

# International Passport Advantage Agreement

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## Attachment for Appliances

### Part 1 – General Terms

The terms of this Attachment for Appliances (“**Attachment**”) are in addition to those of your IBM International Passport Advantage Agreement or IBM International Passport Advantage Express Agreement, as applicable, (“**Agreement**”), and govern your acquisition of Appliances from IBM or an authorized reseller. You accept the terms of this Attachment without modification by signing below. Capitalized terms not defined in this Attachment are defined in the Agreement.

#### 1. Definitions

**Appliance** – an Eligible Product, designed for a particular function and not for general purpose computing tasks, that is composed of a Program Component, a Machine Component, and any Machine Code Component that IBM may provide to you.

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

**Date of Installation** – the date on your purchase invoice or sales receipt for the Appliance is the Date of Installation, unless IBM or your IBM reseller informs you otherwise.

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

**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, its features, conversions, elements, or accessories, or any combination of them. The term “Machine Component” includes an IBM Machine Component and any non-IBM Machine Component that IBM may provide to you. A non-IBM Machine Component is a Machine Component (including other equipment) supplied under this Attachment which is not produced by or for IBM.

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

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

#### 2. Attachment Structure

This Attachment includes **Part 1 - General Terms** and **Part 2 - Country-unique Terms** (if any). The terms of Part 2 may replace or modify those of Part 1.

#### 3. Program Component

##### Authorizations

- a. Provided that you are the rightful possessor, you are licensed to use the Program Component(s) pursuant to the terms of the Agreement, but only on the Machine Component supplied by IBM or an authorized reseller or any replacement of a Machine Component provided to you by IBM or an authorized reseller.
- b. You may not transfer your license to use the Program Component(s) to another party in conjunction with a transfer of the Appliance or otherwise, without IBM’s prior written approval. Your license for each Program Component terminates when you no longer rightfully possess the Appliance.

#### 4. Machine Component

##### 4.1 Production Status

Each IBM Machine Component is manufactured from parts that may be new or used. In some cases, a Machine Component may not be new and may have been previously installed. Regardless, IBM’s applicable warranty terms described in section 4.4 apply.

## **4.2 Title and Risk of Loss**

When you acquire a Machine Component directly from IBM, IBM transfers title to that Machine Component to you or, if applicable, your lessor, upon payment of all the amounts due.

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 you or your designated location. Thereafter, you assume the risk. Each Machine Component will be covered by insurance, arranged and paid for by IBM for you, covering the period until it is delivered to you or your designated location. For any loss or damage, you must i) report the loss or damage in writing to IBM within 10 business days of delivery and ii) follow the applicable claim procedure.

## **4.3 Installation**

### **4.3.1 Machine Component Installation**

You agree to provide an environment meeting the requirements for the Machine Component as specified in its published documentation.

Program Components are pre-installed on either Customer-set-up Machine Components or non-IBM Machine Components. You are responsible for installing a Customer-set-up Machine Component and non-IBM Machine Component according to instructions provided by IBM or the Machine Component's manufacturer. You may request IBM to assist with the installation of a Machine Component; however, you may be charged for the installation.

### **4.3.2 Engineering Changes**

You agree to allow IBM to install mandatory engineering changes (such as those required for safety) on a Machine Component.

Many engineering changes require the removal of parts and the transfer of ownership and possession of the removed parts to IBM. You are responsible for the return of all removed parts to IBM upon installation of the engineering change. As applicable, you represent that you have permission from the owner and any lien holders to i) install engineering changes and ii) transfer ownership and possession of removed parts to IBM. You further represent 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 Warranty for IBM Machine Components**

### **4.4.1 Limited Warranty**

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. During the warranty period, IBM provides repair and exchange service for the IBM Machine Component, without charge, under the type of service IBM designates 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, you may return it to your place of purchase and your money will be refunded.

The warranty period, type of warranty, and service level that apply to your IBM Machine Component upon which the Program Component is preinstalled are specified in an Exhibit to this Attachment.

Unless IBM specifies otherwise, these warranties apply only in the country or region in which you purchased the Appliance.

### **4.4.2 Extent of Warranty**

The warranty stated above will not apply to the extent that there has been misuse (including, but not limited to, use of any IBM 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 you or a third party, or failure or damage caused by a product for which IBM is not responsible. This warranty for IBM Machine Components is voided by removal or alteration of identification labels on the IBM Machine Component or its parts.

**THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES WITH REGARD TO A MACHINE COMPONENT OBTAINED UNDER THE AGREEMENT AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED**

**WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY OF TITLE OR NON-INFRINGEMENT. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THAT PERIOD. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.**

#### **4.4.3 Items Not Covered by Warranty**

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

IBM will identify in an Exhibit to this Attachment any IBM Machine Components that it does not warrant.

Unless otherwise specified in writing, IBM provides non-IBM Machine Components (including those provided with, or installed on, an IBM Machine Component at your request) **WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND**. However, non-IBM manufacturers, suppliers, or publishers may provide their own warranties to you.

Any technical or other support provided under this Attachment for an IBM Machine Component under warranty, such as assistance with “how-to” questions and those regarding IBM Machine Component set-up and installation, is provided **WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND**.

### **4.5 Warranty Service for IBM Machine Components**

#### **4.5.1 Warranty Service**

IBM provides certain types of warranty service to keep Machine Components in, or restore them to, conformance with their Specifications during the Machine Component’s warranty period as specified above. IBM will inform you of the available types of service for a Machine Component. At its discretion, IBM will i) either repair or exchange the failing Machine Component and ii) provide the service either at your location or a service center. IBM manages and installs selected engineering changes that apply to IBM Machine Components and may also perform preventive maintenance.

Many warranty services involve the removal of parts and their return to IBM. An IBM part that replaces a removed part will assume the warranty service status of the removed part. An IBM part that is added to an IBM Machine Component without replacing a previously-installed part is subject to warranty effective on the date the part is provided to you. Unless IBM specifies otherwise, the warranty period, type of warranty, and service level of such part are the same as the IBM Machine Component on which it is installed.

When the type of warranty service involves the exchange of an IBM Machine Component or part, the item IBM or its subcontractor or the reseller replaces becomes IBM’s property, and the replacement becomes yours. You represent that all removed items are genuine and unaltered. The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty service status of the replaced item.

When the type of warranty service requires that you deliver the failing Machine Component to IBM, you agree to ship it suitably packaged (prepaid unless IBM specifies otherwise) to a location IBM designates. After IBM has repaired or exchanged the Machine Component, IBM will deliver it to you at IBM’s expense unless IBM specifies otherwise. IBM is responsible for loss of, or damage to, your Machine Component while it is i) in IBM’s possession or ii) in transit in those cases where IBM is responsible for the transportation charges.

Warranty service may, at IBM’s discretion, be provided by an authorized IBM warranty service provider or IBM subcontractor.

You agree:

- a. to obtain authorization from the owner to have IBM service a Machine Component that you do not own;
- b. where applicable, before IBM provides service, to --
  - (1) follow the problem determination and service request procedures that IBM provides,
  - (2) secure all programs and data contained in a Machine Component, and
  - (3) inform IBM of changes in a Machine Component’s location.

- c. to follow the service instructions that IBM provides (which may include installing a Machine Code Component and other software updates either downloaded from an IBM Internet Web site or copied from other electronic media); and
- d. when you return a Machine Component to IBM for any reason --
  - (1) to securely erase from any Machine Component all data, including without limitation, the following: i) information about identified or identifiable individuals or legal entities ("**Personal Data**") and ii) your confidential or proprietary information and other data. If removing or deleting Personal Data is not possible, you agree to transform such information (e.g., by making it anonymous) so that it no longer qualifies as Personal Data under applicable law;
  - (2) IBM is not responsible for any programs not provided by IBM as part of the Appliance, or data contained in a Machine Component that you return to IBM; and
  - (3) IBM may ship all or part of the Machine Component or its software to other IBM or third party locations around the world to perform its responsibilities under this Agreement, and you authorize IBM to do so.

#### **4.5.2 Replacements**

When Machine Component warranty service involves the exchange of a part or Machine Component, the item that IBM replaces becomes its property and the replacement becomes yours. You represent that all removed items are genuine and unaltered. The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty service status of the replaced item. Before IBM exchanges a part or Machine Component, you agree to remove all features, parts, options, alterations, and attachments not under IBM's service. You also agree to i) ensure that the part or Machine Component is free of any legal obligations or restrictions that prevent its exchange and ii) transfer ownership and possession of removed parts to IBM.

