support personnel during the normal business hours (published prime shift hours) of Customer's IBM support center. (This assistance is not available to Customer's end users.) IBM provides Severity 1 assistance 24 hours a day, every day of the year. Consult the IBM Software Support Handbook for details at <http://www.ibm.com/software/support> .
 - (5) IBM may request that Customer allow it to remotely access Customer's system to assist Customer in isolating the software problem cause. Customer remains responsible for adequately protecting Customer's system and all data contained in it whenever IBM remotely accesses it with Customer's permission.
- d. IBM Software Subscription and Support does not include assistance for 1) the design and development of applications, 2) Customer's use of IBM Programs in other than their specified operating environment or 3) failures caused by products for which IBM is not responsible under this Agreement.

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

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

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

3.5.2 Selected Support

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

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

While Selected Support is in effect for a Selected Program:

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

- b. IBM provides Customer assistance for Customer's 1) routine, short duration installation and usage (how-to) questions; and 2) code related questions. Selected Support for a particular version or release of a Program is available only until IBM withdraws Selected Support for that Program's version, release, or modification. When such Selected Support is withdrawn, Customer must upgrade to a supported version or release of the Program in order to continue to receive such support. The IBM "Software Support Lifecycle" policy does not apply to Selected Support.
- c. IBM may provide Customer with assistance in designing and developing applications based on Customer's subscription level.
- d. IBM may provide assistance via electronic access and, if available, telephone, depending on Customer's location and the subscription level Customer acquires. Such assistance is provided only to Customer's information systems (IS) technical support personnel during the normal business hours (published prime shift hours) of Customer's IBM support center. Consult the IBM Software Support Handbook for details applicable to Selected Support at <http://www.ibm.com/software/support>.
- e. IBM may request that Customer allow it to remotely access Customer's system to assist Customer in isolating the software problem cause. Customer remains responsible for adequately protecting Customer's system and all data contained in it whenever IBM remotely accesses it with Customer's permission.

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

3.5.3 Customer Data and Databases

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

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

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

Customer may renew Customer's expiring software subscription and support or Selected Support by written authorization to renew (e.g., order form, order letter, purchase order), prior to the expiration date, in accordance with the terms of this Agreement.

IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE, EXPIRING SOFTWARE SUBSCRIPTION AND SUPPORT AND SELECTED SUPPORT ARE AUTOMATICALLY RENEWED TO THE NEXT ANNIVERSARY UNDER THE TERMS OF THIS AGREEMENT AND AT THE THEN CURRENT RENEWAL CHARGES UNLESS, PRIOR TO THE EXPIRATION DATE, IBM RECEIVES, EITHER DIRECTLY FROM CUSTOMER OR THROUGH CUSTOMER'S RESELLER, AS APPLICABLE, CUSTOMER'S WRITTEN NOTIFICATION THAT CUSTOMER DOES NOT WANT TO RENEW. CUSTOMER AGREES TO PAY SUCH RENEWAL CHARGES.

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

3.5.5 Withdrawal of Software Subscription and Support or Selected Support for a Particular Program

If IBM or the third party, as applicable, withdraws software subscription and support or Selected Support for a particular Program, Customer understands that

- a. IBM will not make software subscription and support renewal or Selected Support renewal available for that Program; and
- b. if Customer renewed IBM Software Subscription and Support for that IBM Program license or Selected Support for a Selected Program license prior to the notice of withdrawal, IBM may either

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

4. Appliances

4.1 Virtual Appliance

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

4.2 Appliances Comprising Both Program and Machine Components

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

4.3 Program Components

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

4.4 Machine Components

4.4.1 Production Status

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

4.4.2 Title and Risk of Loss

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

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

4.4.3 Installation

a. Machine Component Installation

- (1) Customer agrees to provide an environment meeting the requirements for the Machine Component as specified in its published documentation.
- (2) Customer is responsible for installing a Customer-set-up Machine Component and a non-IBM Machine Component according to instructions provided by IBM or the Machine Component's manufacturer.
- (3) For a Machine Component that IBM is responsible for installing, IBM has standard installation procedures. IBM will successfully complete these procedures before it considers a Machine Component (other than a Machine Component for which Customer defers installation or a Customer-set-up Machine Component) installed. For an IBM Machine Component that IBM is responsible to install, if the IBM Machine Component is not made available for IBM to install within six months from shipment, installation will be subject to an installation charge.

b. Upgrades and Engineering Changes

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

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

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

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

4.4.4 Machine Code Component

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

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

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

- a. otherwise copy, display, transfer, adapt, modify, or distribute (electronically or otherwise) the Machine Code Component, except as IBM may authorize in the Machine Component's user documentation or in writing to Customer;
- b. reverse assemble, reverse compile, otherwise translate, or reverse engineer the Machine Code Component unless expressly permitted by applicable law without the possibility of contractual waiver;
- c. sublicense or assign the license for the Machine Code Component; or
- d. lease the Machine Code Component or any copy of it.

