



International Passport Advantage Express Agreement

Under this Agreement, Client may order Eligible Products (EPs) from IBM. Details regarding EPs are provided in Attachments, and Transaction Documents (TDs) such as Terms of Use, Service Descriptions, quotes, and Proofs of Entitlement (PoEs). This Agreement, Attachments, and applicable TDs are the complete agreement regarding transactions by which Client acquires EPs. In the event of conflict, an Attachment prevails over this Agreement and a TD prevails over both the Agreement and any Attachment.

1. General

1.1 Acceptance of Terms

Client accepts this Agreement by submitting an order to IBM or Client's chosen reseller(s). This Agreement is effective on the date IBM accepts the order under this Agreement. An EP is subject to this Agreement when IBM accepts Client's order by i) sending an invoice or a Proof of Entitlement (PoE) including the level of authorized use, ii) making the Program or IBM Cloud Service available, iii) shipping the Appliance, or iv) providing the support, service, or solution.

1.2 Payment and Taxes

Client agrees to pay all applicable charges specified by IBM, charges for use in excess of authorizations, and any late payment fees. Charges are exclusive of any customs or other duty, tax, and similar levies imposed by any authority resulting from Client's acquisitions under the Agreement and will be invoiced in addition to such charges. Amounts are due upon receipt of the invoice and payable within 30 days of the invoice date to an account specified by IBM. Prepaid services must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid.

If, as a result of Client moving, accessing, or using an EP across a border, any authority imposes a customs duty, tax, levy or fee (including withholding taxes for the import or export of any such EP), then Client 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.

Client agrees to: i) pay withholding tax directly to the appropriate government entity where required by law; ii) furnish a tax certificate evidencing such payment to IBM; iii) pay IBM only the net proceeds after tax; and iv) fully cooperate with IBM in seeking a waiver or reduction of such taxes and promptly complete and file all relevant documents.

1.3 IBM Business Partners and Resellers

IBM Business Partners and resellers are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings.

1.4 Liability and Indemnity

IBM's entire liability for all claims related to this Agreement will not exceed any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the product or service that is the subject of the claim, regardless of the basis of the claim. IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings. These limitations apply collectively to IBM, its affiliates, contractors, subprocessors, and suppliers.

The following amounts, if a party is legally liable for them, are not subject to the above cap: i) third party payments referred to in the paragraph below; and ii) damages that cannot be limited under applicable law.

If a third party asserts a claim against Client that an IBM EP acquired under this Agreement infringes a patent or copyright, IBM will defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM, provided that Client promptly (i) notifies IBM in writing of the claim, (ii) supplies information requested by IBM, and (iii) allows IBM to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.

IBM has no responsibility for claims based, in whole or part, on Non-IBM EPs, items not provided by IBM, or any violation of law or third party rights caused by Content, materials, designs, specifications, or use of a non-current version or release of an IBM Product when an infringement claim could have been avoided by using a current version or release. Each Non-IBM Program 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.

1.5 General Principles

For purposes of this Agreement, Enterprise means the Client and the set of legal entities that, by more than 50%, owns, are owned by, or are under common ownership with the Client.

Parties will not disclose confidential information without a separate, signed confidentiality agreement. If confidential information is exchanged, the confidentiality agreement is incorporated into, and subject to, this Agreement.

IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any responsibility for Client's business or operations. Each party determines the assignment of its personnel and contractors, their direction, control, and compensation.

Content consists of all data, software, and information that Client or its authorized users provide, authorize access to, or inputs to an EP. Use of such EP will not affect Client's existing ownership or license rights in such Content. IBM and its contractors and subprocessors may access and use the Content solely for the purpose of providing and managing the EP, unless otherwise described in a TD.

Client is responsible for obtaining all necessary rights and permissions to enable, and grants such rights and permissions to, IBM and its contractors and subprocessors to use, provide, store, and process Content in any EP. This includes Client providing required information, making necessary disclosures and obtaining consent, if required, before providing individuals' information, including personal or other regulated information in such Content. If any Content could be subject to governmental regulation or may require security measures beyond those specified by IBM for an offering, Client will not input, provide, or allow such Content unless IBM has first agreed in writing to implement additional required security measures. IBM's Data Processing Addendum at <https://www.ibm.com/terms> applies and supplements the Agreement, if and to the extent the European General Data Protection Regulation (EU/2016/679) applies to Content.

Client is responsible for arranging for and paying applicable charges to their selected suppliers of telecommunications, including internet connectivity associated with accessing Cloud Services, Appliance Services, IBM Software Subscription and Support, and Select Support, unless IBM specifies otherwise in writing.

IBM and its affiliates, and their contractors and subprocessors, may, wherever they do business, store and otherwise process business contact information (BCI) of Client, its personnel and authorized users, for example, name, business telephone, address, email, and user IDs, for business dealings with them. Where notice to or consent by the individuals is required for such processing, Client will notify and obtain such consent.

IBM may use personnel and resources in locations worldwide, including third party contractors and subprocessors to support the delivery of EPs. IBM may transfer Content, including personally identifiable information, across country borders. A list of countries where Content may be processed for a Cloud Service is available at <http://www.ibm.com/cloud/datacenters> or as described in a TD. IBM is responsible for the obligations under the Agreement even if IBM uses third party contractors or subprocessors unless otherwise set forth in a TD. IBM will require subprocessors with access to Content to maintain technical and organizational security measures that will enable IBM to meet its obligations for a Cloud Service. A current list of subprocessors and their roles will be provided upon request.

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other. EPs are for use within Client's Enterprise only, and may not be assigned, resold, rented, leased, or transferred to third parties. Any attempt to do so is void. Lease-back financing of Appliances is permitted. Assignment of IBM rights to receive payments and by IBM in conjunction with the sale of the portion of IBM's business that includes the product or service is not restricted.

To the extent permissible under applicable law, the parties consent to use electronic means and facsimile transmissions for communications as a signed writing. Any reproduction of this Agreement made by reliable means is considered an original. This Agreement supersedes any course of dealing, discussions or representations between the parties.

No right or cause of action for any third party is created by this Agreement or any transaction under it. Neither party will bring a legal action arising out of or related to this Agreement more than two years after the cause of action arose. Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control. Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations. Where approval, acceptance, consent, access, cooperation or similar action by either party is required, such action will not be unreasonably delayed or withheld.