Service for some IBM Machine Components involves IBM providing you with an exchange replacement for installation by you. Such exchange replacements may be i) a part of a Machine Component (called a Customer Replaceable Unit, or "CRU," e.g., keyboard, memory, or hard disk drive), or ii) an entire Machine Component. You may request IBM to install the replacement CRU or Machine Component, however, you may be charged for the installation. IBM provides information and replacement instructions with your Machine Component and at any time on your request. IBM specifies in the materials shipped with a replacement whether the failing CRU or Machine Component must be returned to IBM. When return is required, return instructions and a container are shipped with the replacement, and you may be charged for the replacement if IBM does not receive the failing CRU or Machine Component within 15 days of your receipt of the replacement.

#### **4.5.3 Items Not Covered**

Machine Component warranty service does not cover:

- a. accessories, supply items, consumables (such as batteries and printer cartridges), and structural parts (such as frames and covers);
- b. failures caused by a product for which IBM is not responsible;
- c. service of Machine Component alterations; or
- d. service of a Machine Component on which you are using capacity or capability, other than that authorized by IBM in writing.

#### **4.5.4 Warranty Service Upgrade**

For certain Machine Components, you may select a service upgrade from the standard type of warranty service for the Machine Component. IBM charges for the service upgrade during the warranty period.

You may not terminate the service upgrade or transfer it to another Machine Component during the warranty period.

### **5. Machine Code Component**

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

[http://www.ibm.com/servers/support/machine\\_warranties/support\\_by\\_product.html](http://www.ibm.com/servers/support/machine_warranties/support_by_product.html) ,or by contacting an IBM representative. Machine Code Component license agreements may be amended by IBM from time to time. Such amended license terms will apply only to the Machine Code Component that is supplied after such amended terms become effective.

The 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 you have acquired IBM's written authorization. You agree to use the Machine Code Component only as specified in this Attachment and as may be further authorized or restricted in its applicable license agreement. Without limiting additional restrictions in the applicable license, you 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 you;
- 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, copies of the original Machine Code, and copies made from copies). The Machine Code Component is copyrighted and licensed (not sold).

The capacity of certain Machine Components is limited by technological measures in the Machine Code Component. You agree to IBM's implementation of such technological measures to limit Machine Component capacity.

## **6. Intellectual Property Protection**

### **6.1.1 Third Party Claims**

If a third party asserts a claim against you that a Machine Component or a Machine Code Component that IBM provides to you under this Attachment infringes that party's patent or copyright, IBM will defend you against that claim at IBM's expense and pay all costs, damages, and attorney's fees that a court finally awards against you or that are included in a settlement approved in advance by IBM, provided that you:

- a. promptly notify IBM in writing of the claim;
- b. allow IBM to control, and cooperate with IBM in, the defense and any related settlement negotiations; and
- c. are and remain in compliance with the Appliance's applicable license terms and your obligations under section 6.1.2 (Remedies) below.

### **6.1.2 Remedies**

If such a claim is made or appears likely to be made, you agree to permit IBM, in IBM's discretion, to either (i) enable you to continue to use the Appliance, (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, then on IBM's written request, you agree to promptly return the Appliance to IBM and discontinue its use. IBM will then give you a credit equal to the net book value of the Appliance calculated according to generally-accepted accounting principles.

### **6.1.3 Claims for Which IBM Is Not Responsible**

IBM has no obligation regarding any claim based on any of the following:

- a. anything provided by you or a third party on your behalf that is incorporated into an Appliance or IBM's compliance with any designs, specifications, or instructions provided by you or a third party on your behalf;
- b. an Appliance's use other than in accordance with its applicable licenses and restrictions or use of a non-current version or release of an Appliance, to the extent a claim could have been avoided by using the current release or version;

- c. any modification of an Appliance made by you or by a third party on your behalf or the combination, operation, or use of an Appliance with any other Appliance, hardware device, program, data, apparatus, method, or process;
- d. the distribution, operation or use of an Appliance outside your Enterprise or for the benefit of any third party; or
- e. an IBM Program, Non-IBM Program, or Separately Licensed Code, if any, identified in the LI for the Program.

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

## **7. Delivery**

Delivery dates are estimates unless otherwise specifically agreed in writing. IBM fulfills its shipping and delivery obligations upon the delivery of the Appliance to the IBM-designated carrier, unless otherwise agreed to in writing by you and IBM.

## **8. Resale**

You agree to acquire Appliances with the intent to use them within your Enterprise and not for reselling, leasing, or transferring to a third party, unless one of the following applies:

- a. you are arranging lease-back financing for the Appliances; or
- b. you purchase the Appliances without any discount or allowance, and you do not remarket them in competition with IBM's authorized remarketers, and you have received IBM's written approval to transfer the Program Components; or
- c. you are transferring the Machine Component and the Machine Code Component only.