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

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

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

4.4.5 Delivery

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

5. IBM SaaS

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

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

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

5.1 Ownership

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

5.2 Customer's Right to Use

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

- a. Customer accepts the Terms of Use of the IBM SaaS offering;
- b. Customer ensures that anyone who uses the IBM SaaS offering does so only on Customer's behalf and complies with the terms of this Agreement and the applicable Terms of Use; and
- c. Customer does not
 - (1) use, copy, modify, or make the IBM SaaS offering available, in whole or on part, to third parties except as expressly permitted in this Agreement and the applicable Terms of Use;
 - (2) reverse assemble, reverse compile, otherwise translate, or reverse engineer the IBM SaaS offering, unless expressly permitted by applicable law without the possibility of contractual waiver;
 - (3) use any of the IBM SaaS offering's components, files, modules, audio-visual content, or related licensed materials separately from that of the IBM SaaS offering;
 - (4) rent, sublicense, or lease the IBM SaaS offering;
 - (5) create Internet "links" to or from the IBM SaaS offering; or
 - (6) "frame" or "mirror" any content forming part of an IBM SaaS offering, other than on Customer's own intranets in connection with Customer's authorized use of the IBM SaaS offering.

5.3 Subscription to IBM SaaS

5.3.1 Terms for a Specific IBM SaaS Offering

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

5.3.2 IBM SaaS Subscription Period

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

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

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

5.3.3 IBM SaaS Subscription Period Renewal

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

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

5.4 IBM SaaS Technical Support

During an IBM SaaS Subscription Period:

- a. IBM provides assistance, as specified in the ToU, for Customer's offering-specific, task-oriented questions regarding the use of IBM SaaS; and
- b. IBM SaaS technical support is available only for the currently supported versions of IBM SaaS, client operating systems, Internet browsers, and software. IBM technical support is available during the normal business hours (published prime shift hours) of the IBM SaaS support center. Consult the Terms of Use for details applicable to a specific IBM SaaS offering.

5.5 Content

IBM provides only services for Content. IBM is not the publisher of Content transmitted within IBM SaaS. Customer has sole responsibility for the following:

- a. ensuring the adequacy of any IBM SaaS elements to satisfy any Customer requirements;
- b. all Content including, without limitation, its selection, creation, design, licensing, installation, accuracy, maintenance, testing, backup and support;
- c. having all necessary authorizations to allow IBM and its subcontractors to host, cache, record, copy, and display Content, and Customer represents that it has and will keep in effect during its use of IBM SaaS all such authorizations and approvals necessary to grant IBM and its subcontractors these rights, and that such rights are provided at no charge to IBM. Customer retains all right, title, and interest in and to its Content; and
- d. the selection and implementation of procedures and controls regarding access, security, encryption, use, transmission, and backup and recovery of Content.

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

5.6 Termination of IBM SaaS

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

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

6. Country-unique Terms

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

- Section 6.1 contains multiple country amendments to section 1.15 (Geographic Scope and Governing Law);
- Section 6.2 contains the Americas country amendments to other Agreement terms;
- Section 6.3 contains the Asia Pacific country amendments to other Agreement terms; and
- Section 6.4 contains the Europe, Middle East, and Africa country amendments to other Agreement terms.

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

6.1.1 Geographic Scope

EUROPE, MIDDLE EAST, AND AFRICA

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

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

6.1.2 Governing Law

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

AMERICAS

- a. in **Canada**: the laws in the Province of Ontario;
- b. in **Mexico**: the federal laws of the Republic of Mexico;
- c. in the **United States, Anguilla, Antigua/Barbuda, Aruba, British Virgin Islands, Cayman Islands, Dominica, Grenada, Guyana, Saint Kitts and Nevis, Saint Lucia, Saint Maarten, and Saint Vincent and the Grenadines**: the laws of the State of New York, United States;
- d. in **Venezuela**: the laws of the Bolivarian Republic of Venezuela;

ASIA PACIFIC

- e. in **Cambodia and Laos**: the laws of the State of New York, United States;
- f. in **Australia**: the laws of the State or Territory in which the transaction is performed;
- g. in **Hong Kong SAR and Macau SAR**: the laws of Hong Kong Special Administrative Region (“SAR”);
- h. in **Taiwan**: the laws of Taiwan;

EUROPE, MIDDLE EAST, AND AFRICA

- i. in **Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan**: the laws of Austria;
- j. in **Algeria, Andorra, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis and Futuna**: the laws of France;
- k. in **Estonia, Latvia, and Lithuania**: the laws of Finland;
- l. in **Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe**: the laws of England; and
- m. in **South Africa, Namibia, Lesotho and Swaziland**: the laws of the Republic of South Africa.