1.6 Governing Laws and Geographic Scope

Each party is responsible for complying with: i) laws and regulations applicable to its business and Content, and ii) import, export and economic sanction laws and regulations, including the defense trade control regime of any jurisdiction, including the International Traffic in Arms Regulations and those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. Client is responsible for its use of EPs.

Both parties agree to the application of the laws of the country where the transaction is performed (or for services, the laws of the country of Client's business address) to this Agreement, without regard to conflict of law principles. The rights and obligations of each party are valid only in the country where the transaction is performed or, if IBM agrees, the country where the product is placed in productive use, except all licenses are valid as specifically granted. If Client or any user exports or imports Content or makes use of any portion of an EP outside the country of Client's business address, IBM will not serve as the exporter or importer. If any provision of this Agreement is invalid or unenforceable, the remaining provisions remain in full force and effect. Nothing in this Agreement affects 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 to transactions under this Agreement.

1.7 Eligible Products

IBM can add or withdraw EPs (including in CEO Product Categories), change an EP's price, or add or withdraw a license metric for an EP at any time. EPs may not be used to provide commercial hosting or other commercial information technology services to third parties.

For an EP, IBM may withdraw a Fixed Term License, Monthly License (ML), IBM Software Subscription and Support, or Selected Support, or a Cloud Service or an Appliance Service in its entirety, on 12 months' written notice to all then current Clients by published announcement, letter, or e-mail. Client understands that as of the effective date of such withdrawal, Client may not increase its level of use beyond the authorizations already acquired without IBM's written consent, renew or purchase that offering; and if Client renewed the offering prior to the notice of withdrawal, IBM may either (a) continue to provide that offering until the end of the then current term or (b) provide a prorated refund.

1.8 Renewal

The term for a Fixed Term License, Token License, IBM Software Subscription and Support, Selected Support or Appliance Services automatically renews at then current charges, unless Client provides written notice of termination prior to expiration of the term.

To reinstate any expired Software Subscription and Support coverage, Selected Support, a Fixed Term License or Appliance Services, Client may not renew and must acquire Software Subscription and Support Reinstatement, Selected Support Reinstatement, Appliance Services Reinstatement or a new initial Fixed Term License.

For an ML, Client selects a renewal option at the time of order. At each renewal of an ML Commitment Term, IBM may change the charges applicable to the renewed Commitment Term and Client agrees to pay then-current charges as specified in a TD or in a renewal quote made available to Client no less than 60 days prior to the expiration of the then current term. Client may change their selected renewal option for a Commitment Term by giving IBM notice in writing no less than 30 days before the end of that Commitment Term.

For a Cloud Service, Client selects a renewal option at the time of order.

1.9 Compliance Verification

Client 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 Client's use of all EPs is in compliance with this Agreement including the licensing and pricing qualification terms referenced in this Agreement (Passport Advantage Terms). Client 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 Client's compliance with Passport Advantage Terms at all Sites and for all environments in which Client uses (for any purpose) EPs subject to Passport Advantage Terms. Such verification will be conducted in a manner that minimizes disruption to Client's business, and may be conducted on Client'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.

Client agrees that, upon written notice from IBM and the independent auditor, any confidential information provided to the independent auditor or to IBM through the independent auditor, as reasonably required for compliance verification, shall be provided, and Client consents to the exchange of such information, pursuant to the terms of the IBM Agreement for the Exchange of Confidential Information (AECI) or such other general confidentiality agreement in place between Client and IBM, unless Client and the independent auditor agree, in writing, to the use of an alternate confidentiality agreement within 60 days of a request for verification information.

IBM will notify Client in writing if any such verification indicates that Client has used any EPs in excess of its authorized use or is otherwise not in compliance with Passport Advantage Terms. Client agrees to promptly pay directly to IBM the charges that IBM specifies in an invoice for 1) any such excess use, 2) IBM Software Subscription and Support and Selected 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.

1.10 Programs in a Virtualization Environment (Sub-Capacity Licensing Terms)

EPs that meet the operating system, processor technology, and virtualization environment requirements for Sub-Capacity usage may be licensed under Sub-Capacity Licensing terms (an Eligible Sub-Capacity Product); see <https://www.ibm.com/software/passportadvantage/subcaplicensing.html>. Product deployments that cannot meet Sub-Capacity Licensing requirements must be licensed using Full Capacity terms.

PVU-based licenses for Eligible Sub-Capacity Products must be acquired for the total number of Processor Value Units (PVUs) associated with the virtualization capacity available to the Eligible Sub-Capacity Product as measured at <https://www.ibm.com/software/howtobuy/passportadvantage/valueunitcalculator/vucalc.wss>.

Prior to an increase in an Eligible Sub-Capacity Product's virtualization capacity, Client must first acquire sufficient licenses, including IBM Software Subscription and Support, if applicable, to cover that increase.

If at any time IBM becomes aware of circumstances indicating that Client is not operating all or a portion of Client's environment in accordance with applicable Sub-Capacity Licensing requirements, IBM may declare Client's Enterprise, or any applicable portion of Client's Enterprise, ineligible for Sub-Capacity Licensing and will provide Client with notice of any such determination. Client shall have 30 days to provide IBM information sufficient for IBM to determine that Client is in full compliance with the applicable Sub-Capacity Licensing requirements, in which case IBM shall withdraw its determination of ineligibility. Otherwise, Client agrees to acquire sufficient additional licenses and IBM Software Subscription and Support entitlements necessary for full capacity usage within the identified Client environment at then current prices.

1.11 Client's Reporting Responsibilities

For Sub-Capacity usage of EPs, Client agrees to install and configure the most current version of IBM's license metric tool (ILMT) within 90 days of Client's first Sub-Capacity-based Eligible Sub-Capacity Product deployment, to promptly install any updates to ILMT that are made available, and to collect deployment data for each such EP. Exceptions to this requirement are i) when ILMT does not yet provide support for the Eligible Virtualization Environment or Eligible Sub-Capacity Product, ii) if Client's Enterprise has fewer than 1,000 employees and contractors, Client is not a Service Provider (an entity that provides information technology services for end user customers, either directly or through a reseller), and Client has not contracted with a Service Provider to manage Client's environment in which EPs are deployed, and the total physical capacity of Client's Enterprise servers measured on a full capacity basis, but licensed under Sub-Capacity Licensing terms, is less than 1,000 PVUs, or iii) when Client's servers are licensed to full capacity.

