

Passport Advantage Revision 10 FAQs

Revision 3: November 22 2017

Section 1a: Passport Advantage Agreement Change Timing

Q: When do the changes to the Passport Advantage Agreement and the Passport Advantage Express Agreement come into effect?

A: Simple answer: November 1st 2017 for new PA Agreements and PA Express transactions, February 1st, 2018 for most PA Agreements that existed before November 1st, 2017.

Detail:

- (1) **For existing Passport Advantage Agreements (Originating Sites) that existed before November 1st, 2017**, email, and in some cases hardcopy letters as well, were sent notifying them of the updates to their PA Agreement in late October, 2017, the effective date of the change is February 1st, 2018. Existing Additional Sites that existed before November 1st, 2017 under such Agreements were also sent courtesy copies of the notification letters for their information.
- (2) **for all new Passport Advantage Additional Sites that are already enrolled as of November 1st, 2017** under a Passport Advantage Agreement that existed before November 1st, 2017, or Passport Advantage Additional Sites which enroll under such an Agreement between November 1st, 2017 and January 31st, 2018, the new Passport Advantage terms apply as of the effective date of the change applicable to the Passport Advantage Agreement of their Originating Site under which that Additional Site is enrolled;
- (3) **for all completely new Passport Advantage Agreements (Originating Sites) that enroll on or after November 1st, 2017, and for all Additional Sites that subsequently enroll under that new Passport Advantage Agreement**, the new terms apply as of the date of enrollment
- (4) for Passport Advantage Express, the new terms come into effect for all transactions on or after November 1st, 2017.

Q: are PA enrollment forms changing?

A: No, the enrollment forms that were introduced in September 2014 remain the current ones to use.

Section 1b: Passport Advantage Agreement Revision 10 (PA10, PA Express10) Changes

Q: What are the basic changes that have been made in this latest revision relative to the previous revision in 2014?

A: Five basic changes have been made in PA10/PAE10. These are as follows:

1. The addition of a benefit to clients of the Fixed Term License (FTL) and Monthly License (ML) offerings in Passport Advantage that allows them to terminate their committed license term early and to receive a prorated refund of any remaining period. Client must provide at least 30 days' notice of the requested early termination date. This does not apply to Multi-Year Token Licenses (a special type of FTL subject to its own special terms)
2. The addition of a new S&S benefit for a small selected set of products (initially on a pilot basis) referred to as "continuing support" which provides support for specified versions and releases of those products after such versions or releases have gone end of support (EOS). The support provided under this new benefit differs from support provided for versions and released before they go EOS in that while commercially reasonable efforts will be made to address and resolve client PMRs, only existing fixes and patches available as of the date of EOS will be made available in respect of such PMRs, but no new fixes or patches will be developed or provided in respect of those already EOS versions or releases.
3. The compliance and verification section has been updated for clarity overall, and now includes the ability of IBM to suspend a client's ability to use subcapacity licensing/pricing if circumstances arise where IBM becomes aware of a client's noncompliance with subcapacity licensing requirements. Changes have also been made to the allowable exclusions from the requirement to use ILMT in order to ensure that smaller clients with small subcapacity footprints would continue to qualify, while also ensuring that clients with large footprint computing environments, but with a small number of employees, would not qualify for an exclusion.
4. Inclusion of framework to ensure the PA Agreements' readiness for the implementation of the European Union's "General Data

Protection Regulation” (GDPR) that comes into effect in May of 2018 by ensuring linkage with IBM’s data protection terms. Because IBM is a global enterprise and we provide service and collect and manage client data in various locations around the world regardless of where any given client or its employees may be located, we cannot limit our implementation to only those European Union member country terms.

5. “General housekeeping” – as we do for each and every revision of the Agreements, we strive to ensure quality and clarity of the terms and to that end we have done much in the way of this kind of housekeeping in the PA10 revision. As well as things like fixing minor typos and correcting or using more content-direct URLs, we have also added wording that clarifies (without changing the intent or meaning) various parts of the agreement that have caused client questions in the past. Also, in line with current IBM branding, we have changed all mentions of “SaaS” to be “Cloud Services”.

Q: How do I identify what products offer the new S&S continuing support benefit?

A: The PA Agreements point to the Support Handbooks page. On the “Practices” tab of the Software Support Handbook there are page links for the support lifecycle and for continuing support. In the continuing support section, after it describes what continuing support is, it points to the software lifecycle web site to determine eligibility. When you look at a particular product version/release it will state whether it offers continuing support or not.

The information is also usually available in the support knowledgebases and other information/announcement materials for the products that offer continuing support.

Q: Are there any prerequisites to be able to take advantage of the availability of continuing support for eligible products?