6.1.3 Jurisdiction

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

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

AMERICAS

- a. in **Argentina**: the Ordinary Commercial Court of the city of Buenos Aires,
- b. in **Brazil**: the court of Rio de Janeiro, RJ;
- c. in **Chile**: the Civil Courts of Justice of Santiago;
- d. in **Colombia**: the judges and courts of general jurisdiction of Bogota, Colombia;
- e. in **Ecuador**: the civil judges of Quito for executory or summary proceedings (as applicable);

- f. in **Mexico**: the courts located in Mexico City, Federal District;
- g. in **Peru**: the judges and tribunals of the judicial district of Lima, Cercado;
- h. in **Uruguay**: the courts of the city of Montevideo;
- i. in **Venezuela**: the courts of the metropolitan area of the city of Caracas;

EUROPE, MIDDLE EAST, AND AFRICA

- j. in **Austria**: the court of law in Vienna, Austria (Inner-City);
- k. in **Algeria, Andorra, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, France, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Monaco, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis and Futuna**: the Commercial Court of Paris;
- l. in **Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe**: the English courts;
- m. in **South Africa, Namibia, Lesotho and Swaziland**: the High Court in Johannesburg;
- n. in **Greece**: the competent court of Athens;
- o. in **Israel**: the courts of Tel Aviv-Jaffa;
- p. in **Italy**: the courts of Milan;
- q. in **Portugal**: the courts of Lisbon;
- r. in **Spain**: the courts of Madrid; and
- s. in **Turkey**: the Istanbul Central Courts and Execution Directorates of Istanbul, the Republic of Turkey.

6.1.4 Arbitration

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

ASIA PACIFIC

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

The number of arbitrators will be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties will appoint a third arbitrator who will act as chairman of the proceedings. Vacancies in the post of chairman will be filled by the president of the SIAC. Other vacancies will be filled by the respective nominating party. Proceedings will continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator will be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings will be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

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

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

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

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration that shall be held in Jakarta, Indonesia in accordance with the rules of Board of the Indonesian National Board of Arbitration (Badan Arbitrase Nasional Indonesia or "BANI") then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the chairman of the BANI. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English and/or Indonesian language.

EUROPE, MIDDLE EAST, AND AFRICA

- d. in Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan: All disputes arising out of this Agreement or related to its violation, termination or nullity will be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Center of the Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with these rules. The arbitration will be held in Vienna, Austria, and the official language of the proceedings will be English. The decision of the arbitrators will be final and binding upon both parties. Therefore, pursuant to paragraph 598 (2) of the Austrian Code of Civil Procedure, the parties expressly waive the application of paragraph 595 (1) figure 7 of the Code. IBM may, however, institute proceedings in a competent court in the country of installation; and
- e. in Estonia, Latvia, and Lithuania: All disputes arising in connection with this Agreement will be finally settled in arbitration that will be held in Helsinki, Finland in accordance with the arbitration laws of Finland then in effect. Each party will appoint one arbitrator. The arbitrators will then jointly appoint the chairman. If arbitrators cannot agree on the chairman, then the Central Chamber of Commerce in Helsinki will appoint the chairman.

6.2 AMERICAS COUNTRY AMENDMENTS

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

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

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

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

3.3.1 Automatic Renewal of Fixed Term Licenses

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

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

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

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

1.6 Payment

The following replaces 1.6b:

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

1. As long as the country operates in a free currency exchange market, Customer and IBM agree that IBM will accept payment in the applicable country national currency calculated at the country official exchange rate published by the bank specified in a Transaction Document on the date payment is made.
2. If the government of a country establishes any restriction or limitation on its free currency exchange markets, Customer agrees to make payments to IBM in US dollars to a bank account in New York, NY, USA, designated by IBM in the Transaction Document, provided that such payment is not illegal under country law. If such method of payment is forbidden by country law, Customer agrees to pay the amount indicated in the Transaction Document in country national currency, calculated at the official exchange rate that is in use for the remittance of dividends and net earnings to foreign investors outside the country.

Customer agrees to pay accordingly, including any late payment fee. The late payment fee is calculated and payable in US dollars at two percent (or the maximum rate allowed by local law if such is less than two percent) of the delinquent amount due per each thirty day period during which any delinquent balance remains unpaid.