For all instances where ILMT is not used, and for all non PVU-based licenses, Client is required to manually manage and track Client's licenses as described in the Compliance Verification section above.

For all PVU-based EP licenses, reports must contain the information in the example Audit Report available at <https://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html>. Reports (generated by ILMT or manual if Client meets manual reporting exemptions) must be prepared at least once per quarter and retained for a period of not less than 2 years. Failure to generate Reports or provide Reports to IBM will cause charging under full capacity for the total number of physical processor cores activated and available for use on the server.

Client will promptly install new versions, releases, modifications, or code corrections ("fixes") of the ILMT that IBM makes available. Client will subscribe to the IBM Support notifications via <https://www.ibm.com/support/mynotifications> in order to be notified when such fixes become available.

Client will not alter, modify, omit, delete, or misrepresent by any means, directly or indirectly, i) the ILMT audit records, ii) the ILMT Program, or iii) Audit Reports that Client submits to IBM or to an independent auditor. The foregoing does not apply to changes, modifications or updates to ILMT expressly provided by IBM, including through notifications.

Client will assign a person in Client's organization with authority to manage and promptly resolve questions on Audit Reports or inconsistencies between report contents, license entitlement, or ILMT configuration; and promptly place an order with IBM or Client's IBM reseller if reports reflect EP use over Client's authorized level. IBM Software Subscription and Support and Selected Support coverage will be charged as of the date Client exceeded Client's authorized level.

2. Warranties

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

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

IBM warrants it provides IBM Software Subscription and Support, Selected Support, Cloud Services, and Appliance Services using commercially reasonable care and skill as described in this Agreement, Attachment, and TD. These warranties end when such support or service ends.

IBM warrants that an IBM Machine Component of an Appliance used in its specified operating environment conforms to its official published specifications. The warranty period for an IBM Machine Component of an Appliance is a fixed period commencing on its date of installation (also called "Warranty Start Date") specified in a TD. If an IBM Machine Component of an Appliance 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, Client may return it to the party from whom Client acquired it for a refund.

IBM does not warrant uninterrupted or error-free operation of an EP or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access to an EP. These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose. IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, failure to comply with instructions provided by IBM, or if otherwise stated in an Attachment or TD. Unless otherwise specified in an Attachment or TD, IBM offers Non-IBM EPs without warranties of any kind. Third parties provide services and licensed products directly to Client under their own agreements. Third parties may provide their own warranties to Client. IBM will identify IBM EPs it does not warrant.

3. Programs and IBM Software Subscription and Support

IBM Programs acquired under this Agreement are subject to IBM's International Program License Agreement (IPLA), including License Information (LI) documents.

A Program may include 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.

With the exception of certain Programs that IBM designates as platform or operating system specific, Client may use and install Programs in any commercially available national language for any platform or operating system available from IBM up to the level of Client's authorizations.

To acquire additional authorizations to use Programs under this Agreement, Client must have already acquired the Program code.

3.1 Money-back Guarantee

The IPLA's "money-back guarantee" only applies the first time Client licenses the IBM Program under this Agreement or any other valid agreement. If an IBM Program license is for an initial fixed term subject to renewal or for an initial Commitment Term, Client may obtain a refund only if Client returns the Program and its PoE within the first 30 days of such initial term. The IPLA's "money-back guarantee" does not apply to Appliances or Cloud Services.

3.2 Conflict between this Agreement and the IPLA

If there is a conflict between the terms of this Agreement, including its Attachments and TDs, and those of the IPLA, including its LI, the terms of this Agreement prevail. The IPLA and its LIs are available on the Internet at <https://www.ibm.com/software/sla>.

3.3 IBM Trade-ups and Competitive Trade-ups

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

3.4 Monthly Licenses

Monthly License Programs (ML Programs) are IBM Programs provided to Client for a monthly license charge. Monthly Licenses have a term that begins on the date that Client's order is accepted by IBM and continues for a period Client commits to pay IBM (a Commitment Term) as specified in the TD. Client may terminate a current Commitment Term before its end date by giving at least 30 days' written notice to IBM and will receive a prorated refund for any whole months of remaining prepaid term.

3.5 Fixed Term Licenses

Fixed Term Licenses have a term that begins on the date that Client's order is accepted by IBM; on the calendar day following the expiration of a prior Fixed Term; or on the Anniversary date. A Fixed Term License is for the definite time period specified by IBM in a TD. Client may terminate a current Fixed Term License before its end date by giving at least 30 days' written notice to IBM and will receive a prorated refund for any whole months of remaining prepaid term.

3.6 Token Licenses

EPs which are Eligible Token Products or ETPs are assigned a Token Value. As long as the total Tokens required for all ETPs used concurrently does not exceed the number of Tokens authorized in Client's PoE(s), Client may use Token(s) for a single ETP or for a combination of ETPs.

Prior to exceeding current Token authorizations or using an Eligible Token Product not authorized, Client must acquire sufficient additional Tokens and authorizations.

ETPs may contain a disabling device that will prevent them from being used after the end of the Fixed Term. Client agrees not to tamper with this disabling device and take precautions to avoid any loss of data.

3.7 CEO (Complete Enterprise Option) Product Categories

Collections of EPs may be offered by IBM on a per user basis subject to a minimum initial user quantity (a CEO Product Category). For Client's first (primary) CEO Product Category, Client must acquire licenses for all users in their Enterprise who have been assigned a machine capable of copying, using, or extending the use of any Program in the CEO Product Category. For each additional (secondary) CEO Product Category, Client must meet the applicable minimum initial order quantity requirement but is not required to acquire licenses for all users in their Enterprise who have been assigned a machine capable of copying, using, or extending the use of any Program in the CEO Product Category.

Any installs of any component of a CEO Product Category can only be made and used by or for users for whom licenses have been obtained. All client-side Programs (used on an end user device to access a Program on a server) must be acquired from the same CEO Product Category as the server Program they access.

3.8 IBM Software Subscription and Support

IBM provides IBM Software Subscription and Support with each IBM Program licensed under the IPLA.

IBM Software Subscription and Support begins on the date of IBM Program 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 month, 12 months from acquisition.