A: Yes, the product must have current S&S in effect

Section 2: “all or none S&S” requirement

Q: Under the new terms, is anything changing with regard to the “all or none S&S” requirements?

A: No.

Q: What are a client's options in terms of S&S?

A: The client has two options: (1) to have S&S in effect for all of their installed license inventory of a product they have (whether in current use or not), or (2) To have S&S for none of their installed license inventory of a product they have. There is no third option to have S&S for only some of their installed license inventory of a product they have. Of course, the client may also obtain S&S for some or even all of their uninstalled licenses which may save them money if they want to bring them back into service later and avoid paying S&S Reinstatement charges.

Q: What does the term "Partial renewal" mean?

A: A partial renewal means a renewal where the quantity of a given line-item is lower than the quantity for the same line item in the prior period – i.e., the client is renewing less S&S for a product this time than they did last time.

Q: Does the client lose the right to use the licensed software if they do not renew S&S?

A: No, their licenses are unaffected, but the cost of restarting S&S for some or all of their license inventory for which they have allowed S&S to lapse will be significantly more costly.

Q: What is the scope of the "all or none S&S" requirement? Is it on a per product basis for each renewal Site or does it operate across multiple Sites and even across the client's entire Enterprise?

A: The scope is at the same level as we perform renewals – at the per product per Site level. If a client has 100 licenses of Product A installed at Site 123, and another 200 licenses for Product A installed at Site 345, they will get two renewal quotes, one from each Site. The client can renew all or none of the 100 licenses at Site 123, and can renew all or none of the 200 licenses at Site 345 – there is no requirement for them to have to renew S&S for all 300 or for none of them.

Q: Will IBM require clients to state, in writing, how many of their total inventory of licenses for a given product at a Site are installed and how many are not?

A: If a client has acquired 1000 licenses for a given product and at their last renewal had S&S for all 1000, but they now tell us they only have 500 installed and only want to renew S&S for those 500, we will ask for documentation of their installed software deployment that shows that they

will be compliant with all PA terms, including the “all or none S&S” terms for installed licensed software requirement under that reduced quantity renewal.

Q: (a) If a client with 1000 total inventory of licenses for a given product has installed the product to that same level (1000) but is using 500 of them to license an old version of the product where that particular version has gone “end of service” (EOS) even though the product continues to be sold and is available in newer versions for which support is still available as part of S&S, do they still need to have S&S for all 1000 or none at all? (b) If a client is actively using their entire inventory (e.g., 400) of their licenses for a given product but using 200 of them to license an older version, perhaps because that older version is required for a stable application or is being used for an application that doesn’t yet work with a more up-to-date version of the product, do they still need to have S&S for all 400 or none at all?

A: Yes, the requirement covers all installed use regardless of the type of deployment or version of the software in use. The requirement is at the product level, not at the product version level. Our S&S terms have always allowed for the fact that a client might keep their S&S current while still using their licenses to deploy older versions than those currently available or even older than we are still supporting. They may do this in order to keep their upgrade and support options open for the time when they do want to upgrade. Our terms do not guarantee that product updates will be made available during a coverage term of S&S, and they explicitly state that in order to receive support for a product, the client must be using a version of that product for which we currently offer support, but S&S is required for all installed licenses or for none.

Q: Must a client who is using all their licenses of a given product to deploy an old version of software, perhaps even a version of the product which is no longer supported, follow the same “all or none S&S” rule?

A: Yes, if the software is installed, regardless of version(s) deployed, the client can only cover all or none.

Q: What if the client has 1000 licenses installed, but only wants to pay for 500 because the other 500 are not being used, and is willing to state that they will not be calling in for support for the other 500 or using any updates that we make available to them under active S&S for them?

A: The compliance risk is too great in this case and our terms explicitly prohibit it.

Q: If licenses are installed but the client has no plans to use S&S, and their project for which the licensed software has been deployed will only be for six months, does the client have to renew and pay for a full year?

A: They have the same “all or none S&S” choice to make and if they choose “all”, then yes they must acquire S&S for the whole year, business as usual – Passport Advantage terms do not allow for partial year coverage except for prorating coverage to synchronize coverage across products to a single Anniversary (PA statement only – no provision for prorated coverage is included in PA Express).

Q: If a client covers “none” of their licenses of a given product with S&S and their business grows and they acquire more licenses, do they then have to immediately cover all licenses and therefore pay S&S Reinstatement on all others for which they have allowed S&S to lapse since we do not offer licenses without S&S included?

A: The “all or nothing” rules will be applied at their next renewal. As long as they don’t apply any of the benefits of S&S they get with the new licenses, including updating the software and placing support requests for the benefit of the existing, lapsed S&S, licenses, it is possible they can be compliant with the terms if they tightly manage their environment(s) where the licenses and software are being used, but they will have to make the “all or nothing” decision at their next renewal. If they choose the “all” option, S&S for the licenses for which S&S has been previously allowed to lapse must be obtained using S&S Reinstatement parts.