LATIN AMERICA

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

1.4 Acceptance of Terms

The following replaces the first sentence:

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

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

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

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

BRAZIL AND COLOMBIA

1.13 Agreement Termination

The following is added after the fourth paragraph:

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

ARGENTINA

1.4 Acceptance of Terms

The following replaces the second sentence:

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

1.7 Taxes

Both IBM and the Customer will pay the stamp tax in equal amounts and when applicable Impuesto de Sellos).

BRAZIL

1.4 Acceptance of Terms

The following replaces the second paragraph in this section:

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

1.6 Payment

The following replaces 1.6b:

Amounts due are expressed in local currency.

Amounts are due upon receipt of invoice and payable in local currency as IBM specifies in a Transaction Document. Customer agrees to pay accordingly, including any late payment fee. Delinquent amounts are subject to monetary correction based on the inflation index called the "General Price Index" calculated by Getulio Vargas Foundation (IGP-M/FGV), plus interest at the rate of one percent per month, both calculated "pro rata die." The late payment fee is calculated against the resultant delinquent amount at the following rates:

1. two percent of the delinquent amount due per the first thirty day period during which any delinquent balance remains unpaid, plus
2. ten percent for each successive thirty day period during which any delinquent balance remains unpaid.

1.12.1 Notices and Communications

The following replaces 1.12.1:

Each of us may communicate with the other by electronic means and such communication is acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity;

1.8 Eligible Products

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

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

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

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

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

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

The following is added to this section

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

COLOMBIA

1.7 Taxes

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

MEXICO

1.6 Payment

The following replaces 1.6b:

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

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

Customer agrees to pay accordingly, including any late payment fee. The late payment fee is calculated and payable in US dollars at two percent (or the maximum rate allowed by local law if such is less than two percent) of the delinquent amount due per each thirty day period during which any delinquent balance remains unpaid.

PERU

1.11 Limitation of Liability

The following is added to the end of this section:

Except as expressly required by law without the possibility of contractual waiver, Customer and IBM intend that the limitation of liability in this Limitation of Liability section applies to damages caused by all types of claims and causes of action. If any limitation on or exclusion from liability in this section is held by a court of competent jurisdiction to be unenforceable with respect to a particular claim or cause of action, the parties intend that it nonetheless apply to the maximum extent permitted by applicable law to all other claims and causes of action. In accordance with Article 1328 of the Peruvian Civil Code, the limitations and exclusions specified in this section will not apply to damages caused by IBM's willful misconduct ("dolo") or gross negligence ("culpa inexcusable").

NORTH AMERICA

CANADA

1.11 Limitation of Liability

1.11.1 Items for which IBM May be Liable

The following replaces the last sentence in this section 1.11.1:

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

1.4 General Principles of Our Relationship

1.12.3 Compliance with Laws

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

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

1.12.5 Other Principles of Our Relationship

The following replaces item 1.12.5f:

No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is IBM responsible for any third party claims against Customer except or as permitted by the Limitation of Liability section above for bodily injury (including death) or physical harm to real or tangible personal property caused by IBM's negligence for which IBM is legally liable to that third party.

The following subsection is added:

1.14.6 Data Privacy

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

a. General

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

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

b. Security Safeguards

- (1) Each party acknowledges that it is solely responsible for determining and communicating to the other the appropriate technological, physical, and organizational security measures required to protect Personal Data.
- (2) Each party will ensure that Personal Data is protected in accordance with the security safeguards communicated and agreed to by the other.
- (3) Each party will ensure that any third party to whom Personal Data is transferred is bound by the applicable terms of this section.
- (4) Additional or different services required to comply with the Laws will be deemed a request for new services.

c. Use

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

d. Access Requests

- (1) Each party agrees to reasonably cooperate with the other in connection with requests to access or amend Personal Data.
- (2) Each party agrees to reimburse the other for any reasonable charges incurred in providing each other assistance.
- (3) Each party agrees to amend Personal Data only upon receiving instructions to do so from the other party or its personnel.

e. Retention

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

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

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

UNITED STATES OF AMERICA

1.7 Taxes

The following is added at the end of this section

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

1.12 General Principles of Our Relationship

1.12.4 Dispute Resolution

The following is added to the end of this section:

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

1.12.5 Other Principles of Our Relationship

The following is added as 1.12.5.m:

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

3. Programs and Subscription and Support

The following sentence is added at the end of the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 3.5.4 Automatic Annual Renewal of Software Subscription and Support and Selected Support:

CUSTOMER MAY TERMINATE SOFTWARE SUBSCRIPTION AND SUPPORT FOR A PROGRAM OR SELECTED SUPPORT FOR A SELECTED PROGRAM LICENSE AT ANY TIME AFTER THE FIRST ANNIVERSARY ON ONE MONTH'S WRITTEN NOTICE, EITHER DIRECTLY TO IBM OR THROUGH CUSTOMER'S IBM RESELLER, AS APPLICABLE, IF IBM HAS NOT RECEIVED CUSTOMER'S WRITTEN AUTHORIZATION (e.g., order form, order letter, purchase order) TO RENEW CUSTOMER'S EXPIRING SOFTWARE SUBSCRIPTION AND SUPPORT OR SELECTED SUPPORT. IN SUCH EVENT, CUSTOMER MAY OBTAIN A PRORATED REFUND.

The following sentence is added at the end of the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 3.3.1 Automatic Renewal of Fixed Term Licenses:

CUSTOMER MAY TERMINATE A PROGRAM'S FIXED TERM LICENSE AT ANY TIME AFTER ITS INITIAL TERM ON ONE MONTH'S WRITTEN NOTICE, EITHER DIRECTLY TO IBM OR THROUGH CUSTOMER'S IBM RESELLER, AS APPLICABLE, IF IBM HAS NOT RECEIVED CUSTOMER'S WRITTEN AUTHORIZATION (e.g., order form, order letter, purchase order) TO RENEW CUSTOMER'S EXPIRING FIXED TERM LICENSE. IN SUCH EVENT, CUSTOMER MAY OBTAIN A PRORATED REFUND.

2.3 Extent of Warranty

The following is added as the first paragraph:

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

4.4 Machine Components

4.4.2 Title and Risk of Loss

The following replaces the first paragraph:

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

6.3 ASIA PACIFIC COUNTRY AMENDMENTS

AUSTRALIA

1.3 Definitions - Definition of "Personal Data"

The definition is amended and replaced with the following:

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

1.6 Payment

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

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

1.7 Taxes

The following paragraph replaces 1.7 in its entirety:

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

adjust the charge or other amount payable to take into account that change from the date the change becomes effective.

1.10 Intellectual Property Protection

1.10.3 Claims for which IBM is Not Responsible

The following replaces the second from last sentence:

Subject to any rights Customer may have under the Trade Practices Act 1974, this Intellectual Property Protection section states IBM's entire obligation to Customer and Customer's exclusive remedy regarding any third party intellectual property claims.

1.11 Limitation of Liability

The following paragraph is included at the end of 1.11.1:

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

(a) for services:

- (1) the supplying of the services again or
- (2) the payment of the cost of having the services supplied again; and

(b) for goods:

- (1) the repair or replacement of the goods or the supply of equivalent goods; or
- (2) the payment of the cost of replacing the goods or having the goods repaired

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

2.5 Extent of Warranty

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

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

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

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

5.5 Content

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

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

NEW ZEALAND

1.3 Definitions - Definition of "Personal Data"

The definition is amended and replaced with the following:

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

and includes Personal Information as defined by the Privacy and Personal Information Protection Act.”

1.6 Payment

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

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

1.7 Taxes

The following paragraph replaces 1.7 in its entirety:

If any government or authority imposes a duty, tax (other than income tax), levy, or fee, on this Agreement or on the Eligible Product itself, that is not otherwise provided for in the amount payable, Customer agrees to pay it when IBM invoices Customer. If the rate of GST changes, IBM may adjust the charge or other amount payable to take into account that change from the date the change becomes effective.

2.5 Extent of Warranty

The following paragraph is added after the paragraph that begins “These warranties are customer’s exclusive warranties..”

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

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

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

BANGLADESH, BHUTAN, AND NEPAL 3.5 Programs and Subscription and Support

The following replaces the paragraph that begins “IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE” in 3.5.4 Automatic Annual Renewal of Software Subscription and Support and Selected Support:

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

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

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

HONG KONG SAR, MACAU SAR, AND TAIWAN

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

- 1) In **Hong Kong SAR**: “Hong Kong SAR“
- 2) In **Macau SAR**: “Macau SAR,” except under section 1.15.2 (Governing Law) above; and
- 3) In **Taiwan**: “Taiwan.”

INDIA

1.12.4 Dispute Resolution

The following replaces the final sentence in 1.12.4:

If no suit or other legal action is brought, within three years after the cause of action arose, in respect of any claim that either party may have against the other, the rights of the concerned party in respect of such claim will be forfeited and the other party will stand released from its obligations in respect of such claim.