While IBM Software Subscription and Support is in effect, IBM makes available defect corrections, restrictions, bypasses, and any new versions, releases, or updates IBM makes generally available. Once IBM Software Subscription and Support has been allowed to lapse, these benefits will no longer be available to Client if they had been made available while IBM Software Subscription and Support was in effect and Client chose not to exercise that right.

While IBM Software Subscription and Support is in effect, IBM provides Client assistance for Client's i) routine, short duration installation and usage (how-to) questions; and ii) code-related questions (together

“Support”). Consult the IBM Software Support Handbook for details at <https://www.ibm.com/software/support/handbook.html> . Support for a particular version or release of an IBM Program is available only until IBM withdraws Support for that IBM Program’s version or release. When Support is withdrawn, Client must upgrade to a supported version or release of the IBM Program to continue to receive Support. The IBM “Software Support Lifecycle” policy is available at <https://www.ibm.com/software/support/lifecycle>.

For selected Program versions or releases, as listed in the IBM Software Support Handbook, after Support has been withdrawn for such versions or releases and while Client has current Software Subscription and Support coverage in effect for such Programs, IBM will provide support for Client’s i) routine, short duration installation and usage (how-to) questions; and ii) code-related questions. However, in such cases, IBM will only provide existing code patches and fixes and will not develop or provide new patches or fixes for those versions or releases.

If Client elects to continue IBM Software Subscription and Support for an IBM Program at a designated Client Site, Client must maintain IBM Software Subscription and Support for all uses and installations of the IBM Program at that Site.

If Client requests to renew expiring IBM Software Subscription and Support at a lesser quantity of IBM Program uses and installations than the expiring quantity, Client must provide a report that verifies current IBM Program usage and installation, and may be required to provide other compliance verification information.

Client shall not use IBM Software Subscription and Support benefits for IBM Programs for which Client has not fully paid for IBM Software Subscription and Support. If Client does, Client must acquire IBM Software Subscription and Support reinstatement sufficient to cover all such unauthorized use at then current IBM prices.

3.9 Selected Support

Selected Support may be available for (i) Non-IBM Programs, or for (ii) Programs licensed under the IBM License Agreement for Non-Warranted Programs (together “Selected Programs”).

The IBM Software Subscription and Support section above applies to Selected Programs under Selected Support except that 1) IBM may provide Client with assistance in designing and developing applications based on Client’s subscription level; 2) the IBM “Software Support Lifecycle” policy does not apply; and 3) no new versions, releases or updates are provided by IBM.

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

4. Appliances

An Appliance is an EP which is any combination of Program Components, Machine Components (MCs) and any applicable Machine Code Components offered together as a single offering and designed for a particular function. Unless otherwise provided, terms that apply to a Program apply to the Program Component of an Appliance. Client shall not use an Appliance component independently of the Appliance of which it is a part

Each Appliance is manufactured from parts that may be new or used, and in some cases, an Appliance or its replacement parts may have been previously installed. Regardless, IBM’s warranty terms apply.

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

When Client acquires an Appliance directly from IBM, IBM transfers title to a MC to Client or, if applicable, Client’s lessor, upon payment of all the amounts due except in the United States where title transfers upon shipment. For an upgrade acquired for an Appliance, IBM reserves transfer of title of the MC until IBM receives payment of all the amounts due and receives all removed parts, which then become IBM’s property.

If IBM is responsible for installation, Client will allow installation within 30 calendar days of shipment or additional charges may apply. Client will promptly install or allow IBM to install mandatory engineering changes. Client installs a Client-set-up Appliance according to instructions provided with it.

A Machine Code Component is computer instructions, fixes, replacements and related materials, such as data and passwords relied on, provided by, used with or generated by a Machine Component, that permit the

operation of the Machine Component's processors, storage, or other functionality as stated in its specifications. Client acceptance of this Agreement includes acceptance of IBM's Machine Code license agreements provided with the Appliance. A Machine Code Component is licensed only for use to enable a Machine Component to function under its specifications and only for the capacity and capability for which Client has acquired IBM's written authorization. The Machine Code Component is copyrighted and licensed (not sold).

4.1 IBM Appliance Services

IBM provides Appliance Services for Appliances consisting of Machine maintenance and IBM Software Subscription and Support as a single offering as further described in the Appliance Support Handbook at <https://www.ibm.com/software/support/handbook.html>.

One year of Appliance Services, starting on the Warranty Start Date specified in a TD, is included with the purchase of an Appliance. Thereafter, automatic renewal terms apply. All renewals will be fulfilled with Appliance Services offered at the same level of service, if available, that Client was entitled to during that first year. Parts removed or exchanged for upgrade, warranty service, or maintenance are IBM property and must be returned to IBM within 30 calendar days. A replacement takes on the warranty or maintenance status of the replaced part. When Client returns an Appliance to IBM, Client will remove all features not supported under Appliance Services, securely erase all data, and ensure that it is free of any legal restrictions that would prevent its return.

Appliance Services cover undamaged and properly maintained and installed Appliances used as authorized by IBM with unaltered identification labels. Services do not cover alterations, accessories, supply items, consumables (such as batteries), structural parts (such as frames and covers), or failures caused by a product for which IBM is not responsible.

5. Cloud Services

Cloud Services are EPs provided by IBM and made available via a network. Cloud Services are not Programs but may require Client to download enabling software to use a Cloud Service as specified in a TD.

Client may access and use a Cloud Service only to the extent of authorizations acquired by Client. Client is responsible for use of Cloud Services by any party who accesses the Cloud Service with Client's account credentials. A Cloud Service may not be used in any jurisdiction for unlawful, obscene, offensive, or fraudulent Content or activity, such as advocating or causing harm, interfering with, or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive, or deceptive messages, viruses or harmful code, or violating third party rights. If there is a complaint or notice of violation, use may be suspended until resolved, and terminated if not resolved promptly.

Additional terms, including data protection terms, for Cloud Services are provided in the General Terms for Cloud Offerings Terms of Use. Each Cloud Service is described in a TD. Terms of Use and Service Descriptions can be viewed at <https://www-03.ibm.com/software/sla/sladb.nsf/sla/saas/>. Cloud Services are designed to be available 24/7, subject to maintenance. Client will be notified of scheduled maintenance. Technical support and service level commitments, if applicable, are specified in a TD.

