International Passport Advantage Agreement

Under this Agreement, Client may order Eligible Products (EPs) from IBM. Details regarding EPs are provided in Attachments, Service Descriptions, Terms of Use and Transaction Documents, collectively TDs. This Agreement and applicable TDs are the complete agreement regarding transactions by which Client acquires EPs. Client Originating Company (also identified as the Originating Site in the Passport Advantage Enrollment Form) and the IBM Originating Company that accepts the Client Originating Company's orders agree to coordinate the administration of this Agreement within their respective Enterprises, which includes the set of legal entities that, by more than 50%, owns, are owned by, or are under common ownership with the Originating Company. The Client Originating Company is responsible for compliance with the terms for all Client sites assigned a Passport Advantage Site Number (Site(s)) under this Agreement. If there is a conflict, a TD prevails over the terms of this Agreement.

1. General

1.1 Acceptance of Terms

The Client Originating Company and thereafter each of its participating Enterprise companies accept this Agreement by submitting an IBM International Passport Advantage Enrollment Form to IBM or Client's chosen reseller(s). This Agreement is effective on the date IBM accepts the initial order under this Agreement (the Effective Date) and remains in effect until the Client Originating Company or the IBM Originating Company terminates it 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 SaaS available, iii) shipping the Appliance, or iv) providing the support, service, or solution.

1.2 Changes to Agreement Terms

Because this Agreement may apply to many future orders, IBM reserves the right to modify it by providing Client at least three months' written notice. Changes are not retroactive; they apply, as of the effective date, only to new orders and renewals. Client accepts changes by placing new orders after the change effective date or allowing transactions to renew after receipt of the change notice. Except as otherwise provided in this Agreement, all changes must be in writing, signed by both parties.

1.3 Payment and Taxes

Client agrees to pay all applicable charges specified by IBM, charges for use in excess of authorizations, any customs or other duty, tax, levy, or fee imposed by any authority resulting from Client's acquisitions under this Agreement, and any late payment fees. 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.

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.

1.4 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.

1.5 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. This limit applies collectively to IBM, its subsidiaries, contractors, and suppliers. IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, revenue, goodwill, or anticipated savings.

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; ii) damages for body injury (including death); and iii) damages to real property and tangible personal property; and iv) damages that cannot be limited under applicable law.

If a third party asserts a claim against Client that an IBM Product 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 Products, items not provided by IBM, or any violation of law or third party rights caused by Client's 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.

1.6 General Principles

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.

Client is responsible for obtaining all necessary permissions to use, provide, store and process content in any services, maintenance, or support, and grants IBM permission to do the same. Some of Client's content may be subject to governmental regulation or may require security measures beyond those specified by IBM for an offering. Client will not input or provide such content unless IBM has first agreed in writing to implement additional required security measures.

Client is responsible to pay communications charges associated with accessing SaaS, Appliance Services, IBM Software Subscription and Support, and Select Support unless IBM specifies otherwise in writing.

IBM and its subcontractors may process the business contact information of Client, its employees and contractors worldwide for our business relationship, and Client has obtained the necessary consents. IBM will comply with requests to access, update, or delete such contact information. IBM may use personnel and resources in locations worldwide and third party suppliers to support the delivery of products and services.

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.

All notices under this Agreement must be in writing and sent to the address below, unless a party designates in writing a different address. 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.

1.7 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 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 IBM and Non-IBM Products.

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 any provision 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.

1.8 Agreement Termination

After expiration or termination of its obligations under this Agreement, the Client Originating Company may terminate this Agreement without cause on one month's notice to the IBM Originating Company, and the IBM Originating Company may terminate this Agreement on three months' notice to the Customer Originating Company.

If Client acquired or renewed IBM Software Subscription and Support, Selected Support, IBM SaaS, or if Client acquired or renewed a Program's license prior to the notice of termination, IBM may either continue to provide such services or allow Client to use the Program for the remainder of the current term(s), or give Client a prorated refund.

The Client Originating Company will be considered to have terminated this Agreement if neither it nor any of its participating Enterprise companies have placed orders for EPs for 24 consecutive months nor have Software Subscription and Support or Selected Support in effect, nor have any outstanding quotes for EPs.

Either of us may terminate this Agreement if the other does not comply with any of its terms, provided the one not complying is given written notice and reasonable time to comply.