INDONESIA

1.13 Agreement Termination

The following paragraph is added:

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

JAPAN

1.6 Payment

Add the following sentence:

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

1.12.4 Dispute Resolution

The following is inserted at the end of 1.12.4:

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

PEOPLE'S REPUBLIC OF CHINA

1.3 Definitions - Definition of "Date of Installation"

The following replaces the definition of Date of Installation:

Date of Installation —

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

SINGAPORE

1.12.5 Other Principles of Our Relationship

The following replaces the terms of 1.12.5e:

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

6.4 EUROPE, MIDDLE EAST, AFRICA COUNTRY AMENDMENTS

Amendments Applicable to Many Countries

EUROPE, MIDDLE EAST, AND AFRICA

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

1.11.1 Items for which IBM May be Liable

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

EUR 500,000 (five hundred thousand euro)

EU MEMBER STATES AND ADDITIONAL COUNTRIES SPECIFIED

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

1.12.5 Other Principles of Our Relationship

The following replaces 1.12.5d:

- a. Definitions – For the purposes of 1.12.5d, the following additional definitions shall apply:
 - (1) Business Contact Information – business-related contact information disclosed by Customer to IBM, including names, job titles, business addresses, telephone numbers and email addresses of Customer’s employees and contractors.
 - (2) Business Contact Personnel – Customer employees and contractors to whom the Business Contact Information relates. For Austria, Italy, and Switzerland, Business Contact Information also includes information about Customer and its contractors as legal entities (for example, Customer’s revenue data and other transactional information).
 - (3) Data Protection Authority – the authority established by the Data Protection and Electronic Communications Legislation in the applicable country or, for non-EU countries, the authority responsible for supervising the protection of personal data in that country, or (for any of the foregoing) any duly appointed successor entity thereto.
 - (4) Data Protection & Electronic Communications Legislation – i) the applicable local legislation and regulations in force implementing the requirements of EU Directive 95/46/EC (on the protection of individuals with regard to the processing of personal data and on the free movement of such data) and of EU Directive 2002/58/EC (concerning the processing of personal data and the protection of privacy in the electronic communications sector); or ii) for non-EU countries, the legislation and/or regulations passed in the applicable country relating to the protection of personal data and the regulation of electronic communications involving personal data, including (for any of the foregoing) any statutory replacement or modification thereof.
 - (5) IBM Group – International Business Machines Corporation of Armonk, New York, USA, its subsidiaries, and their respective Business Partners and subcontractors.
- b. Customer authorises IBM:
 - (1) to process and use Business Contact Information within IBM Group in support of Customer, including the provision of support services, and for the purpose of furthering the business relationship between Customer and IBM Group, including, without limitation, contacting Business Contact Personnel (by email or otherwise) and marketing IBM Group products and services (the “Specified Purpose”); and
 - (2) to disclose Business Contact Information to other members of IBM Group in pursuit of the Specified Purpose only.
- c. IBM agrees that all Business Contact Information will be processed in accordance with the Data Protection & Electronic Communications Legislation and will be used only for the Specified Purpose.
- d. To the extent required by the Data Protection & Electronic Communications Legislation, Customer represents that it has obtained (or will obtain) any consents from (and has issued (or will issue) any notices to the Business Contact Personnel as are necessary in order to enable IBM Group to process and use the Business Contact Information for the Specified Purpose.
- e. Customer authorizes IBM to transfer Business Contact Information outside the European Economic Area, provided that the transfer is made on contractual terms approved by the Data Protection Authority or the transfer is otherwise permitted under the Data Protection & Electronic Communications Legislation.

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

4.4.6 Disposal of Machines

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

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

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

- a. to securely erase from any WEEE all programs not provided by IBM with the original equipment and data, including without limitation, the following: i) information about identified or identifiable individuals or legal entities ("Personal Data"); and ii) Customer's confidential or proprietary information and other data. If removing or deleting Personal Data is not possible, Customer agrees to transform such information (e.g., by making it anonymous) so that it no longer qualifies as Personal Data under applicable law;
- b. to remove all funds, if any, from WEEE, returned to IBM;
- c. that IBM is not responsible for saving or protecting any funds, programs not provided by IBM with the original equipment, or any data contained in a WEEE that Customer returns to IBM; and
- d. that IBM may ship all or part of the WEEE or its software to other IBM or third party locations around the world to perform its responsibilities under this Agreement, and Customer authorizes IBM to do so.

WESTERN EUROPEAN COUNTRIES

2.3 Warranty for IBM Machine Components of IBM Appliances

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

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

EMEA-WIDE

1.6 Payment

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

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

If payment is not made within 30 days from the date of invoice, (or in the case of quarterly advance billing of recurring charges, within 60 days from the date of invoice), Customer may be subject to late payment charges.

The late payment charges are calculated as follows:

Belgium and Luxembourg:

Replace the first sentence in the second paragraph of the above EMEA-wide text with the following:

Any amounts not paid within the terms stated on the IBM invoice will be subject to a late payment fee that will be equal to 1% per period of 30 days, based on the outstanding balance VAT included, until paid in full. Late payment fees due will have to be paid at the end of each period of 30 days.

Denmark and Sweden:

Interest according to the Late Payment Interest Act apportioned to the number of days of delay.

Estonia, Latvia, and Lithuania:

2% per month apportioned to the number of days of delay.

Finland:

Interest according to the Act on interest rate apportioned to the number of days of delay.

France:

In compliance with article 441-6 of the Code of Commerce, a late payment fee is payable, without any need for IBM to issue a reminder, in respect of the period commencing on the day following the payment due date specified on IBM's invoice, and ending on the date when full payment of the invoiced amount is made; such late payment fee shall be calculated on the basis of a rate equal to the European Central Bank's rate for its most recent refinancing operation, plus 10 points.

Germany:

Late payment fees will be calculated according to the German statutory rate.

In the second paragraph of the above EMEA-wide text replace both usages of "date of invoice" with the following:

due date

Greece:

The following replaces the above EMEA-wide text:

Amounts are due and payable upon receipt of invoice. If payment is not made within 30 days from the date of invoice, Customer may be subject to late payment fees.

The late payment fees will be calculated, per day of actual delay, from the due date of the invoice, based on the maximum rate of late payment fee allowed by law.

Italy:

Replace the final paragraph of the above EMEA-wide text with the following:

The late payment charges will be calculated, per day of actual delay, based on the prime rate published by the Italian Banking Association ABI in effect on the last day of the month the payment has been received by IBM, increased by three points.

In case of no payment or partial payment and following a formal credit claim procedure or trial IBM might initiate, the late payment fee will be calculated from the due date of the invoice based on the prime rate published by the Italian Banking Association ABI in effect on the last day of the month the payment was due, increased by three points. IBM can transfer the credit to a factoring company; if IBM does so, it will advise Customer in writing.

Netherlands:

The following replaces the second and third sentences of the EMEA-wide text:

If payment is not made within 30 days from the date of invoice, Customer will be in default without the necessity of a default notice. In such case Customer will be subject to late payment fees of 1% per month.

Norway:

Interest according to the Late Payment Interest Act apportioned to the number of days of delay.

South Africa, Namibia, Lesotho, Swaziland:

Such charges accrue daily from the date payment must have been received by IBM, and will be equal to 2% (two percent) above the ruling prime rate (of a bank designated by IBM) on any outstanding payment.

Spain:

Such fees will be calculated applying 1% of the charges per month to the number of days of delay.

UK and Ireland:

Such charges will be calculated at a monthly rate of 2% of the invoice amount, or as permitted by applicable law.

UK, Ireland, South Africa, Namibia, Lesotho, Swaziland:

Add the following:

IBM's rights relating to late payment charges shall be in addition to any other right that IBM may have in the event that Customer fails to make any payment due to IBM under this Agreement.

IBM reserves the right to require payment in advance of delivery or other security for payment.

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

The following replaces the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 3.5.4 Automatic Annual Renewal of Software Subscription and Support and Selected Support:

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

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

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

AUSTRIA

1.6 Payment

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

Payment in full is due and payable without deduction upon receipt of invoice. Customer agrees to pay accordingly, including any late payment fees. If the invoice amount is not received on IBM's account within 30 days, upon due date, IBM may charge late payment fees at the rate indicated in the Transaction Document.

1.11 Limitation of Liability

The following sentence is added:

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

1.11.1 Items for which IBM May Be Liable

The following replaces the first sentence:

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

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

1.11.2 Items for which IBM Is Not Liable

The following replaces 1.11.2b:

indirect damages or consequential damages; or

2.5 Extent of Warranty

The following replaces the last paragraph

Warranty for non-IBM Eligible Products:

- (a) Warranty is provided for a period of twelve months, beginning at the date of delivery. Consumers are at least entitled to claim warranty defects within the limitation period provided by law.
- (b) IBM warrants that each non-IBM Eligible Product, when used in the specified operating environment, relates to its functions and conforms to its specifications. In case a non-

IBM Eligible Product is delivered without specifications, IBM only warrants that the non-IBM Eligible Product information correctly describes the non-IBM Eligible Product, and that the non-IBM Eligible Product can be used according to the non-IBM Eligible Product information.