IBM will provide the facilities, personnel, equipment, software, other resources necessary to provide the Cloud Services, and generally available user guides and documentation to support Client's use of the Cloud Service. Client will provide hardware, software, and connectivity to access and use the Cloud Service, including any required Client-specific URL addresses and associated certificates. A TD may have additional Client responsibilities.

A Cloud Service subscription period begins on the date that IBM notifies Client that Client has access and ends on the date specified in the TD. During a Cloud Service subscription period, Client may increase Client's subscribed level, but may only decrease the subscribed level at the end of a subscription period when renewing.

International Passport Advantage Express Agreement - Country Required Terms (CRTs)

AMERICAS

Payment and Taxes

Add after the first sentence of the first paragraph:

Peru:

If Client does not pay such charges, Client will automatically incur in delay and the amount due will produce interests since the day in which the debt should have been cancelled, until the day in which it is fully paid, both days included, with the highest rate of interest authorized by the Banco Central de Reserva del Perú and published by the Superintendencia de Banca, Seguros y AFP used in this kind of transactions, considering for this purpose both the compensating interests as well as the late fees. If these interest rates were changed, the highest authorized for each term of the delay will be charged. The interests will be required jointly with the capital and any partial payment should be regulated by the imputation laws contained in the Peruvian Civil Code, specially its article 1257.

Add at the end of the first paragraph:

United States and Canada:

Where taxes are based upon the location(s) receiving the benefit of a Cloud Service, Client has an ongoing obligation to notify IBM of such location(s) if different than Client's business address listed in the applicable TD.

Liability and Indemnity

Insert the following disclaimer at the end of this section:

Peru:

In accordance with Article 1328 of the Peruvian Civil Code this limitations and exclusions will not apply in the cases of willful misconduct ("dolo") or gross negligence ("culpa inexcusable").

Governing Laws and Geographic Scope

Replace the phrase, "the country where the transaction is performed (or for services, the laws of the country of Client's business address)" with:

Argentina:

the Republic of Argentina.

Brazil:

the Federative Republic of Brazil

Canada:

the Province of Ontario

Chile:

Chile

Colombia:

the Republic of Colombia

Ecuador:

the Republic of Ecuador

Peru:

Peru

United States, Anguilla, Antigua/Barbuda, Aruba, Bahamas, Barbados, Bermuda, Bonaire, British Virgin Islands, Cayman Islands, Curacao, Dominica, Grenada, Guyana, Jamaica, Montserrat, Saba, Saint Eustatius, Saint Kitts and Nevis, Saint Lucia, Saint Maarten, Saint Vincent and the Grenadines, Suriname, Tortola, Trinidad and Tobago, Turks and Caicos:

the State of New York, United States

Uruguay:

Uruguay

Venezuela:

Venezuela

Add the following at the end of the second paragraph:

Argentina:

Any proceeding regarding the rights, duties, and obligations arising from this Agreement will be brought in the Ordinary Commercial Court of the City of "Ciudad Autónoma de Buenos Aires".

Brazil:

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 court of São Paulo, SP, Brazil.

Chile:

Any conflict, interpretation or breach related to this Agreement that can not be solved by the Parties should be remitted to the jurisdiction of the Ordinary Courts of the city and district of Santiago.

Colombia:

All rights, duties and obligations are subject to the judges of the Republic of Colombia.

Ecuador:

Any dispute arising out or relating to this Agreement will be submitted to the civil judges of Quito and to the verbal summary proceeding.

Peru:

Any discrepancy that may arise between the parties in the execution, interpretation or compliance of this Agreement that may not be directly resolved shall be submitted to the Jurisdiction and Competence of the Judges and Tribunals of the 'Cercado de Lima' Judicial District.

Uruguay:

Any discrepancy that may arise between the parties in the execution, interpretation or compliance of this Agreement that may not be directly resolved shall be submitted to the Montevideo Courts ("Tribunales Ordinarios de Montevideo").

Venezuela:

The parties agree to submit any conflict related to this Agreement, existing between them to the Courts of the Metropolitan Area of the City of Caracas.

General Principles

Add after the fourth paragraph the following new paragraph:

Argentina, Chile, Colombia, Ecuador, Peru, Uruguay, Venezuela:

If Client provides, or authorizes others to provide, personal data in any Content, Client represents that it is either the data controller or that, prior to providing any such personal data from, or extending the benefit of the EPs to, any other data controller, Client has been instructed by or obtained the consent of the relevant data controllers. Client appoints IBM as a data processor to process such personal data. Client will not use an EP in conjunction with personal data to the extent that doing so would violate applicable data protection laws.

Delete the second sentence of the ninth paragraph:

Argentina, Chile, Colombia, Ecuador, Peru, Uruguay, Venezuela:

"Any reproduction of this Agreement made by reliable means is considered an original."

Delete the second sentence of the last paragraph ("Neither party will bring a legal action arising out of or related to the Agreement more than two years after the cause of action arose.") and replace it with the following sentence:

Brazil:

Neither party will bring a legal action arising out of or related to this Agreement beyond the time limitations established in Articles 205 and 206 of the Brazilian Civil Code, Law n. 10.406 of January 10, 2002.

Canada:

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

ASIA PACIFIC

Payment and Taxes

In the last paragraph, remove the word “and” before “(iv)”, and at the end of the sentence, add:

India:

and (v) file accurate Taxes Deducted at Source (TDS) returns on a timely basis. If any tax, duty, levy or fee ("Taxes") are not charged on the basis of the exemption documentation provided by the Client and the taxation authority subsequently rules that such Taxes should have been charged, then the Client will be liable to pay such Taxes, including any interests, levies and/or penalties applicable thereon.

Liability and Indemnity

In first paragraph, add at the end of the first sentence the following:

Australia:

(for example, whether based in contract, tort, negligence, under statute or otherwise)

In first paragraph, second sentence after the word “special” and before the word “incidental,” add the following:

Philippines:

(including nominal and exemplary damages), moral,

Add as a new paragraph at the end of the first paragraph:

Australia:

Where IBM is in breach of a guarantee implied by the Competition and Consumer Act 2010, IBM's liability is limited to (a) for services, the supplying of services again or the payment of the cost of having the services supplied again; and (b) for goods, the repair or replacement of goods or the supply of equivalent goods, or the payment of the cost of replacing the goods or having the good 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, then none of these limitations apply.