Client agrees to promptly discontinue use of and destroy all of Client's copies of a Program upon termination of a license grant.

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

1.9 Eligible Products

IBM determines EPs, and assigns each EP a point value. IBM can add or withdraw EPs (including in CEO Product Categories), change PA point values, 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, IBM Software Subscription and Support, and Select Support, Monthly Licensing (ML) in its entirety, or a SaaS or an Appliance Service in its entirety (collectively Options) on 12 months' written notice to all then current Clients by published announcement, letter, or e-mail.

If IBM withdraws an Option, 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 Option; and if Client renewed the Option prior to the notice of withdrawal, Client may either (a) continue to use/receive that Option until the end of the then current term or (b) obtain a prorated refund.

1.10   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.

IBM may pro-rate charges for IBM Software Subscription and Support, Selected Support, Fixed Term Licenses of six months or more, and Appliance Services to align with Client's PA Anniversary.

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.

1.11   Relationship Suggested Volume Price (RSVP) Level and Suggested Volume Pricing (SVP)

An RSVP level is determined by aggregating points for all EPs ordered during Client's Term (described below). The point value of Client's initial EP order determines Client's initial RSVP level. Client may attain a higher RSVP Level by placing additional EP orders. The higher RSVP level will apply to orders placed after the higher RSVP level is attained. An SVP level is also calculated for each order, and is based on the point value for that order. If the SVP level for a particular order is higher than Client's current RSVP level, the SVP level will apply to that order.

The initial Term commences with Client's first order after enrollment and continues until the last day of the twelfth full month thereafter (i.e., the initial PA term includes 12 full months, plus if the order was not placed on the first day of a month, the remainder of the first month). On the first day of the month following the end of the prior Term (the Anniversary), the next 12 month Term begins. For each Term after the initial Term, Client's RSVP Level is reset on the Anniversary, based on EP acquired by all participating Client Sites during the prior Term. The RSVP Level for a new Term will not be lowered by more than one level below Client's RSVP level at the end of the prior Term.

RSVP/SVP Level Table:

RSVP/SVP Level	BL	D	E	F	G	H
Points	<500	500	1,000	2,500	5,000	10,000

1.12   Compliance Verification

Client will i) maintain, and provide upon request, records and system tools output, and access to Client's premises, as reasonably necessary for IBM and its independent auditor to verify Client's compliance with this Agreement, including Machine Code and Program licenses and metrics, such as sub-capacity usage, and ii) promptly order any required entitlements and pay additional charges at IBM's then current rates, (including uses in excess of Client's authorizations or entitlements, and associated IBM Subscription and Support and Selected Support), and other liabilities determined as a result of such verification. These compliance verification obligations remain in effect during the term of this Agreement and for two years thereafter. Client is responsible for retaining adequate records. If Client's records are inadequate to determine IBM Subscription and Support or Selected Support charges, IBM's charges for any excess usage will include two years of associated maintenance and IBM Subscription and Support or Selected Support.

1.13   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 based on processor value units (PVUs) under Sub-Capacity Licensing terms (an Eligible Sub-Capacity Product) http://www-01.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 PVUs associated with the virtualization capacity available to the Eligible Sub-Capacity Product as measured at https://www-112.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.

1.14   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 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, iii) if the total physical capacity of Client's Enterprise servers measured on a full capacity basis, but licensed under Sub-Capacity terms is less than 1,000 PVUs, or iv) 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 http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html . Reports must be prepared at least once per quarter. 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 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 and Appliance Services using reasonable care and skill.

IBM warrants that a 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 a 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, Client may return it to the party from whom Client acquired it for a refund.

The warranty for IBM SaaS is stated in its TD.

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. Non-IBM Products are sold under this Agreement as is, without warranties of any kind. Third parties may provide their own warranties to Client.

IBM will identify IBM EPs it does not warrant.

Unless otherwise specified in an Attachment or TD, IBM provides non-IBM EPs, **WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND**. Third parties provide and license products and services directly to Client under their own agreements.

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 its LI.

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.

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 a 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 this initial term. The IPLA's "money-back guarantee" does not apply to Appliances.

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 http://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.

3.5   Fixed Term Licensing

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 specified by IBM in a TD.

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 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 accessing any Program in the CEO Product Category. For each additional (secondary) CEO Product Category, Client must meet the applicable minimum initial order quantity requirement.