- (c) IBM does not warrant uninterrupted or error-free operation of a non-IBM Eligible Product or that IBM will correct all program defects. The Customer is responsible for the results of the use of a non-IBM Eligible Product. IBM does not warrant uninterrupted or error-free operation of an Eligible Product or that IBM will correct all defects.
- (d) At IBM's discretion, warranty may also be provided by the third party provider himself.
- (e) In the event that IBM is unable to remedy a warranty defect within a reasonable period of time - even after an appropriate grace period - the Customer may in respect of this defect (at his discretion) demand a reduction of price, or rescission of contract. In case of minor defects or deviations, the Customer shall not be entitled to demand a rescission of the contract.
- (f) In addition, the limitation of liability provision will apply.
- (g) However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranty to Customer.

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

1.7 Taxes

Delete the last sentence:

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

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

1.7 Taxes

Delete 1.7.

EGYPT

1.12. General Principles of Our Relationship

Delete 1.12.1.

GERMANY

1.11. Limitation of Liability

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

- a. IBM will be liable without limit for 1) loss or damage caused by a breach of an express guarantee; 2) damages or losses resulting in bodily injury (including death); and 3) damages caused intentionally or by gross negligence.
- b. In the event of loss, damage and frustrated expenditures caused by slight negligence or in breach of essential contractual obligations, IBM will be liable, regardless of the basis on which Customer is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), per claim only up to the greater of 500,000 euro or the charges (if the Eligible Product is IBM SaaS or subject to Fixed Term charges, up to 12 months' charges) Customer paid for the Eligible Product that caused the loss or damage. A number of defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one default.
- c. In the event of loss, damage and frustrated expenditures caused by slight negligence, IBM will not be liable for indirect or consequential damages, even if IBM was informed about the possibility of such loss or damage.
- d. In case of delay on IBM's part: 1) IBM will pay to Customer an amount not exceeding the loss or damage caused by IBM's delay and 2) IBM will be liable only in respect of the resulting damages that Customer suffers, subject to the provisions of Items a and b above.

1.12.4. Dispute Resolution

The following replaces the third sentence of 1.12.4:

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

1.12.5 Other Principles of Relationship

The following replaces 1.12.5e:

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

2.2 Warranty for IBM Software Subscription and Support and Selected Support

The following replaces 2.2

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

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

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

2.3 Warranty for IBM Machine Components of IBM Appliances

The following replaces 2.3:

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

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

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

2.5 Extent of Warranty

The second paragraph is deleted.

The following replaces the last paragraph:

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

4.4.6 Disposal of Machines

The following terms are added as a new section 4.4.6:

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

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

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

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

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

- a. Customer is responsible to remove all funds, if any, from WEEE returned to IBM, and to securely erase any data that Customer considers sensitive (including personal data), existing in/on waste machines (e.g. hard disk, storage devices, memory chips, etc.), before making them available for collection by IBM or its designated assignee. In the event that Customer is unable to comply with this obligation due to technical reasons, Customer will inform IBM thereof in writing. In this case, IBM shall be entitled to delete all data stored in/on the waste machines, as instructed and requested by Customer and according to the "IBM Supplementary Terms and Conditions for Processing of Customer Data by Order according to § 11 BDSG";
- b. IBM is not responsible for saving or protecting any funds, programs not provided by IBM with the original equipment, or any data contained in a WEEE that Customer returns to IBM; and
- c. IBM may ship all or part of the WEEE or its software to other IBM or third party locations around the world to perform its responsibilities under this Agreement, and Customer authorizes IBM to do so.

NETHERLANDS

1.6. Payment

Add the following paragraphs to 1.6b:

We may apply Customer's payment to Customer's other outstanding invoices.

Our rights relating to late payment charges shall be in addition to any other right that we may have in the event that Customer fails to make any payment due to us under this Agreement.

We reserve the right to also base our decision on the conclusion of an agreement with Customer on Customer's solvency and to require payment in advance of delivery or other security for payment.

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

Replace 1.7 with the following:

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

SOUTH AFRICA, NAMIBIA, LESOTHO, SWAZILAND

1.6 Payment

Add the following additional sentence:

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

SWITZERLAND

1.3 Definitions - Definition of "Non-IBM Program"

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

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

1.12. General Principles of Our Relationship

Delete 1.12.1.

TURKEY

1.6 Payment

The following replaces 1.6b

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

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

Add the following to the end of this section:

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

IRELAND AND UNITED KINGDOM

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

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

1.11 Limitation of Liability

1.11.1 Items for Which IBM May Be Liable

The following replaces the first paragraph of the Subsection:

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

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

1.11.2 Items for Which IBM is Not Liable

The following replaces Items 1.11.2b and 1.11.2c:

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