Governing Laws and Geographic Scope

In the first sentence of the second paragraph, replace the phrase, “the country where the transaction is performed (or for services, the laws of the country of Client’s business address)” with:

Cambodia, Laos:

the State of New York, United States

Australia:

the State or Territory in which the transaction is performed

Hong Kong:

Hong Kong S.A.R. of the PRC

Korea:

the Republic of Korea, and subject to the Seoul Central District Court of the Republic of Korea

Macau:

Macau S.A.R. of the PRC

Taiwan:

Taiwan

In the second sentence of the second paragraph, replace the phrase “the country where the transaction is performed or, if IBM agrees, the country where the product is placed in productive use” with:

Hong Kong:

Hong Kong S.A. R. of the PRC

Macau:

Macau S.A.R. of the PRC

Taiwan:

Taiwan

Add as a new paragraph:

Cambodia, Laos, Philippines, and Vietnam:

Disputes will be finally settled by arbitration in Singapore under the Arbitration Rules of the Singapore International Arbitration Center (“SIAC Rules”).

India:

Disputes shall be finally settled in accordance with The Arbitration and Conciliation Act, 1996 then in effect, in English, with seat in Bangalore, India. There shall be one arbitrator if the amount in dispute is less than or equal to Indian Rupee five crores and three arbitrators if the amount is more. When an arbitrator is replaced, proceedings shall continue from the stage they were at when the vacancy occurred.

Indonesia:

Disputes will be finally settled by arbitration in Jakarta, Indonesia, under the rules of the Board of the Indonesian National Board of Arbitration (Badan Arbitrase Nasional Indonesia or “BANI”).

Malaysia:

Disputes will be finally settled by arbitration in Kuala Lumpur, under the Arbitration Rules of the Kuala Lumpur Regional Centre for Arbitration (“KLRCA Rules”).

People’s Republic of China:

Either party has the right to submit the dispute to the China International Economic and Trade Arbitration Commission in Beijing, the PRC, for arbitration.

General Principles

In the fourth paragraph, insert into the first sentence after “store”;

India:

, transfer,

In the second sentence of the last paragraph, replace “two” with the following:

India:

three

Add as a new paragraph:

Indonesia:

This Agreement is made in the English and Indonesian languages. To the extent permitted by the prevailing law, the English language translation of this Agreement will prevail in the case of any inconsistencies or differences of interpretation with the Indonesian language translation.

EMEA

Add the following new paragraphs after the opening paragraph:

Italy:

Pursuant to the art. 1341 and 1342 of Italian Civil Code, Client expressly accepts the following articles of this Agreement: General – Acceptance of Terms; Payment and Taxes; IBM Business Partners and Resellers; Liability and Indemnity; General Principles; Governing Laws and Geographic Scope; Eligible Products; Renewal;; Compliance Verification; Programs in a Virtualization Environment (Sub-Capacity Licensing Terms); and Client’s Reporting Responsibilities; Warranties; Programs and IBM Software Subscription and Support – Money-back Guarantees; Conflict between this Agreement and the IPLA; IBM Trade-ups and Competitive Trade-ups; Monthly Licenses; Fixed Term Licenses; Token Licenses; CEO (Complete Enterprise Option) Product Categories; IBM Software Subscription and Support; and Selected Support; Appliances; and Cloud Services.

Czech Republic:

Client expressly accepts the terms of this agreement which include the following important commercial terms: (i) limitation and disclaimer of liability for defects (Warranties), (ii) IBM’s right to verify Client’s usage data and other information affecting the calculation of charges (Compliance Verification), (iii) limitation of Client’s entitlement to damages (Liability and Indemnity), (iv) binding nature of export and import regulations (Governing Laws and Geographic Scope), (v) shorter limitation periods (General), (vii) exclusion of

applicability of provisions on adhesion contracts (General), (vii) acceptance of the risk of a change of circumstances (General), and (viii) exclusion of rules permitting the execution of a contract in cases where the parties fail to reach full consensus (General).

Romania:

The Client expressly accepts the following standard clauses that may be deemed 'unusual clauses' as per the provisions of article 1203 Romanian Civil Code: clauses 1.2, 1.4, and 1.7. The Client hereby acknowledges that it was sufficiently informed of all the provisions of this Agreement, including the clauses mentioned above, it properly analyzed and understood such provisions and had the opportunity to negotiate the terms of each clause.

Payment and Taxes

Add the following to the end of the first sentence of the first paragraph:

France:

that are equal to the most recent European Central Bank rate plus 10 points, in addition to debt collection costs of forty (40) euros or, if these costs exceed forty euros, complementary indemnification subject to justification of the amount claimed).

Italy:

that are due based on IBM's notice to Client.

Ukraine:

based on the overdue amount from the next day after the due date up to the date of actual payment, prorated for each day of delay, at the interest rate of double the discount rate determined by the National Bank of Ukraine (NBU) during the delay period (paragraph 6 of article 232 of Commercial Code of Ukraine does not apply). *Replace the third sentence of the first paragraph with the following:*

France:

Amounts are due and payable within 10 days of the invoice date to an account specified by IBM.

Add the following to the end of the last sentence of the first paragraph:

Lithuania:

, except as provided by law.

At the end of the first paragraph, add the following:

Italy:

In the instance of no payment or partial payment, and also following a formal credit claim procedure or trial that IBM may initiate, in derogation of article 4 of Legislative Decree n. 231 dated October 9, 2002, and according to article 7 of the same Legislative Decree, IBM will notify Client in writing by registered, return receipt mail of late payment fees due.

Liability and Indemnity

France, Germany, Italy, Malta, Portugal, and Spain:

In the first sentence of the first paragraph, insert after "exceed" and before "the amounts":

the greater of €500,000 (five hundred thousand euro) or

Ireland and UK:

In the first sentence of the first paragraph, replace the phrase "up to the amounts paid" with:

up to 125% of the amounts paid

Spain:

In the first sentence of the first paragraph, replace the phrase "direct damages incurred by Client" with:

and proven damages incurred by Client as a direct consequence of the IBM default

Slovakia:

Insert after the first sentence of the first paragraph:

Referring to § 379 of the Commercial Code, Act No. 513/1991 Coll. as amended, and concerning all conditions related to the conclusion of the Agreement, both parties state that the total foreseeable

damage, which may accrue, shall not exceed the sum set forth in paragraph above, and it is the maximum for which IBM is liable.