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.

IBM Software Subscription and Support includes defect corrections, restrictions, bypasses, and any new versions, releases, or updates IBM makes generally available.

IBM provides Client assistance for Client's i) routine, short duration installation and usage (how-to) questions; ii) code-related questions (together "Support"). Consult the IBM Software Support Handbook for details at http://www.ibm.com/software/support . 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 http://www.ibm.com/software/info/supportlifecycle/ .

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, used with or generated by MC, that permit the operation of the MC'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 and Support as a single offering as further described in the Appliance Support Handbook at http://www.ibm.com/software/appliance/support .

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 thirty days. A replacement assumes 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.   IBM SaaS

IBM Software as a Service (IBM SaaS) is an EP offering IBM provides to Client remotely through the Internet providing access to (i) functionality of Programs, (ii) infrastructure, and (iii) technical support. IBM SaaS is not a Program but may require Client to download enabling software to use it.

Client acknowledges that International Business Machines Corporation and its subsidiaries do not control the transfer of data over telecommunications facilities, including the Internet.   IBM will only provide access and use of Client's proprietary content to IBM employees and contractors as needed to deliver IBM SaaS. IBM will not disclose Client's proprietary content and will return or destroy it upon the expiration or cancellation of IBM SaaS. IBM will provide Client notice of any unauthorized third party access to Client's content of which IBM becomes aware and will use reasonable efforts to remediate identified security vulnerabilities.

Client may access and use IBM SaaS only to the extent of authorizations acquired by Client. Client is responsible for use of IBM SaaS by any party who accesses the IBM SaaS with Client's account credentials. An IBM SaaS may not be used for unlawful, obscene, offensive or fraudulent content or activity, in any jurisdiction for any user, 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. Unless expressly provided in a TD, Client is not authorized to use IBM SaaS to provide hosting or timesharing services to any third party.

The terms of a specific IBM SaaS offering are provided in its TD and may include without limitation, definitions, description of subscription and services, charge metrics, renewal and restrictions. TDs can be viewed at http://www-03.ibm.com/software/sla/sladb.nsf/sla/saas/ .

An IBM SaaS Subscription Period begins on the date that IBM notifies Client that Client has access and ends the last day of the month specified in the TD.

During an IBM SaaS Subscription Period, Client may increase Client's subscribed level of an IBM SaaS, but may only decrease the subscribed level at the end of a Subscription Period when renewing.

During an IBM SaaS Subscription Period IBM provides assistance, as specified in the TD, for Client's offering-specific, task-oriented questions regarding IBM SaaS. IBM SaaS technical support is available only for the currently supported versions of IBM SaaS, Client operating systems, Internet browsers, and software. IBM technical support for SaaS is available during the normal business hours (published prime shift hours) of the IBM SaaS support center.

AMERICAS

Governing Laws and Geographic Scope – *Replace the phrase, "the laws of the country where the transaction is performed (or for internet delivered Services, the laws of the country of Client's Business Address)" with:*

Canada: the laws of the Province of Ontario.

United States, Anguilla, Antigua/Barbuda, Aruba, British Virgin Islands, Cayman Islands, Dominica, Grenada, Guyana, Saint Kitts and Nevis, Saint Lucia, Saint Maarten, Saint Vincent and the Grenadines: the laws of the State of New York, United States.

General – *Replace the first sentence of paragraph two with*:

Latin America (all countries): Client accepts the terms in Attachments and Transaction Documents by signing the Attachments and Transaction Documents.

General – *Add, where required:*

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

ASIA PACIFIC

Governing Laws and Geographic Scope – *Replace the phrase, "the laws of the country where the transaction is performed (or for internet delivered Services, the laws of the country of Client's Business Address)" with:*

Cambodia, Laos: the laws of the State of New York, United States;

Australia: the laws of the State or Territory in which the transaction is performed;

Hong Kong SAR, Macau SAR: the laws of Hong Kong Special Administrative Region ("SAR");

Korea: the laws of the Republic of Korea;

Taiwan: the laws of Taiwan.

Governing Laws and Geographic Scope– *Add as a new paragraph:*

Cambodia, India, Laos, Philippines, Vietnam: Disputes will be finally settled by arbitration, held in Singapore, in accordance with the Arbitration Rules of the Singapore International Arbitration Center ("SIAC Rules") then in effect.