Subject to the foregoing provisions of this section 8, for the purposes of the Machine Components and Machine Code Component of an Appliance subject to this Attachment, the first three sentences in section 1 ("Eligible Products") of the Agreement do not apply and are deemed to be deleted.

## **9. Compliance Verification**

Upon reasonable notice, IBM may verify your compliance with this Attachment, the Agreement, and the license agreements they reference at all Passport Advantage site(s) where you use or install Appliances subject to the terms of this Attachment for any purpose. Such verification will be conducted in a manner that minimizes disruption to your business and may be conducted on your 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.

You agree to create, retain, and provide to IBM and its auditors written records, system tool outputs, PoEs, and other system information sufficient to provide auditable verification to IBM that your installation and use of Appliances is in compliance with the terms of this Attachment, the Agreement, and the license agreements they reference, including, without limitation, all of IBM's applicable licensing and pricing qualification terms.

IBM will notify you in writing if any such verification indicates that have used Appliances in excess of their authorized level of use or you are otherwise not in compliance with this Attachment. You agree to promptly pay directly to IBM i) the charges as IBM specifies in an invoice for any additional licenses equal to the quantity used in excess of authorized level of use and applicable Subscription and Support offerings, as applicable, for such licenses for the lesser of the time that such licenses have been used or two years, and ii) any additional charges and other liabilities determined as a result of such verification

The rights and obligations set forth in this section remain in effect during the period the Appliances are installed in your Enterprise and for two years thereafter.

## **Part 2 - Country-unique Terms**

For transactions performed in the countries specified below, the following terms replace or modify the referenced terms in Part 1. All terms in Part 1 that are not changed by these amendments remain unchanged and in effect. This Part 2 is organized as follows:

- Americas country amendments to other Attachment terms;
- Asia Pacific country amendments to other Attachment terms; and
- Europe, Middle East, and Africa country amendments to other Attachment terms.

## AMERICAS COUNTRY AMENDMENTS

### UNITED STATES

#### 4.2 Title and Risk of Loss

*The following replaces the first paragraph:*

When IBM accepts your order, IBM agrees to sell you the Machine Component included with the Appliance. IBM transfers title to you or, if applicable, your lessor when the Machine Component is shipped to you 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. You authorize IBM to file appropriate documents to permit IBM to perfect its security interest.

#### 4.4.2 Extent of Warranty

*The following is added as the first paragraph:*

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

## ASIA PACIFIC COUNTRY AMENDMENTS

### AUSTRALIA

#### 4.4.1 Limited Warranty

*The following is added as the first paragraph:*

The warranties specified this section are in addition to any rights you may have under the Trade Practices Act 1974 or other similar legislation and are only limited to the extent permitted by the applicable legislation.

#### 4.4.2 Extent of Warrant

*The second sentence of the first paragraph is deleted.*

#### 6.1.3 Claims for Which IBM is Not Responsible

*The following replaces the last sentence:*

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

### JAPAN

#### 1. Definitions

*The following replaces the definition of **Date of Installation**:*

**Date of Installation** — the Date of Installation is the expiration date of the Inspection Period.

*The following definition is added to this section:*

**Inspection Period** – The Inspection Period for a Machine Component included as part of the Appliance commences on the day following its shipment from IBM and expires on the 10th day after shipment.

You will inspect and confirm the Machine Component during this period

### NEW ZEALAND

#### 4.4.1 Limited Warranty

*The following is added as the first paragraph:*

The warranties specified in this section are in addition to any rights you may have under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited. The Consumer Guarantees Act 1993 will not apply in respect of any goods or services which IBM provides, if you require the goods or services for the purposes of a business as defined in that Act.

## EUROPE, MIDDLE EAST, AFRICA (EMEA) COUNTRY AMENDMENTS

## **EU MEMBER STATES AND ADDITIONAL COUNTRIES SPECIFIED**

*The following terms are added as a new section 4.6 for Iceland, Norway and all Member States of the European Union (“EU”), except Germany:*

### **4.6 Disposal of Machine Components**

As from the effective date in your 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:

**4.6.1** When any Machine Component supplied under the 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.

**4.6.2** For all WEEE, you are responsible for making the WEEE available for collection from your premises within 30 days after supply of the replacement Machine Component. Whenever IBM collects and disposes of your WEEE, based on a legal or contractual obligation, you agree:

- a. to securely erase from any WEEE all programs, if any, 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) your confidential or proprietary information and other data. If removing or deleting Personal Data is not possible, you agree to transform such information (e.g., by making it anonymous) so that it no longer qualifies as Personal Data under applicable law;
- b. that IBM is not responsible for saving or protecting any programs not provided by IBM with the original equipment, or any data contained in a WEEE that you return to IBM; and
- c. 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 the Agreement, and you authorize IBM to do so.