Russia:

Insert before the last sentence of the first paragraph:

IBM will not be liable for the forgone benefit.

Ireland and UK:

In the second sentence of the first paragraph, delete:

economic

Portugal:

Replace the last sentence of the first paragraph with:

IBM will not be liable for indirect damages, including loss of profit.

Replace the last sentence of the first paragraph with:

Belgium, Netherlands, and Luxembourg:

IBM will not be liable for indirect or consequential damages, lost profits, business, value, revenue, goodwill, damage to reputation or anticipated savings, any third party claim against Client, and loss of (or damage to) data.

France:

IBM will not be liable for damages to reputation, indirect damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.

Spain:

IBM will not be liable for damage to reputation, lost profits, business, value, revenue, goodwill, or anticipated savings.

Germany:

In the second paragraph, replace “and (ii) damages that cannot be limited under applicable law” with the following:

and (ii) loss or damage caused by a breach of guarantee assumed by IBM in connection with any transaction under this Agreement; and (iii) caused intentionally or by gross negligence.

General Principles

In the sixth paragraph, insert the following new sentence at the end of the first sentence:

Spain:

IBM will comply with requests to access, update, or delete such contact information if a request is submitted to the following address: IBM, c/ Santa Hortensia 26-28, 28002 Madrid, Departamento de Privacidad de Datos.

Add after the fourth paragraph the following new paragraphs:

EU Member States, Iceland, Liechtenstein, Norway, Switzerland, and Turkey:

If Client provides, or authorizes others to provide, personal data in any Content, Client represents that it is either the data controller or that, prior to providing any such personal data from, or extending the benefit of the EPs to, any other data controller, Client has been instructed by or obtained the consent of the relevant data controllers. Client appoints IBM as a data processor to process such personal data. Client will not use an EP in conjunction with personal data to the extent that doing so would violate applicable data protection laws. IBM shall reasonably cooperate with Client in its fulfillment of any legal requirement, including providing Client with access to personal data.

Client agrees that IBM may transfer Client’s personal data across a country border, including outside the European Economic Area (EEA). If a Cloud Service is included in IBM’s Privacy Shield certification listed at http://www.ibm.com/privacy/details/us/en/privacy_shield.html and Client chooses to have the Cloud Service hosted in a data center located in the United States, Client may rely on such certification for the transfer of personal data outside the EEA. Alternatively, the parties or their relevant affiliates may enter into separate standard unmodified EU Model Clause agreements in their corresponding roles pursuant to EC Decision 2010/87/EU (as amended or replaced, from time to time) with optional clauses removed. If IBM makes a change to the way it processes or secures personal data as part of the Cloud Services and such change

causes Client to be noncompliant with data protection laws, Client may terminate the affected Cloud Services by providing written notice to IBM within 30 days of IBM's notification of the change to Client.

Add to the end of the last paragraph:

Czech Republic:

Pursuant to Section 1801 of Act No. 89/2012 Coll. (the "Civil Code"), Section 1799 and Section 1800 of the Civil Code as amended, do not apply to transactions under this Agreement. The parties exclude application of Section 1740 (3) and Section 1751 (2) of the Civil Code, which provide that the Agreement is concluded even in the absence of full compatibility of the parties' expression of intent. Client accepts the risk of a change of circumstances under Section 1765 of the Civil Code.

In the last paragraph, delete the following sentence:

Bulgaria, Croatia, Russia, Serbia, and Slovenia:

Neither party will bring a legal action arising out of or related to this Agreement more than two years after the cause of action arose.

In the last paragraph, add to the end of the second sentence:

Lithuania:

, except as provided by law.

In the last paragraph, second sentence, replace the word "two" with:

Latvia, Poland, and Ukraine:

three

Slovakia:

four

In the last paragraph, add to the end of the following sentence: "Neither party is responsible for failure to fulfil its non-monetary obligations due to causes beyond its control":

Russia:

, including but not limited to earthquakes, floods, fires, acts of God, strikes (excluding strikes of the parties' employees), acts of war, military actions, embargoes, blockades, international or governmental sanctions, and acts of authorities of the applicable jurisdiction.

Governing Laws and Geographic Scope

In the first sentence of the second paragraph, replace the phrase, "the country where the transaction is performed (or for services, the laws of the country of Client's business address)" with:

Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Romania, Serbia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan:

Austria

Algeria, Andorra, Benin, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis and Futuna:

France

Angola, Bahrain, Botswana, Egypt, Eritrea, Ethiopia, Gambia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe:

England

Estonia, Latvia, and Lithuania:

Finland

Liechtenstein:

Switzerland

Russia:

Russia

South Africa, Namibia, Lesotho and Swaziland:

the Republic of South Africa

Spain:

Spain

Switzerland:

Switzerland

United Kingdom:

England

Add to the end of the second paragraph:

Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kosovo, Kyrgyzstan, Moldova, Montenegro, Romania, Russia, Serbia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan:

All disputes arising out of this Agreement shall be finally settled by the International Arbitral Centre of the Austrian Federal Economic Chamber (Arbitration Body), under the Rules of Arbitration of that Arbitral Centre (Vienna Rules), in Vienna, Austria, with English as the official language, by three impartial arbitrators appointed in accordance with the Vienna Rules. Each party will nominate one arbitrator, who will jointly appoint an independent chairman within 30 days or else the chairman will be appointed by the Arbitration Body under the Vienna Rules. The arbitrators will have no authority to award injunctive relief or damages excluded by or exceeding limits in this Agreement. Nothing in this Agreement will prevent either party from resorting to judicial proceedings for (1) interim relief to prevent material prejudice or a breach of confidentiality provisions or intellectual property rights, or (2) determining the validity or ownership of any copyright, patent or trademark owned or asserted by a party or its Enterprise company, or (3) debt collection in amounts below USD 500.000,00.