Indonesia: Disputes will be finally settled by arbitration, held in Jakarta, Indonesia, in accordance with the rules of the Board of the Indonesian National Board of Arbitration (Badan Arbitrase Nasional Indonesia or "BANI") then in effect.

Malaysia: Disputes will be finally settled by arbitration held in Kuala Lumpur in accordance with the Arbitration Rules of the Kuala Lumpur Regional Centre for Arbitration ("KLRCA Rules") then in effect.

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 in accordance with arbitration rules in force at the time.

Governing Laws and Geographic Scope – *Add as a new paragraph*:

Hong Kong SAR, **Macau SAR, Korea and Taiwan:**

All rights and obligations are subject to the courts of the country in which the transaction is performed except that in the countries identified below, all disputes will be brought before and subject to the exclusive jurisdiction of the following courts of competent jurisdiction:

Hong Kong SAR, **Macau SAR**: the courts of Hong Kong Special Administrative Region (SAR);

Korea: the Seoul Central District Court of the Republic of Korea;

Taiwan: the courts of Taiwan.

EMEA

Appliances – *Replace the fourth paragraph with*:

Spain, Switzerland, and Turkey: When IBM accepts Client's order, IBM transfers title to Client or, if applicable, Client's lessor when the Appliance is shipped to Client or its designated location. However, IBM reserves a purchase money security interest in the MC until IBM receives the amounts due.

Warranties – *Add to all countries in Western Europe, after paragraph 4:*

The warranty for Machines acquired in Western Europe will be valid and applicable in all Western European countries, provided the Machines have been announced and made available in such countries. For purposes of this paragraph, "**Western Europe**" means Andorra, Austria, Belgium, 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.

Liability and Indemnity

France, Germany, Malta, Portugal, Spain – *Insert after "exceed" and before "the amount":* **the greater of €500,000 (five hundred thousand euro) or**

Ireland, UK - *Replace the phrase "**up to the amounts paid**" with:* up to **125% of the amounts paid**

Governing Laws and Geographic Scope – *Replace the phrase, "the laws of the country where the transaction is performed (or for internet delivered 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: the laws of 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: the laws of 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: the laws of England;

Estonia, Latvia, and Lithuania: the laws of Finland;

Russia: the laws of the Russian Federation;

South Africa, Namibia, Lesotho and Swaziland: the laws of the Republic of South Africa.

Governing Laws and Geographic Scope– *Add to the end of the first paragraph:*

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: All disputes will be finally settled under the Rules of Arbitration and Conciliation of the Federal Economic Chamber in Vienna (Vienna Rules).

Algeria, Benin, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, Guinea-Bissau, 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, Wallis and Futuna: Any dispute will be finally settled by arbitration, administered by the ICC International Court of Arbitration, in Paris, in accordance with its arbitration rules in effect at the time of arbitration, except as may be modified herein or by agreement of the parties.

Angola, Bahrain, Botswana, Egypt, Eritrea, Ethiopia, Gambia , Ghana, Jordan, Kenya, Kuwait, Liberia, Libya, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, West Bank/Gaza, Yemen, Zambia, Zimbabwe: Any dispute will be finally settled by arbitration, administered by the London Court of International Arbitration , in accordance with the LCIA arbitration rules in effect at the time of arbitration, except as may be modified herein or by agreement of the parties.

Estonia, Latvia, and Lithuania: All disputes will be finally settled in arbitration to be held in Helsinki, Finland in accordance with the arbitration laws of Finland then in effect.

Russia: All disputes will be settled by Arbitration Court of Moscow.

South Africa, Namibia, Lesotho, and Swaziland: Any dispute will be finally settled by arbitration, administered by the Arbitration Foundation of South Africa Rules (AFSA Rules), in accordance with the ICC arbitration rules in effect at the time of arbitration, except as may be modified herein or by agreement of the parties.

Governing Laws and Geographic Scope – *Add to the end of the second paragraph:*

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);

Greece: the competent court of Athens;

Israel: the courts of Tel Aviv-Jaffa;

Italy: the courts of Milan;

Portugal: the courts of Lisbon;

South Africa, Namibia, Lesotho and Swaziland: the High Court in Johannesburg;

Spain: the courts of Madrid;

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

United Kingdom: the English courts.