Q: How do these terms impact Government and Academic clients?

A: The same as for commercial clients.

Q: Recognizing that IBM is placing a lot of focus on “ON TIME” renewals, has there been a change in the process for allowing clients to renew prorated lines at a later date?

A: There has been no specific change of policy or process. However, we strongly advise that clients renew prorated line-items (in PA) when their normal renewal is due in order to avoid an accidental lapse of coverage which can therefore lead to S&S Reinstatement charges as well as causing them to be noncompliant with the “all or nothing” clause of the contract.

Q: Regarding the requirement that clients must renew S&S for all licenses installed or none, is this specific to the product, brand or all the products under a given Site?

A: The “all or none S&S” requirement applies at the product level. At a particular Site, a client can choose to have all their installed licenses for one or some products at that Site covered by S&S while having no S&S for other products’ licenses covered.

Section 3: Agreement change & notification

Q: The PA Agreements talk about “Transaction Documents” - what are these?

A: "Transaction Documents" is a generic term that can mean a number of different things that further specify, affect, and/or qualify the terms of the agreement or a particular transaction. For example, an IBM quote is a transaction document that has some standardization due to it being system-generated before the order to which the transaction document applies is received or accepted by IBM.

Q: What are the terms “processor”, “subprocessor”, and “controller”?

A: We started using term "subprocessor" in our base agreements in 2016 to distinguish between IBM enterprise companies that process data verses 3rd party subprocessors strictly in the provisions that obtain permissions, cover liability, or are authorizing type statements, like global resources, etc. When GDPR comes into play, we do a little more segregation of the types of subprocessors (within IBM Enterprise or 3rd party) specifically when cross border processing occurs.

Best to start with what "processing" means. The new GDPR created a broader definition of this but basically becomes the defacto global standard

‘processing’ means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

‘processor’ means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller;

‘controller’ means the natural or legal person, public authority, agency or other body which alone or jointly with others determines the purposes and means of the processing of personal data. Where the purposes and

means of processing are determined by EU or Member State laws, the controller may be designated by those laws.

While there is no "official" GDPR definition of subprocessor, is it someone that under the direct authority of the processor, are authorised to process personal data.

So a "subprocessor" could be an 3rd party contractor under contract or it could be an IBM affiliate/subsidiary under intracompany agreement that processes for the processor.

We use the term "subprocessor" in 2 documents.

From the Passport Advantage Agreement (and other base agreements, such as the CSA) standpoint, IBM uses [little "s"] subprocessor, to mean a 3rd party company that is under contract to IBM where they process the client data (i.e., runs the datacenter where data is processed or provides processing support). The reason we call it out as a separate type of contractor (versus just using the term "contractors" to cover all) is so our terms cover getting specific permissions and authorizing type provisions to cover this specific type of contractor when data is processed. We decided to use the same phrasing throughout the various permissions, authorization, and liability statements,

Specifically for GDPR, the use of subprocessor is in the IBM Data Processing Addendum (DPA) and DPA Exhibit, and subprocessors are separated into categories of subprocessors based on relationship to IBM and cross border type processing. In the DPA Exhibit we have IBM entity/subsidiary (think of if you contract with an IBM Country entity, but one of IBM's subsidiary companies (e.g., IBM Germany) is the one running a data center or we have an offering where a 3rd party contractor may provide specific processing type activities or manage the data center, Please note, GDPR only applies if there is personal data being processed of an EEA citizen/resident as defined in the GDPR itself.

The IBM DPA can be found at the applicable country section of <https://www.ibm.com/terms>

Q: Are the current Government, Academic, and Service Provider (xSP) Attachments still valid and unchanged?

A: Yes, they are unchanged and remain in force with the new Agreement revision.

Section 4: Passport Advantage Express

Q: Do all the changes to Passport Advantage also apply to Passport Advantage Express?

A: Yes. Passport Advantage Express, updated effective November 1st, 2017, has been updated in exactly the same ways as Passport Advantage, while still retaining its unique transactional features.

Q: Are notifications of terms changes being made to Passport Advantage Express clients?

A: No, Passport Advantage Express is a transactional agreement, with applicable terms being those in place as of the date of each transaction, unlike Passport Advantage which is a relational agreement whose terms remain in effect unless and until modified by notification per the agreement, or as otherwise agreed in writing between IBM and the client.

Section 5: Resources

Q: What resources are in place to help IBM sellers, including IBM sellers who work with VADs, respond to client questions?

A: Additional resources and information will be provided via Passport Advantage Online. Clients should contact their IBM or reseller sales representative for additional help and information.