Estonia, Latvia, and Lithuania:

All disputes arising out of this Agreement shall be finally settled by the Arbitration Institute of the Finland Chamber of Commerce (FAI) (Arbitration Body), under the Arbitration Rules of the Finland Chamber of Commerce (Rules), in Helsinki, Finland, with English as the official language, by three impartial arbitrators appointed in accordance with those Rules. Each party will nominate one arbitrator, who will jointly appoint an independent chairman within 30 days or else the chairman will be appointed by the Arbitration Body under the Rules. The arbitrators will have no authority to award injunctive relief or damages excluded by or exceeding limits in this Agreement. Nothing in this Agreement will prevent either party from resorting to judicial proceedings for (1) interim relief to prevent material prejudice or a breach of confidentiality provisions or intellectual property rights, or (2) determining the validity or ownership of any copyright, patent or trademark owned or asserted by a party or its Enterprise company, or (3) debt collection in amounts below USD 500.000,00.

Afghanistan, Angola, Bahrain, Botswana, Burundi, Cape Verde, Djibouti, Egypt, Eritrea, Ethiopia, Gambia, Ghana, Iraq, Jordan, Kenya, Kuwait, Lebanon, Liberia, Libya, Madagascar, Malawi, Mauritius, Mozambique, Nigeria, Oman, Pakistan, Palestinian Territory, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Seychelles, Sierra Leone, Somalia, South Sudan, Tanzania, Uganda, United Arab Emirates, Western Sahara, Yemen, Zambia, and Zimbabwe:

All disputes arising out of this Agreement shall be finally settled by the London Court of International Arbitration (LCIA) (Arbitration Body), under the LCIA Arbitration Rules (the Rules), in London, UK, with English as the official language, by three impartial arbitrators appointed in accordance with the Rules. Each party will nominate one arbitrator, who will jointly appoint an independent chairman within 30 days or else the chairman will be appointed by the Arbitration Body under the Rules. The arbitrators will have no authority to award injunctive relief or damages excluded by or exceeding limits in this Agreement. Nothing in this Agreement will prevent either party from resorting to judicial proceedings for (1) interim relief to prevent material prejudice or a breach of confidentiality provisions or intellectual property rights, or (2) determining the validity or ownership of any copyright, patent or trademark owned or asserted by a party or its Enterprise company, or (3) debt collection in amounts below USD 500.000,00.

Algeria, Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Congo Republic, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Guinea, Guinea-Bissau, Ivory Coast, Mali, Mauritania, Morocco, Niger, Senegal, Togo, and Tunisia:

All disputes arising out of this Agreement shall be finally settled by the ICC International Court of Arbitration, in Paris (Arbitration Body), under its arbitration rules (the Rules), in Paris, France, with French as the official language, by three impartial arbitrators appointed in accordance with the Rules. Each party will nominate one arbitrator, who will jointly appoint an independent chairman within 30 days or else the chairman will be appointed by the Arbitration Body under the Rules. The arbitrators will have no authority to award injunctive relief or damages excluded by or exceeding limits in this Agreement. Nothing in this Agreement will prevent either party from resorting to judicial proceedings for (1) interim relief to prevent material prejudice or a breach of confidentiality provisions or intellectual property rights, or (2) determining the validity or ownership of any copyright, patent or trademark owned or asserted by a party or its Enterprise company, or (3) debt collection in amounts below USD 250.000,00.

South Africa, Namibia, Lesotho, and Swaziland:

All disputes arising out of this Agreement shall be finally settled by the Arbitration Foundation of Southern Africa (AFSA) (Arbitration Body), under the Rules of the Arbitration of the AFSA (the Rules), in Johannesburg, South Africa, with English as the official language, by three impartial arbitrators appointed in accordance with the Rules. Each party will nominate one arbitrator, who will jointly appoint an independent chairman within 30 days or else the chairman will be appointed by the Arbitration Body under the Rules. The arbitrators will have no authority to award injunctive relief or damages excluded by or exceeding limits in this Agreement. Nothing in this Agreement will prevent either party from resorting to judicial proceedings for (1) interim relief to prevent material prejudice or a breach of confidentiality provisions or intellectual property rights, or (2) determining the validity or ownership of any copyright, patent or trademark owned or asserted by a party or its Enterprise company, or (3) debt collection in amounts below USD 250.000,00.

Add to the end of the second paragraph:

Andorra, Austria, Belgium, Cyprus, France, Germany, Greece, Israel, Italy, Luxembourg, Netherlands, Poland, Portugal, South Africa, Namibia, Lesotho, Swaziland, Spain, Switzerland, Turkey and United Kingdom:

All disputes will be brought before and subject to the exclusive jurisdiction of the following courts of competent jurisdiction:

Andorra:

the Commercial Court of Paris.

Austria:

the court of Vienna, Austria (Inner-City).

Belgium:

the courts of Brussels.

Cyprus:

the competent court of Nicosia.

France:

Commercial Court of Paris.

Germany:

the courts of Stuttgart.

Greece:

the competent court of Athens.

Israel:

the courts of Tel Aviv-Jaffa.

Italy:

the courts of Milan.

Luxembourg:

the courts of Luxembourg.

Netherlands:

the courts of Amsterdam.

Poland:

the courts of Warsaw.

Portugal:

the courts of Lisbon.

Spain:

the courts of Madrid.

Switzerland:

the courts of Zurich.

Turkey:

the Istanbul Central (Çağlayan) Courts and Execution Directorates of Istanbul, the Republic of Turkey.

United Kingdom:

the English courts.

Warranties

Add to all countries in Western Europe, after the fourth paragraph:

The warranty for IBM Machine Components of an Appliance acquired in Western Europe will be valid and applicable in all Western European countries, provided the IBM Machine Components of an Appliance have been announced and made available in such countries. For purposes of this paragraph, "Western Europe" means Andorra, Austria, Belgium, Bulgaria, 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 that subsequently joins the European Union, from date of accession.

In the fifth paragraph, replace the second sentence with the following:

Poland:

These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied or statutory warranties ('rekojmia') or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose.

In the fifth paragraph, add to the end of the second sentence the following:

Italy:

to the extent permitted by law.

In the fifth paragraph, at the end of the fourth sentence after "without warranties of any kind", insert the following:

Czech Republic, Estonia and Lithuania:

, or liabilities for defects. The parties hereby exclude any liability of IBM for defects beyond the agreed warranties.

Appliances

In the fourth paragraph, first sentence, add the following after "United States":

Portugal, Spain, Switzerland, and Turkey:

, Portugal, Spain, Switzerland and Turkey,