## **WESTERN EUROPEAN COUNTRIES**

### **4.4.1 Limited Warranty**

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

The warranty for IBM Machine Components acquired in Western Europe will be valid and applicable in all Western European countries provided the Machine Components 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.

## **MULTIPLE COUNTRIES IDENTIFIED BELOW**

**Denmark, Estonia, Finland, Latvia, Lithuania, Norway, and Sweden**

### **6. Intellectual Property Protection**

*The following is added as a new paragraph immediately following sub-section 6.1.3.e:*

IBM is not responsible for, and has no liability to you in the event of, any patent or copyright infringement claim arising in relation to: (i) the Program Component of the Appliance; and/or (ii) any non-IBM operating system software forming part of the Appliance.

## **AUSTRIA**

### **4.4 Warranty for IBM Machine Components**

*The following is added as the first paragraph:*

The following conditions of the Warranty for IBM Machine Components replace the conditions of the statutory warranties.

#### **4.4.1 Limited Warranty**

*The following two sentences replace the last sentence of the second paragraph:*

If an IBM Machine Component does not function as warranted during the warranty period and IBM is unable within a reasonable time to either i) make it do so or ii) replace it with one that is at least functionally equivalent, you may return it to IBM for a refund. The right to rescission shall not apply in the case of minor defects.

#### **4.4.2 Extent of Warranty**

*The following is deleted from the second paragraph: “MERCHANTABILITY AND”*

#### **4.5.1 Warranty Service**

*The following is added as the second sentence in the fourth paragraph:*

During the warranty period, IBM will reimburse you for the transportation charges for delivery of the failing Machine Component to IBM and will return it to you at IBM's expense.

## **CYPRUS**

### **6. Intellectual Property Protection**

*The following terms are added as a new section 6.2:*

#### **6.2 Limitation of Liability for Third Party Claims**

Notwithstanding the foregoing, IBM's liability for any claim raised pursuant to or related to this Intellectual Property Protection section shall be limited to the net book value of the Appliance calculated according to generally-accepted accounting principles at the time of the claim.

## **CZECH REPUBLIC**

#### **6.1.3 Claims for Which IBM is Not Responsible**

*Sub-section 6.1.3.e is deleted in its entirety.*

## **GERMANY**

### **4.4 Warranty for IBM Machine Components**

*The following is added as the first paragraph:*

Notwithstanding any other provision of this section 4.4, the statutory warranty period will apply in the case of a building or Machine Component that has been used for a building in accordance with the normal way it is used and has resulted in the defectiveness of the building or work whose result consists in the rendering of planning or monitoring services for this purpose.

#### **4.4.1 Limited Warranty**

*The following is added as the second sentence of the second paragraph:*

Unless a longer period is stated in writing, the warranty period for a Machine Component is twelve months.

#### **4.4.2 Extent of Warranty**

*The second paragraph is deleted.*

#### **4.4.3 Items Not Covered by Warranty**

*The following replaces the section:*

Without prejudice to your rights under other warranty provisions of the Agreement, IBM does not warrant uninterrupted or error-free operation of a Machine Component or that IBM will correct all minor deviations from applicable specifications.

IBM may identify certain Machine Components as “not warranted.” In such case, this means that i) IBM does not offer a voluntary manufacturer service (SOLW) in respect of such Machine Components and ii)

supplementary performance may also be provided directly or through a third party including, for example, the supplier or producer of the relevant Machine Components.

Non-IBM manufacturers, suppliers, or publishers may provide their own manufacturer warranties and guarantees.

#### **4.5.1 Warranty Service**

*The following is added as the second sentence in the fourth paragraph:*

During the warranty period, IBM will reimburse you for the transportation charges for delivery of the failing Machine Component to IBM.

#### **4.6 Disposal of Machine Components**

*The following terms are added as a new section 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:

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

**4.6.2** According to German law, you are 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 you, based on a separate agreement.

You are responsible for making the WEEE available for collection from your premises within 30 days after supply of the replacement Machine Component.

**4.6.3** Whenever IBM collects and disposes of your WEEE, based on a legal or contractual obligation, you agree:

- a. You are responsible to securely erase any data that you consider 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 you are unable to comply with this obligation due to technical reasons, you 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 you 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 programs not provided by IBM with the original equipment, or any data contained in a WEEE that you return 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 the Agreement, and you authorize IBM to do so.

### **GREECE**

#### **6.1.1 Third Party Claims**

*The following is added at the start of the first sentence of the first paragraph:*

Unless otherwise required by mandatory law without the possibility of contractual waiver,

### **IRELAND**

#### **4.4.2 Extent of Warranty**

*The following paragraph is added:*

Except as expressly provided in these terms and conditions, or Section 12 of the Sale of Goods Act 1893 as amended by the Sale of Goods and Supply of Services Act, 1980 ("the 1980 Act"), all conditions or warranties (express or implied, statutory or otherwise) are hereby excluded including, without limitation, any warranties implied by the Sale of Goods Act 1893 as amended by the 1980 Act (including, for the avoidance of doubt, Section 39 of the 1980 Act).

### **6. Intellectual Property Protection**

*The following terms are added as a new section 6.2 (Severability):*

#### **6.2 Severability**

If any provision of this Intellectual Property Protection section is held to be invalid or unenforceable, the remaining provisions of this Intellectual Property Protection section and the Attachment remain in full force and effect.

## **IRELAND AND UNITED KINGDOM**

### **4.2 Title and Risk of Loss**

*The words "arranged and" are deleted from the third sentence of the second paragraph.*

## **ISRAEL**

### **6. Intellectual Property Protection**

*The following is added as a new paragraph immediately following sub-section 6.1.3.e:*

For the avoidance of doubt, IBM would not bear the burden of demonstrating that any of the above exclusions in fact took place or applied with respect to any claimed infringement of any third party's patent or copyright.

## **POLAND**

### **6. Intellectual Property Protection**

*The following is added as a new paragraph immediately following sub-section 6.1.3.e:*

Exclusion of IBM's liability under section 6.1.3 shall be interpreted to the broadest extent legally possible, in particular as: (i) an exclusion of the your rights under statutory warranty (wyłączenie odpowiedzialności z tytułu rękojmi); and (ii) a limitation of IBM's liability under general provisions of law i.e., IBM shall not be liable for damages other than any caused due to IBM's willful misconduct.

## **SWITZERLAND**

### **4.2 Title and Risk of Loss**

*The following replaces the first paragraph:*

In the event you delay payment, IBM may either register retention of title in the official Registry at your expense or revoke the transaction. In the event IBM revokes the transaction, you will immediately return the Machine Component to IBM upon IBM's request.

## **TURKEY**

### **4.1 Production Status**

*The following replaces this section:*

IBM fulfills orders for IBM Machine Components as newly manufactured in accordance with IBM's production standards.

### **4.2 Title and Risk of Loss**

*The following replaces the first paragraph:*

For each Machine Component, when IBM accepts your order, IBM agrees to sell you the Machine Component included with the Appliance. IBM transfers title to you, or (if you choose) your lessor, when IBM ships the Machine Component. However, IBM reserves the right of ownership to the Machine Component until receipt of payment in full. If you fail to pay, or delay any payment, IBM reserves the right either to require fulfillment of the transaction or to terminate the transaction and recover the Machine Component. For a warranty service involving the removal of parts, which become IBM's property, IBM reserves its rights as stated above until IBM receives payment of all the amounts due and the removed parts. IBM is solely entitled, and if needed, you agree to sign appropriate documents to enforce IBM's above mentioned rights.

## **UNITED KINGDOM**

*See "IRELAND AND UNITED KINGDOM" amendments above.*

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The complete agreement between the parties consists of this Attachment for Appliances, any of its Exhibits, and the Agreement. If there is a conflict among the terms of this Attachment, any of its Exhibits, and the Agreement, then an Exhibit prevails over the Attachment and the Attachment prevails over the Agreement. In entering into this agreement, neither party is relying on any representation not specified in this Attachment, any of its Exhibits, or the Agreement, including without limitation any representations concerning i) the performance or function of any

Appliance, other than as expressly warranted above; ii) the experiences or recommendations of other parties; or iii) results or savings you may achieve.

Agreed to:  
<**Customer Entity Name**>

By \_\_\_\_\_  
Customer Authorized signature

Name (type or print):

Position (type or print):

Date:

Agreement number / Site number:

Your IBM Customer number:

Your address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Agreed to:  
<**IBM Entity Name**>

By \_\_\_\_\_  
Authorized signature

Name (type or print):

Position (type or print):

Date: