



International Passport Advantage Express Agreement

This International Passport Advantage Express Agreement (IPAEA) and its applicable Attachment(s) and Transaction Document(s) (TD(s)) are the complete agreement regarding each transaction under this IPAEA (together the Agreement) under which Client may order Eligible Products (EPs) from IBM or IBM Business Partners. EPs are IBM and Non-IBM offerings such as Programs, Appliances, or Services made available to Client by IBM. Services include but are not limited to Support Offerings, Cloud Services, or other Services IBM provides, such as customization, configuration, or other services to support EPs, as detailed in an Attachment or TD.

TDs provide the specifics of transactions, such as charges, and a description of and information about the applicable EPs. Examples of TDs include terms of use, service descriptions, quotes, and Proofs of Entitlement (PoEs). There may be more than one TD applicable to a transaction.

Attachments provide supplemental terms that apply across certain types of EPs.

The IPAEA is an international agreement, and the Part 2 – Country Required Terms modify the Part 1 – Global Terms as applicable for a specified country.

Subject to Section 8, in the event of conflict, an Attachment prevails over this IPAEA, and a TD prevails over any Attachment and this IPAEA.

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Part 1 – Global Terms

1. IPAEA Acceptance

- Client accepts this IPAEA by submitting an order to IBM or Client's chosen IBM Business Partner.
- Enterprise means Client and the set of legal entities that, by more than 50%, owns, are owned by, or are under common ownership with the Client.

- c. This IPAEA is effective on the date IBM accepts the order under this IPAEA. IBM accepts Client's orders by: i) sending a TD that includes the level of authorized use; ii) making a Program or Cloud Service available; iii) shipping an Appliance; or iv) providing the Services.

2. Content and Data Protection

- a. Content consists of all data, software, and information that Client or its authorized users provide, authorize access to, or inputs to the Cloud Services or information or data Client may provide, make available or grant access to, in connection with IBM providing the Cloud Services or other Services. Client grants the rights and permissions to IBM, its affiliates, and contractors of either, to use, provide, store, and otherwise process Content solely for the purpose of providing the Cloud Services or other Services. As between IBM and Client, use of the Cloud Services or other Services will not affect Client's ownership or license rights in Content.
- b. IBM, its affiliates, and their respective contractors may access and use the Content solely for the purpose of providing and managing the IBM Cloud Services or other IBM Services. IBM will treat all Content as confidential by only disclosing the Content to IBM employees and contractors to the extent necessary to provide the IBM Cloud Services or other IBM Services.
- c. Client is responsible for obtaining all necessary rights and permissions to permit processing of Content in the Cloud Services or for IBM to perform other Services. Client will make disclosures and obtain consent required by law before Client provides, authorizes access to, or inputs individuals' information, including personal or other regulated data, for processing in the IBM Cloud Services or use by IBM in providing the other Services.
- d. If any Content could be subject to governmental regulation or may require security measures beyond those specified by IBM for the Cloud Services or to provide other Services, Client will not provide, allow access to, or input the Content for processing in the Cloud Services or provide or allow access of Content to IBM to provide other Services unless specifically permitted in the applicable TD or unless IBM has first agreed in writing to implement additional security and other measures. Client is responsible for adequate back-up of Content on Client managed systems prior to providing or allowing access of Content to IBM to provide other Services.
- e. IBM Data Security and Privacy Principles (DSP), at <http://ibm.com/terms/?id=z126-7745>, apply for generally available, standard IBM Cloud Services and other IBM Services as identified in a TD. At IBM's discretion, IBM may change the DSP from time to time and the change will be effective when published or on the specified effective date. The intent of any change will be to improve and clarify existing commitments and maintain alignment to current adopted operational and security standards or applicable laws. The intent is not to degrade the security or functionality.
- f. The specific security features and functions of an IBM Cloud Service or other IBM Services will be described in the applicable Attachment and/or TD(s). Client is responsible for selecting, ordering, enabling, or using available data protection features appropriate to support Client's use of Cloud Services. Client is responsible for assessing the suitability of the Cloud Services for the Content and Client's intended use of Content with Services IBM will provide. Client acknowledges that the use of Cloud Services and other Services meets Client's requirements and processing instructions required to comply with applicable laws.
- g. IBM's Data Processing Addendum (DPA) is found at <http://www.ibm.com/dpa>. The DPA and applicable DPA Exhibit(s) apply to IBM's processing of personal data on behalf of the Client.
- h. For IBM Cloud Services with self-managed features, Client can remove Content at any time. Otherwise, IBM will return or remove Content from IBM computing resources upon the expiration or cancellation of the IBM Cloud Services or other IBM Services, or earlier upon Client's request. IBM may charge for certain activities performed at Client's request (such as delivering Content in a specific format). IBM does not archive Content; however, some Content may remain in backup files until expiration of such files as governed by IBM's backup retention practices.

3. Warranties

- a. IBM warrants an IBM Program as set forth in its applicable IBM license agreement.
- b. IBM warrants it provides Services using commercially reasonable care and skill as described in the Agreement. The warranty for Services ends when the Services end.

- c. IBM warrants that an IBM Machine component of an Appliance used in its specified operating environment conforms to its specifications. A Machine is a hardware device including its features, upgrades, and accessories. The warranty period is specified in the applicable Attachment or TD.
- d. If an Appliance does not function as warranted during its warranty period and IBM is unable to repair or replace it with a functionally equivalent Appliance, Client may return it to IBM or the IBM Business Partner for a refund of the amount Client paid (for recurring charges, up to twelve months' charges) and Client's license or right to use such Appliance terminates.
- e. 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 does not warrant uninterrupted or error-free operations of an EP or that IBM will correct all defects or prevent third-party disruptions or unauthorized third-party access to an EP. IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, or failure to comply with written instructions provided by IBM. Non-IBM EPs and preview products, or identified non-warranted IBM EPs are sold under the Agreement as-is, without warranties of any kind. Third parties may provide their own warranties to Client for Non-IBM EPs.

4. Charges, Taxes, Payment, and Verification

- a. Client's right to use an EP is contingent on Client paying applicable charges as specified in the Agreement under which Client acquired the entitlements.
- b. Client agrees to pay all applicable charges for acquired entitlements and any charges for use of excess authorizations. Charges are exclusive of any customs or other duty, tax, and similar levies imposed by any authority resulting from Client's acquisitions of entitlements and will be invoiced in addition to such charges. Amounts are due upon receipt of the invoice and payable within 30 days of the invoice date to an account specified by IBM and if not paid within 30 days, late payment fees may apply. Client is responsible to properly acquire additional entitlements in advance to increase its use. Prepaid EPs 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 except as specified in this Agreement. IBM may pro-rate charges for select EPs to align with a common date such as Anniversary dates.
- c. In the event that an withholding or deduction for or on account of tax is required under any law or regulation of any governmental entity or authority, domestic or foreign to be made by Client in respect of any charge, Client shall increase the sum payable by the amount necessary to ensure IBM receives an amount equal to the sum it would have received had no withholdings or deductions been made. Client is responsible to pay any withholding tax directly to the appropriate government entity where required by law.
- d. If Client imports, exports, transfers, accesses, or uses an EP across a border, Client agrees to be responsible for and pay authorities any custom, duty, tax, or similar levy assessed by the authorities. This excludes those taxes based on IBM's net income.
- e. Client's obligation to pay EP charges due under this Agreement is absolute and unconditional and not subject to setoff or delay. Neither IBM nor IBM's affiliates and subsidiaries make any representation regarding Client's accounting treatment of such payments; IBM may account for receivables as financing receivables for United States reporting purposes.

4.1 License Verification

- a. For all Programs at all Sites and for all environments, Client annually will: i) provide a report of deployed Programs, in a format, equivalent to the reporting template under License Verification annual reporting at http://www.ibm.com/about/software-licensing/us-en/sam/client_responsibilities, as otherwise requested by IBM, using records, system tools output, and other system information; ii) provide supporting documentation (collectively, Deployment Data); and iii) retain this information for a minimum of 2 years. Upon request from IBM, Client will provide this information within 30 days of the request.
- b. Upon reasonable notice, IBM and its independent auditors may verify Client's compliance with the Agreement at all Sites and for all environments that Client uses (for any purpose) Programs. Verification will be conducted in a manner that minimizes disruption to Client's business. Verification may be conducted on Client's premises, during normal business hours. IBM will have a written confidentiality agreement in place with the independent auditor. In addition to providing Deployment

Data described above, Client agrees to provide to IBM and its auditors additional accurate information and Deployment Data upon request.

- c. Client will promptly order and pay at IBM's then current prices for: i) any deployments in excess of authorizations indicated on or by any annual report or verification; ii) applicable S&S for such excess deployments for the lesser of the duration of such excess use or two years; and iii) any additional charges and other liabilities determined as a result of such verification, including but not limited to taxes, duties, and regulatory fees.

5. Liability and Intellectual Property Protection

- a. IBM's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the EP that is the subject of the claim, regardless of the basis of the claim. IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings. These limitations apply collectively to IBM, its affiliates, contractors, and suppliers.
- b. The following amounts are not subject to the above cap: i) third-party payments related to infringement claims described in the paragraph 5(c) below; and ii) damages that cannot be limited under applicable law.
- c. If a third party asserts a claim against Client that an IBM EP acquired under the 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. To obtain IBM's defense against and payment of infringement claims, Client must promptly: i) notify IBM in writing of the claim; ii) supply information requested by IBM; and iii) allow IBM to control, and reasonably cooperate in, the defense and settlement, including mitigation efforts. IBM's defense and payment obligations for infringement claims extend to claims of infringement based on open-source code that IBM selects and embeds in an IBM EP.
- d. IBM has no responsibility for claims based on: i) Non-IBM EPs; ii) items not provided by IBM; iii) IBM's proper use of any Client required third-party products or services related to the administration of the transaction; iv) any violation of law or third-party rights caused by Content, or any Client materials, designs, specifications; or v) Client's use of a non-current version or release of an IBM EP when an infringement claim could have been avoided by using a current version or release.

6. Governing Laws and Geographic Scope

- a. Both parties agree to the application of the laws of the country where the transaction is performed (or for IBM or Non-IBM Cloud Services, the laws of the country of Client's business address), without regard to conflict of law principles. Any disputes will be brought before a court of competent jurisdiction within such country.
- b. The rights and obligations of each party are valid only in the country where the transaction is performed (or for IBM or Non-IBM Cloud Services the country of Client's business address) or, if IBM agrees, the country where the IBM EP or Non-IBM EP is placed in productive use, except all licenses are valid as specifically granted.
- c. Each party is also responsible for complying with: i) laws and regulations applicable to its business and Content; and ii) import, export and economic sanction laws and regulations, including the defense trade control regime of the United States of America and any applicable jurisdiction that prohibit or restrict the import, export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. IBM will not serve as Client's exporter or importer, except as required by data protection laws, for: i) any Content; ii) use of any portion of a Cloud Service from a country outside Client's business address.
- d. If any provision of the Agreement is invalid or unenforceable, the remaining provisions remain in full force and effect. Nothing in the 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 the Agreement.

7. General Terms

- a. EPs are for use within Client's Enterprise only. Client may not assign, resell, rent, lease, or transfer an EP to a third party. Any attempt to do so is void. Lease-back financing of Appliances is permitted.

EPs may not be used to provide commercial hosting or other commercial information technology services to third parties.

- b. IBM may withdraw on 12 months' notice Term Licenses, S&S, Selected Support, Cloud Services, or Appliance Services. IBM will continue to provide the withdrawn offering for the remainder of Client's unexpired term or work with Client to migrate to another generally available IBM offering. Non-IBM EPs may be discontinued at any time if the third party discontinues, or IBM no longer makes available such Non-IBM EPs.
- c. IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform or take responsibility for any of Client's regulatory, business, or operational obligations. Client is responsible for its use of IBM EPs and Non-IBM EPs. IBM is acting as an information technology provider only. IBM's direction, suggested usage, guidance, or Client's use of an IBM EP does not constitute medical, clinical, legal, accounting, or other licensed professional advice. Client should obtain its own expert advice. Each party is responsible for determining the assignment, direction, control, and compensation of its and its affiliates personnel and their respective contractors.
- d. For Programs IBM provides to Client in tangible form, IBM fulfills its shipping and delivery obligations upon the delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by Client and IBM.
- e. Client may not use IBM EPs or Non-IBM EPs if failure or interruption of the IBM EPs or Non-IBM EPs could lead to death, serious bodily injury, or property or environmental damage.
- f. Parties will not disclose confidential information to employees or contractors of the other party without a separate, signed confidentiality agreement. If confidential information is exchanged in connection with the Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this IPAEA. This paragraph does not apply to Content provided in the use of an IBM Cloud Services or Non-IBM Cloud Service.
- g. IBM maintains a robust set of business conduct and related guidelines covering conflicts of interest, market abuse, anti-bribery and corruption, and fraud. IBM and its personnel comply with such policies and require contractors to have similar policies.
- h. IBM, its affiliates, and their respective contractors require use of business contact information and certain account usage information. This information is not Content. Business contact information is used to communicate and manage business dealings with the Client. Examples of business contact information include name, business telephone, address, email, user ID, and tax registration number(s). Account usage information is required to enable, provide, manage, support, administer, and improve EPs. Examples of account usage information include reported errors and digital information gathered using tracking technologies, such as cookies and web beacons during use of the EPs. The IBM Privacy Statement at <http://www.ibm.com/privacy> provides additional details with respect to IBM's collection, use, and handling of business contact and account usage information. When Client provides information to IBM and notice to, or consent by, the individuals is required for such processing, Client will notify the individuals and obtain their consent.
- i. IBM Business Partners who use or make available IBM EPs or Non-IBM EPs are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings. If IBM notifies Client their current IBM Business Partner will no longer resell an IBM EP, Client may select to acquire the EP directly from IBM or another authorized IBM Business Partner as available.
- j. IBM may offer Non-IBM EPs, or an IBM EP may enable access to Non-IBM EP, that may require acceptance of third-party terms presented to the Client. Linking to or use of Non-IBM EPs constitutes Client's agreement with such third-party terms. Third-party terms and privacy practices govern use of Content Client may provide, grant access to or input to a Non-IBM Cloud Service or other Non-IBM Service. IBM is not a party to any third-party agreement and is not responsible for Non-IBM EPs. Access to Non-IBM EPs may be discontinued at any time if the third party discontinues or IBM no longer makes available such Non-IBM EPs. IBM may provide Client opportunities to voluntarily provide feedback in connection with the use of IBM EPs, which IBM may use for any purpose.
- k. A preview product is when IBM makes an IBM EP or Non-IBM EP or feature of an IBM EP or Non-IBM EP available at no charge, with limited or pre-release functionality, or for a limited time, to try available functionality (such as beta, trial, evaluation, no-charge, or designated preview products). Services levels agreements set forth in the Agreement (including in a TD or Attachment) that

provides service levels does not apply to preview products. A preview product may not be covered by support and IBM may change or discontinue a preview product at any time and without notice. For any preview product that is provided as a pre-release, IBM is not obligated to release a generally available product. Client is responsible for placing an order under generally available terms for generally available EPs when a preview expires.

- l. Neither party may assign the Agreement, in whole or in part, without the prior written consent of the other. IBM may assign its right to receive payments without consent. IBM will remain responsible to perform its obligations. Assignments by IBM in conjunction with the sale of the portion of IBM's business that includes an IBM EP or Non-IBM EP is not restricted by the foregoing. IBM may share the Agreement and related documents in conjunction with any assignment.
- m. The parties' consent to use electronic means and facsimile transmissions for communications as a signed writing. Any reproduction of the Agreement made by reliable electronic means is considered an original. The Agreement supersedes any course of dealing, discussions, or representations between the parties. Where approval acceptance, consent, access, cooperation, or similar action by either party is required, such action will not be unreasonably delayed or withheld.
- n. No right or cause of action for any third party is created by the Agreement or any transaction under it. Neither party will bring a legal action arising out of or related to the Agreement more than two years after the cause of action arose. Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control.
- o. IBM may use personnel and resources in locations worldwide, including third-party contractors to support the delivery of IBM EPs and Non-IBM EPs. Client's use of IBM EPs or Non-IBM EPs may result in the transfer of Content, including personally identifiable information, across country borders. A list of countries where Content may be transferred and processed is described in the TD or as specified in Services support documentation. IBM is responsible for the obligations under the Agreement even if IBM uses a third-party contractor and will have appropriate agreements in place to enable IBM to meet its obligations.
- p. If IBM and Client agree to use a Client-requested third-party service to support the procurement or payment activities associated with the Agreement, IBM agrees to submit or receive applicable documents (such as invoices or similar contracting documents) using the third-party service. Client agrees to reimburse IBM for any third-party fees associated with IBM's use of such third-party service. In the event: i) the third-party service becomes unavailable for any reason; or ii) the third-party provider modifies the service or terms of use in a manner IBM deems commercially unacceptable, the Client agrees to directly accept documents from IBM and pay IBM directly. Client remains responsible to IBM for timely payments of invoices and for any claims or proceedings related to the third-party service provider's failure to comply with applicable laws or for such provider's use, misuse, or disclosure of data or confidential information. IBM agrees to promptly notify Client in writing of any such claim or proceeding.

8. Program Licenses

- a. IBM Programs available under this IPAEA are licensed under IBM's International Program License Agreement (IPLA) or a designated IBM license agreement available at <http://www.ibm.com/terms/pla>, and the Program's License Information document (LI) available at <http://www.ibm.com/terms/?cat=software-license>. If there is a conflict between the terms of this IPAEA, including its applicable Attachments and TDs, and the terms of the IPLA including the applicable LI, the terms of this IPAEA prevail.
- b. If Client is dissatisfied with a Program for any reason, Client may terminate the license by returning the Program and proof of entitlement to IBM or the authorized IBM Business Partner within 30 days of the first acquisition date of such Program for a refund of the amount paid.
- c. Trade-up licenses for IBM Programs that replace IBM Programs with active support or Non-IBM Programs may be acquired for a reduced charge. When Client installs a replacement IBM Program, the replaced IBM Program license terminates. Client agrees to uninstall and destroy all copies of the replaced IBM or Non-IBM Program, unless the trade-up license covers continued use of such replaced Program.

8.1 Program Term Licenses and Renewals

- a. Programs IBM offers under term licensing models give Client a license to use a Program and access to S&S or Sustained Support, as applicable, for a term specified in applicable TDs.

- b. Upon expiration of the license term, Client's license to use the Program and access to S&S or Sustained Support, as applicable, terminates. Client is required to uninstall and destroy all copies of the affected Program. Client agrees to provide evidence of such upon request from IBM.

8.1.1 Subscription License

- a. Client may not terminate entitlements for Subscription License before the end of the current term.
- b. For select Programs that Client has previously licensed and has active support (Qualifying Program), Client may upgrade to a Subscription License Upgrade Program, as detailed in a TD. When a Subscription License Upgrade is acquired, Client may use the Qualifying Program and the Subscription License Program in any deployment combination up to the total number of entitlements purchased for the Subscription License Upgrade Program.

8.1.2 Monthly License

- a. Client may terminate a Monthly License term early by giving IBM at least 30 days' written notice. Client will receive a prorated refund for any whole months remaining in a prepaid term.

8.1.3 Fixed Term License

- a. Client may terminate a Fixed Term License early by giving IBM at least 30 days' written notice. Client will receive a prorated refund for any whole months remaining in a prepaid term.

8.1.4 Term License Renewal

- a. If the Program is still available and Client renews for another term, IBM will renew the expiring license entitlements for the term and renewal charges specified in the TD.
- b. If Client does not renew, the license term expires.
- c. If Client does not renew a Subscription License Upgrade Program, the license term for the Upgrade Program expires. Client may continue to use the Qualifying Program at the Program version level in use at the end of the term or, if applicable, the designated Qualifying Program replacement. If Client elects to resume an available Support Offering for the Qualifying Program, Client must acquire the Support Offering at then current prices for all uses and installations of the Qualifying Program.
- d. If Client requests to renew expiring licenses at a lesser quantity of the Program uses and installations than the expiring quantity, Client must provide system generated documentation that verifies the current Program uses and installations to IBM, as specified in the Agreement. If the documentation is not received by IBM at least 30 days prior to the renewal date, Client must renew all expiring quantities.
- e. Client may change the renewal option for a Term License, if available, at any time by giving IBM at least 30 days' written notice before the end of the current term.

8.2 Full Capacity and Virtualization Requirements

- a. Client must license the total number of all physical Activated Processor Cores in the physical hardware environment made available to or managed by the EP, except for those servers from which the EP has been permanently removed (Full Capacity). An Activated Processor Core is a processor core that is available for use in a physical server, regardless of whether the capacity of the processor core can be or is limited through virtualization technologies, operating system commands, BIOS settings, or similar restrictions.

8.2.1 Virtualization Environment Products (Sub-Capacity or Container Licensing)

- a. Sub-Capacity Licensing – EPs that meet the requirements for Sub-Capacity usage (see <http://www.ibm.com/software/passportadvantage/subcaplicensing.html>) may be licensed under Sub-Capacity Licensing terms (Eligible Sub-Capacity Product). Client must acquire entitlements equal to the virtualization capacity available to the Eligible Sub-Capacity Product.
- b. Container Licensing – EPs that meet the requirements for Container usage (see <http://www.ibm.com/software/passportadvantage/containerlicenses.html>) may be licensed under Container Licensing terms (Eligible Container Product). Client must acquire entitlements for the total number of processor cores associated with the capacity of all containers available to the Eligible Container Product.
- c. Client is responsible to comply with the virtualization environments requirements to be eligible for Sub-Capacity Licensing or Container Licensing benefits.

- d. Prior to an increase in Sub Capacity or Container Licensing Programs, Client must first acquire sufficient licenses, including IBM Software Subscription and Support, if applicable, to cover that increase.
- e. If EP deployments do not meet the Sub-Capacity Licensing or Container Licensing requirements in this section, Client is required to license at Full Capacity.

8.2.2 Client's Reporting Responsibilities

In addition to the License Verification terms in Section 4.1 and applicable TDs, the following reporting and resolution terms apply.

- a. For EPs under Sub-Capacity Licensing and Container Licensing, Client agrees to properly install, run, and maintain the most current available update of the applicable license reporting tool within 90 days of Client's first deployment and produce a report. Unless IBM approves a different reporting tool, the Client agrees to the following tools.
 - 1) Sub-Capacity Products -Client will use the IBM License Metric Tool (ILMT) and to subscribe to the ILMT support notifications at <http://www.ibm.com/support/mynotifications> and promptly install any updates.
 - 2) Container Products – Client will use the IBM License Service tool and Client is responsible to correctly configure according to the Eligible Container Product's documentation.
- b. Client must assign a person in Client's organization with authority to manage and promptly resolve questions on reports or inconsistencies between report contents, license entitlement, and the applicable license reporting tool.
- c. For EPs under Sub-capacity Licensing or Container Licensing, for all Sites and environments, Client is required to run reports at least once per quarter and retain each report a minimum of 2 years and provide to IBM upon request. Manual reporting is not permitted for Container Products.
- d. For EPs running in Full Capacity, in all Sites and environments, Client must: i) track either manually or using an available IBM tools; ii) report Client's licenses for each EP at least once a year; iii) retain, for a minimum of 2 years, each report and the Deployment Data used to identify the deployed EP and the related Full Capacity of the Servers made available or managed by the EP; and iv) provide reports to IBM upon request. Report format must contain similar information as noted in the Manual Calculation of Virtualization Capacity report at: <http://www.ibm.com/software/passportadvantage/subcaplicensing.html>.
- e. For EPs that no longer meet Sub-Capacity Licensing requirements for which Client would like to continue to license under Sub-Capacity Licensing terms, Client will submit a migration plan to meet the Sub-Capacity Licensing requirements for IBM's review and approval. During any approved migration, Client shall maintain the version of ILMT that supported the EP based on the Sub-Capacity Licensing requirements prior to becoming ineligible and continue to generate ILMT reports. With IBM's prior written consent, Client may manually manage and track such EPs in accordance with item d above.
- f. Except for IBM approved changes, modifications, or updates to software licensing tools, Client may not alter, modify, omit, delete, or misrepresent by any means, directly or indirectly:
 - 1) any IBM-approved software reporting tools, including its code, or any report generated by such tools; or
 - 2) any manually generated reports that misrepresents use of EPs.

8.2.3 Excess Use Resolution

- a. IBM will notify Client in writing if Client has used any EPs in excess of Client's Authorized Use or is otherwise not in compliance with the Agreement. Client agrees to promptly pay the charges at then current prices that IBM specifies in an invoice for: i) such excess use; ii) S&S and Selected Support for such excess use for the lesser of the duration of such excess use or two years; and iii) any additional charges and other liabilities determined, including but not limited to taxes, duties, and regulatory fees.

8.3 CEO (Complete Enterprise Option) Product Categories

- a. A CEO Product Category is a collections of EP components offered by IBM on a per CEO User basis subject to specific acquisition rules including a minimum initial user quantity (a CEO Product Category) described at <http://www.ibm.com/software/passportadvantage/ceoproductcategories.html>.

For Client's first CEO Product Category, Client must acquire licenses for all users in their Enterprise who have been assigned a machine capable of copying, using, or extending the use of any Program in the CEO Product Category (CEO User) and subject to that category's minimum initial order user quantity. For each additional CEO Product Category, Client must meet the applicable minimum initial order user quantity requirement for the CEO Product Category but is not required to acquire licenses for all CEO Users.

- b. Any installs of any EP component of a CEO Product Category can only be used by or for users for whom licenses have been obtained. All EPs used on an end user device to access an EP on a server must be acquired from the same CEO Product Category as the server the EP accessed.

9. Appliances

- a. An Appliance is an EP which is a combination of Program components, Machine components, and any applicable Machine Code components offered together as a single offering and designed for a specific function. Unless otherwise provided, terms that apply to a Program apply to the Program component of an Appliance. Client shall not use any component independent of the Appliance of which it is a part.
- b. A Machine component is an IBM or non-IBM device, including its feature, upgrades, and accessories. A Machine Code component is computer instructions, fixes, replacements, and related materials, such as data and passwords relied on, provided by, used with, or generated by a Machine component, that permit the operation of the Machine component's processors, storage, or other functionality. Machine Code may include software code licensed under separate agreement identified in an Other Internal Licensed Code Attachment. Client acceptance of this IPA EA 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 copy of the Machine Code component is copyrighted and licensed.
- c. 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.
- d. When Client acquires an Appliance directly from IBM, IBM transfers title to a Machine component 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. IBM pays for insurance on Client's behalf until delivery to Client's location. Client must report any loss in writing to IBM within 10 business days of delivery and follow the claim procedure provided by IBM. For an upgrade acquired for an Appliance, IBM reserves transfer of title of the Machine component until IBM receives payment of all the amounts due and receives all removed parts, which then become IBM's property. IBM will not serve as the exporter or importer of record.
- e. If an Appliance is IBM-set-up (IBM installable), Client will allow installation within 30 days of shipment or additional charges may apply. Client will promptly install or allow IBM to install mandatory engineering changes. If an Appliance is Client-set-up (Client installable), Client will install it according to instructions provided with it.
- f. Appliance hardware components removed or exchanged for upgrade, warranty service, or maintenance become IBM property and must be returned to IBM within 30 days. A replacement takes on the warranty or maintenance status of the replaced part. If 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.

10. Cloud Services

- a. Cloud Services are "as a service" EPs that IBM makes available and provides via a network, such as software as a service, platform as a service, or infrastructure as a service, or other network delivered services as specified in a TD.
- b. Cloud Services are designed to be available 24/7, subject to maintenance. IBM will provide advance notice of scheduled maintenance.
- c. When IBM accepts Client's order, IBM provides Client the authorizations specified in the TD. IBM provides the facilities, personnel, equipment, software, and other resources necessary to provide

Cloud Services. IBM provides generally available user guides and documentation to support Client's use of the IBM Cloud Service.

- d. Client will provide hardware, software, and connectivity to access and use Cloud Services, including any required Client-specific URL addresses and associated certificates.
- e. Client's authorized users may access Cloud Services only to the extent of authorizations Client acquires. Client is responsible for use of Cloud Services by any user who accesses the Cloud Services with Client's account credentials.
- f. The following acceptable use terms apply for Client's use of the Cloud Services. Cloud Services may not be used to undertake any activity or host Content that: i) is unlawful, fraudulent, harmful, malicious, obscene, or offensive; ii) threatens or violates the rights of others; iii) disrupts or gains (or intends to disrupt or gain) unauthorized access to data, services, networks, or computing environments within or external to IBM; iv) sends unsolicited, abusive, or deceptive messages of any type; or v) distributes any form of malware. Client may not use Cloud Services for crypto mining, unless otherwise agreed by IBM in writing. Client may not: i) reverse engineer any portion of a Cloud Service; ii) assign or resell direct access to a Cloud Service to a third party outside Client's Enterprise; or iii) combine a Cloud Service with Client's value add to create Client branded solution that Client markets to its end user customers unless otherwise agreed by IBM in writing.
- g. Additional terms, including data protection terms, for Cloud Services are provided in the General Terms for Cloud Offerings for Passport Advantage Agreements document at <http://www.ibm.com/terms/?id=i126-5948>. Each Cloud Service is described in a Service Description and may include additional Client responsibilities. These documents can be viewed at <http://www.ibm.com/terms/?cat=cloud-sd>. Technical support and service level commitments, if any, are specified in a TD.
- h. Client acquires Cloud Services on a subscription basis or as specified in a TD. Client may increase authorization levels to the Cloud Services by placing an order. Client may only decrease Client's authorization levels when renewing the Cloud Services.

11. Support

A TD will identify acquired support offerings, coverage start and end dates, and other transactional information.

- a. Support Offerings are EPs which will consist of one or combination of:
 - 1) Software Subscription which provides Client access to generally available defect corrections, restrictions, bypasses, and any new versions, releases, or updates; or
 - 2) Software Support which provides Client assistance with Client's: i) routine, short duration installation and usage (how-to) questions; and ii) code-related questions.
- b. The IBM Support Guide at <http://www.ibm.com/support/guide> provides details and additional information for IBM support offerings. The IBM Software Support Lifecycle policy is available at <http://www.ibm.com/support/lifecycle>.

11.1 Support Offerings

11.1.1 Software Subscription and Support

- a. Software Subscription and Support (S&S) provides both Software Subscription and Software Support.

11.1.2 Appliance Services

- a. Appliance Services is an offering that provides Machine maintenance and S&S. Appliance Services cover undamaged and properly maintained and installed Appliances used as authorized by IBM with unaltered identification labels. Appliance 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.

11.1.3 Optional Support Offerings

- a. Client may acquire optional support offerings as described in the applicable TDs.

11.2 Usage and Renewal of Support Offerings

- a. Software Support for a specified version or release of an EP is available only until withdrawn by IBM at which time Client must: i) upgrade to a supported version or release of the EP; or ii) acquire an available optional support offering to continue to receive Software Support.
- b. If Client elects to continue to receive the benefits of a support offering for an EP at a designated Site, Client must maintain applicable support offering entitlements for all uses and installations of the EP at that Site. All uses and installations of any Appliance expansion or add-on applied to an Appliance must also be maintained.
- c. If Client requests to renew expiring S&S, or as specified for optional support offerings, at a lesser quantity of EP uses and installations than the expiring quantity (Partial Renewal), Client must provide system generated documentation that verifies current uses and installations of the EP to IBM. For EPs under Sub-Capacity Licensing or Container Licensing, Client must provide ILMT or IBM License Service tool reports with uses and installations of the EP for at least the last 90 days prior to the renewal date. If the documentation is not received by IBM at least 30 days prior to the renewal date, Client must renew all expiring quantities.
- d. If Client's S&S or Appliance Services coverage lapses, the benefits of the S&S or Appliance Services will no longer be available to the Client including, if applicable, but not limited to, the ability to access downloads and media. To reinstate coverage, Client must pay any applicable reactivation fee and acquire the S&S or Appliance Services at then current prices for all uses and installations of the EP. For Appliances, Client must permit IBM to inspect the Appliance before Appliance Services can be reinstated and if not in acceptable condition, Client must restore the Appliance into acceptable working condition, as determined by IBM, to receive Appliance Services for that Appliance.
- e. IBM uses information about errors and problems to improve EPs and Services and assist with the provision of related support offerings.

Part 2 – Country Required Terms

For EPs acquired in the countries specified below, the following terms replace or modify the referenced terms of this IPAEA. Terms not changed by these amendments remain unchanged and in effect.

AMERICAS

Section 2. Content and Data Protection

In paragraph a, second sentence, and paragraph b, in both the first and second sentences, replace the word "contractors" with:

In Mexico: providers

Section 4. Charges, Taxes, Payment, and Verification

In paragraph b, replace the first and second sentence with the following:

In Brazil: Client agrees to pay all applicable charges for acquired entitlements and any charges for use in excess of authorizations and any customs or other duty, tax, and similar levies imposed by any authority resulting from Client's acquisitions under this Agreement.

In paragraph b:

In Mexico:

In the third sentence, delete the words "to an account specified by IBM and if not paid within 30 days, late payment fees may apply." and replace with the following words".

"and 2% default interests may apply."In Mexico:

Add the following new sentence after the third sentence:

Payments will be made through electronic transfer of funds to an account specified by IBM or in IBM's domicile which is located in Alfonso Napoles Gandara 3111, Santa Fe Peña Blanca, Alvaro Obregon, Mexico City, Zip Code 01210.

Add at the end of paragraph b the following sentence:

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

Add at the end of paragraph b the following sentence:

In United States: The parties agree no tangible personal property (e.g. media or publications) shall transfer to Client if: i) IBM delivers Programs electronically to Client; or ii) Client claims a sales or use tax exemption for Programs IBM delivers electronically to Client. Where taxes are based upon the location(s) receiving the benefit of the Program, Client has an ongoing obligation to notify IBM of such location(s) if different than Client's business address listed in the applicable TD.

Section 5. Liability and Intellectual Property Protection

In paragraph a, last sentence, delete the word:

In Mexico: contractors

Insert the following disclaimer at the end of paragraph a:

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

Section 6. Governing Laws and Geographic Scope

Replace paragraph a, in its entirety, with the following:

In Argentina: Both parties agree to the application of the laws of the Republic of Argentina, without regard to the conflict of law principles. Any proceeding regarding the rights, duties, and obligations arising from this Agreement will be brought in the Ordinary Commercial Court of the City of "Ciudad Autónoma de Buenos Aires".

In Chile: Both parties agree to the application of the laws of Chile, without regard to the conflict of law principles. Any conflict, interpretation or breach related to this Agreement that cannot be solved by the Parties should be remitted to the jurisdiction of the Ordinary Courts of the city and district of Santiago.

In Colombia: Both parties agree to the application of the laws of the Republic of Colombia, without regard to the conflict of law principles. All rights, duties and obligations are subject to the judges of the Republic of Colombia.

In Ecuador: Both parties agree to the application of the laws of the Republic of Ecuador, without regard to the conflict of law principles. Any dispute arising out or relating to this Agreement will be submitted to the civil judges of Quito and to the verbal summary proceeding.

In Peru: Both parties agree to the application of the laws of Peru, without regard to the conflict of law principles. Any discrepancy that may arise between the parties in the execution, interpretation or compliance of this Agreement that may not be directly resolved shall be submitted to the Jurisdiction and Competence of the Judges and Tribunals of the 'Cercado de Lima' Judicial District.

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

In Venezuela: Both parties agree to the application of the laws of Venezuela, without regard to the conflict of law principles. The parties agree to submit any conflict related to this Agreement, existing between them to the Courts of the Metropolitan Area of the City of Caracas.

In paragraph a, first sentence only, replace the phrase, "the country where the transaction is performed (or for IBM or Non-IBM Cloud Services, the laws of the country of Client's business address)" with:

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

In Canada: the Province of Ontario and the federal laws of Canada applicable therein.

In Mexico: Mexico

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

In Brazil: All disputes arising out of or related to this Agreement, including summary proceedings, will be brought before and subject to the exclusive jurisdiction of the Forum of the City of São Paulo, State of São Paulo, Brazil and the parties irrevocably agree with this specific jurisdiction renouncing any other, however privileged it may be.

In paragraph b, second sentence, replace the phrase, "the country where the transaction is performed (or for IBM or Non-IBM Cloud Services the country of Client's business address) or, if IBM agrees, the country where the IBM EP or Non-IBM EP is placed in productive use" with:

In Argentina: Argentina

In Chile: Chile

In Colombia: Colombia

In Ecuador: Ecuador

In Mexico: Mexico

In Peru: Peru

In Uruguay: Uruguay

In Venezuela: Venezuela

Section 7. General Terms

In paragraph c:

In Mexico: In the first sentence replace the word "contractor" with the word "company" and in the last sentence replace the word "contractors" it with the word "providers"

In paragraph f (first sentence), h (second sentence), and i (first sentence):

In Mexico: Replace the word "contractors" with the word "providers".

In paragraph o:

In Brazil: *delete the entire 2nd sentence: "Neither party will bring a legal action arising out of or related to the Agreement more than two years after the cause of action arose".*

In paragraph p:

In Mexico: The words "personnel and" are eliminated and the word "contractors" in first and last sentences is substituted with "suppliers".

Add as a new paragraph r to this section:

In Canada: Both parties agree to write this document in English. Les parties ont convenu de rédiger le présent document en langue anglaise.

Section 8.1.1 Subscription License

Replace paragraph a with:

In United States for US State, Local, and Education (SLED) Government Contracts: No more than a 12-month term is permitted. IBM will invoice in full upon acceptance of Client's order.

Section 9. Appliances

In paragraph d, replace the first sentence with the following:

In Argentina, Chile, Colombia, Ecuador, Peru, Uruguay and Venezuela: When IBM accepts Client's order, IBM transfers title to a Machine component upon tradition to Client or Client's lessor.

Section 10. Cloud Services

In Mexico:

In paragraph c, second sentence delete ", personnel".

Add as a new paragraph i, the following:

- i. The Parties acknowledge and agree that, given its nature, the Cloud Services do not imply the provision of IBM personnel nor of personnel of IBM suppliers for the benefit of the Client, and consequently, Cloud Services are not considered as Services or Specialized Works in terms of the Corresponding Labor and Tax Laws.

ASIA PACIFIC

Preamble

In People's Republic of China:

Add the following to the end of the first paragraph of the Preamble.

Cloud Services may not be acquired under IPAEA. Any reference to Cloud Services, including Section 10 do not apply.

Section 3. Warranties

Add at the end of this section as a new paragraph f:

In Australia: These warranties are in addition to any rights under, and only limited to the extent permitted by, the Competition and Consumer Act 2010.

In Japan: IBM's liability is limited to this paragraph and the Liability and Intellectual Property Protection section, applicable TDs as Client's sole remedy for failure to meet the warranties specified in this section.

In New Zealand: These warranties are in addition to any rights under the Consumer Guarantee Act 1993 or other legislation that cannot be limited by law.

Section 4. Charges, Taxes, Payment, and Verification

In paragraph b. replace the third sentence that starts with "Amounts are due upon receipt..." with the following 2 sentences:

In Hong Kong, Indonesia, Korea, Macau, Malaysia, Philippines, Singapore, and Vietnam: Amounts are due upon receipt of the invoice from IBM and payable within 30 days of the invoice date to an account specified by IBM. If payment is not received within 30 days from the invoice date, IBM may charge a late payment fee on the amount outstanding, calculated on the number of days the payment is received late, at the lesser of: i) 2% for every 30-day period or portion thereof; or ii) the maximum amount permissible by applicable law.

In Thailand: Amounts are due upon receipt of the invoice from IBM and payable within 30 days of the invoice date to an account specified by IBM. If payment is not received within 30 days from the invoice date, a late payment fee may be applied on the amount outstanding, at the rate of 1.25% per month, calculated on the number of days the payment is received late.

Replace paragraph c, in its entirety with, the following (ensure list properly re-letters to "c"):

In India, Indonesia, Japan, Philippines, and Thailand:

- c. In the event Client is required to pay any withholding or deduction of tax required under an applicable governmental entity regulation based on IBM's charge for a:
 - 0) cross border transaction, Client will increase the sum payable by the amount necessary to ensure IBM receives an amount equal to the sum it would have received had no withholdings or deductions been made. Client is responsible to pay any withholding tax directly to the appropriate government entity where required by law.
 - 1) domestic transaction, Client will: i) pay withholding tax directly to the appropriate government entity where required by law; ii) furnish a tax certificate evidencing such payment to IBM within the timeline prescribed under the income tax regulations; iii) pay IBM only the net proceeds after tax; and iv) fully cooperate with IBM in seeking a waiver or reduction of such taxes as per the applicable law and promptly complete and file all relevant documents or returns timely and

accurately. Client agrees to promptly compensate IBM any amount withheld or deducted, if Client delays in furnishing IBM, or incorrectly files, tax certificates, documents or returns.

Section 5. Liability and Intellectual Property Protection

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

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

In paragraph a, second sentence after the word "special" and before the word "incidental", add the following:

In Philippines: (including nominal and exemplary damages), moral,

Add as a new paragraph after the end of paragraph a (and ensure paragraphs properly reletter):

In Australia: Where IBM is in breach of a guarantee implied by the Competition and Consumer Act 2010, IBM's liability is limited to the repair or replacement of goods or the supply of equivalent goods, or the payment of the cost of replacing the goods or having the good repaired. Where a guarantee relates to the right to sell, quiet possession, or clear title of a good under schedule 2 of the Competition and Consumer Act, then none of these limitations apply.

Section 6. Governing Laws and Geographic Scope

In paragraph a, in the first sentence only, replace the phrase, "the country where the transaction is performed (or for IBM or Non-IBM Cloud Services, the laws of the country of Client's business address)" with:

In Cambodia, Laos: the State of New York, United States

In Australia: the State or Territory in which the transaction is performed

In Hong Kong: the Hong Kong Special Administrative Region of the People's Republic of China

In Korea: the Republic of Korea

In Macau: the Hong Kong Special Administrative Region of the People's Republic of China

In People's Republic of China: the People's Republic of China

In Taiwan: Taiwan

In India: India

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

In Cambodia, Laos, Philippines, and Sri Lanka: Disputes will be finally settled by arbitration in Singapore under the Arbitration Rules of the Singapore International Arbitration Center ("SIAC Rules").

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

In Indonesia: Disputes will be finally settled by arbitration in Jakarta, Indonesia, administered by the Indonesian National Board of Arbitration established in the year 1977 ("Badan Arbitrase Nasional Indonesia" or "BANI") in accordance with the rules of the Indonesian National Board of Arbitration. The arbitration award shall be final and binding on the parties without appeal and shall be in writing and set forth the findings of fact and the conclusion of law.

In Korea: Any dispute will be brought before the Seoul Central District Court of the Republic of Korea.

In People's Republic of China: Any dispute will be brought to the China International Economic and Trade Arbitration Commission in Beijing, the PRC, for arbitration. The parties agree three arbitrators will be used to resolve any dispute.

In Vietnam: Disputes will be finally settled by arbitration in Vietnam under the Arbitration Rules of the Vietnam International Arbitration Centre ("VIAC Rules"). All proceedings and documents presented will be in the English language.

Replace paragraph b, in its entirety with, the following:

In Hong Kong: The rights and obligations of each party are valid only in the Hong Kong Special Administrative Region of the People's Republic of China, except all licenses are valid as specifically granted.

In Macau: The rights and obligations of each party are valid only in the Macau Special Administrative Region of the People's Republic of China, except all licenses are valid as specifically granted.

In Taiwan: The rights and obligations of each party are valid only in Taiwan, except all licenses are valid as specifically granted.

In paragraph c, in the first sentence, item ii), after the word "including" and before words "the defense", add:

In Japan: those of Japan laws and

In paragraph c, replace the last sentence with:

In People's Republic of China: IBM will not serve as Client's exporter or importer, except as required by data protection laws, for any Content.

Section 7. General Terms

In paragraph o, in the second sentence, replace the phrase "two years" with:

In India: three years

Add to the end of this section the following new paragraph r:

In Indonesia: This agreement is made in the English and Bahasa Indonesian language versions. To the extent permitted by the applicable law, the English version will prevail in the event of conflict between such versions.

EUROPE, MIDDLE EAST, AND AFRICA

Section 3. Warranties

In paragraph e, replace the fourth sentence that starts with "Non-IBM EPs...", and before the existing last sentence, with the following two sentences:

In Czech Republic, Estonia, and Lithuania: Non-IBM EPs and preview products, or identified non-warranted IBM EPs are provided as-is, without warranties of any kind or liabilities for defects. The parties hereby exclude any liability of IBM for defects beyond the agreed warranties.

Section 4. Charges, Taxes, Payment, and Verification

In paragraph b, add the following to the end of the third sentence:

In Italy: if IBM requests in a written notice to Client.

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

In paragraph b, replace the third sentence with the following:

In France: Amounts are due and payable within 10 days of the invoice date to an account specified by IBM and late payment fees apply equal to the most recent European Central Bank rate plus 10 points, in addition to debt collection costs of forty (40) euros or, if these costs exceed forty euros, complementary indemnification subject to justification of the amount claimed).

In paragraph b, add the following to the end of the sixth sentence that starts with "IBM does not give credit...":

In Lithuania:, or except as provided by law

At the end of paragraph b, add the following:

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

Replace paragraph c, in its entirety, with the following:

In Angola, Egypt, Morocco, Ghana, Kenya, Nigeria, Pakistan, Senegal, and Tunisia:

- c. In the event Client is required to pay any withholding or deduction of tax required under an applicable governmental entity regulation based on IBM's charge for a:
- 1) cross border transaction, Client will increase the sum payable by the amount necessary to ensure IBM receives an amount equal to the sum it would have received had no withholdings or deductions been made. Client is responsible to pay any withholding tax directly to the appropriate government entity where required by law.
 - 2) domestic transaction, Client will: i) pay withholding tax directly to the appropriate government entity where required by law; ii) furnish a tax certificate evidencing such payment to IBM within the timeline prescribed under the income tax regulations; iii) pay IBM only the net proceeds after tax; and iv) fully cooperate with IBM in seeking a waiver or reduction of such taxes as per the applicable law and promptly complete and file all relevant documents or returns timely and accurately. Client agrees to promptly compensate IBM any amount withheld or deducted, if Client delays in furnishing IBM, or incorrectly files, tax certificates, documents, or returns.

Section 5. Liability and Intellectual Property Protection

In paragraph a, in the first sentence insert the following before the words "the amounts paid":

In Belgium, France, Germany, Italy, Luxembourg, Malta, Portugal, and Spain: the greater of €500,000 (five hundred thousand euro) or

In Ireland and United Kingdom: 125% of

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

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

In paragraph a, insert after the first sentence the following new sentence:

In Slovakia: Referring to § 379 of the Commercial Code, Act No. 513/1991 Coll. as amended, and concerning all conditions related to the conclusion of the agreement, both parties state that the total foreseeable damage, which may accrue, shall not exceed the amount above, and it is the maximum for which IBM is responsible.

In paragraph a, in the second sentence, delete the word:

In Ireland and United Kingdom: economic

In paragraph a, replace the second sentence with the following and bold the text:

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

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

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

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

Add the following new sentence at the end of paragraph a:

In France: The terms of the Agreement, including financial terms, were established in consideration of the present clause, which is an integral part of the general economy of the Agreement.

In paragraph b, replace "and ii) damages that cannot be limited under applicable law" with the following:

In Germany: ; ii) damages for body injury (including death); iii) loss or damage caused by a breach of guarantee assumed by IBM in connection with any transaction under this Agreement; and iv) caused intentionally or by gross negligence.

Section 6. Governing Laws and Geographic Scope

In paragraph a, first sentence only, replace the phrase "the country where the transaction is performed (or for IBM or Non-IBM Cloud Services, the laws of the country of Client's business address)" with:

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

In Estonia, Latvia, and Lithuania: Finland

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

In Angola, Bahrain, Botswana, Egypt, Eritrea, Ethiopia, Gambia, Ghana, Iraq, 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, West Bank/Gaza, Yemen, Zambia, and Zimbabwe: England

In Liechtenstein: Switzerland

In South Africa, Namibia, Lesotho, and Swaziland: the Republic of South Africa

In United Kingdom: England

In paragraph a, add the following new sentence after the first sentence:

In France: The Parties agree that articles 1222 and 1223 of the French Civil Code are not applicable.

In paragraph a, replace the second sentence, in its entirety, with the following:

In Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kosovo, Kyrgyzstan, Moldova, Montenegro, Romania, Serbia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan: All disputes arising out of this Agreement shall be finally settled by the International Arbitral Centre of the Austrian Federal Economic Chamber (Arbitration Body), under the Rules of Arbitration of that Arbitral Centre (Vienna Rules), in Vienna, Austria, with English as the official language, by three impartial arbitrators appointed in accordance with the Vienna Rules.

Each party will nominate one arbitrator, who will jointly appoint an independent chairman within 30 days or else the chairman will be appointed by the Arbitration Body under the Vienna Rules. The arbitrators will have no authority to award injunctive relief or damages excluded by or exceeding limits in this Agreement. Nothing in this Agreement will prevent either party from resorting to judicial proceedings for (1) interim relief to prevent material prejudice or a breach of confidentiality provisions or intellectual property rights, or (2) determining the validity or ownership of any copyright, patent or trademark owned or asserted by a party or its Enterprise company, or (3) debt collection in amounts below USD 500,000.00.

In Estonia, Latvia, and Lithuania: All disputes arising out of this Agreement shall be finally settled by the Arbitration Institute of the Finland Chamber of Commerce (FAI) (Arbitration Body), under the Arbitration Rules of the Finland Chamber of Commerce (Rules), in Helsinki, Finland, with English as the official language, by three impartial arbitrators appointed in accordance with those Rules. Each party will nominate one arbitrator, who will jointly appoint an independent chairman within 30 days or else the chairman will be appointed by the Arbitration Body under the Rules. The arbitrators will have no authority to award injunctive relief or damages excluded by or exceeding limits in this Agreement. Nothing in this Agreement will prevent either party from resorting to judicial proceedings for (1) interim relief to prevent material prejudice or a breach of confidentiality provisions or intellectual property rights, or (2) determining the validity or ownership of any copyright, patent or trademark owned or asserted by a party or its Enterprise company, or (3) debt collection in amounts below USD 500,000.00.

In Afghanistan, Angola, Bahrain, Botswana, Burundi, Cape Verde, Djibouti, Egypt, Eritrea, Ethiopia, Gambia, Ghana, Iraq, Jordan, Kenya, Kuwait, Lebanon, Liberia, Libya, Madagascar, Malawi,, Mozambique, Nigeria, Oman, Pakistan, Palestinian Territory, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Seychelles, Sierra Leone, Somalia, South Sudan, Tanzania, Uganda, United Arab Emirates, Western Sahara, Yemen, Zambia, and Zimbabwe: All disputes arising out of this Agreement shall be finally settled by the London Court of International Arbitration (LCIA) (Arbitration Body), under the LCIA Arbitration Rules (the Rules), in London, UK, with English as the official language, by three impartial arbitrators appointed in accordance with the Rules. Each party will nominate one arbitrator, who will jointly appoint an independent chairman within 30 days or

else the chairman will be appointed by the Arbitration Body under the Rules. The arbitrators will have no authority to award injunctive relief or damages excluded by or exceeding limits in this Agreement. Nothing in this Agreement will prevent either party from resorting to judicial proceedings for (1) interim relief to prevent material prejudice or a breach of confidentiality provisions or intellectual property rights, or (2) determining the validity or ownership of any copyright, patent or trademark owned or asserted by a party or its Enterprise company, or (3) debt collection in amounts below USD 500,000.00.

In Algeria, Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Congo Republic, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Guinea, Guinea-Bissau, Ivory Coast, Mali, Mauritania, Mauritius, Morocco, Niger, Senegal, Togo, and Tunisia: All disputes arising out of this Agreement shall be finally settled by the ICC International Court of Arbitration, in Paris (Arbitration Body), under its arbitration rules (the Rules), in Paris, France, with French as the official language, by three impartial arbitrators appointed in accordance with the Rules. Each party will nominate one arbitrator, who will jointly appoint an independent chairman within 30 days or else the chairman will be appointed by the Arbitration Body under the Rules. The arbitrators will have no authority to award injunctive relief or damages excluded by or exceeding limits in this Agreement. Nothing in this Agreement will prevent either party from resorting to judicial proceedings for (1) interim relief to prevent material prejudice or a breach of confidentiality provisions or intellectual property rights, or (2) determining the validity or ownership of any copyright, patent or trademark owned or asserted by a party or its Enterprise company, or (3) debt collection in amounts below USD 250,000.00.

In South Africa, Namibia, Lesotho, and Swaziland: All disputes arising out of this Agreement shall be finally settled by the Arbitration Foundation of Southern Africa (AFSA) (Arbitration Body), under the Rules of the Arbitration of the AFSA (the Rules), in Johannesburg, South Africa, with English as the official language, by three impartial arbitrators appointed in accordance with the Rules. Each party will nominate one arbitrator, who will jointly appoint an independent chairman within 30 days or else the chairman will be appointed by the Arbitration Body under the Rules. The arbitrators will have no authority to award injunctive relief or damages excluded by or exceeding limits in this Agreement. Nothing in this Agreement will prevent either party from resorting to judicial proceedings for (1) interim relief to prevent material prejudice or a breach of confidentiality provisions or intellectual property rights, or (2) determining the validity or ownership of any copyright, patent or trademark owned or asserted by a party or its Enterprise company, or (3) debt collection in amounts below USD 250,000.00.

In Andorra, Austria, Cyprus, France, Germany, Greece, Israel, Italy, Portugal, Spain, Switzerland, and Turkiye: All disputes will be brought before and subject to the exclusive jurisdiction of the following court of competent jurisdiction:

In Andorra: the Commercial Court of Paris.

In Austria: the court of Vienna, Austria (Inner City).

In Cyprus: the competent court of Nicosia.

In France: Commercial Court of Paris.

In Germany: the courts of Stuttgart.

In Greece: the competent court of Athens.

In Israel: the courts of Tel Aviv Jaffa.

In Italy: the courts of Milan.

In Portugal: the courts of Lisbon.

In Spain: the courts of Madrid.

In Switzerland: the commercial court of the canton of Zurich.

In Turkiye: the Istanbul Central (Çağlayan) Courts and Execution Directorates of Istanbul, the Republic of Turkiye.

In Netherlands: The Parties waive their rights under Title 7.1 ('Koop') and clause 7:401 and 402 of the Dutch Civil Code, and their rights to invoke a full or partial dissolution ('gehele of partiele ontbinding') of this Agreement under Section 6:265 of the Dutch Civil Code.

Add the following as an additional paragraph e:

In all countries in Western Europe (see definition within provision): Client agrees i) not to use in, or sell, export or re-export, directly or indirectly to, the Russian Federation any IBM Products or Non-IBM Products Client acquires from IBM; and ii) to prohibit Client's employees, contractors, or affiliates to do any of the foregoing and will implement processes to monitor compliance. Failure to comply with the above is considered a material breach. Client agrees to promptly inform IBM of any activities concerning compliance and provide relevant information upon IBM request. For purposes of this paragraph, Western Europe means European Union member countries

and Andorra, Iceland, Liechtenstein, Monaco, Norway, San Marino, Switzerland, United Kingdom, and the Vatican State.

Section 7. General Terms

In paragraph i, insert the following at the end of the paragraph:

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

In paragraph o, add to the end the paragraph:

In Czech Republic: Pursuant to Section 1801 of Act No. 89/2012 Coll. (the "Civil Code"), Section 1799 and Section 1800 of the Civil Code as amended, do not apply to transactions under this Agreement. Client accepts the risk of a change of circumstances under Section 1765 of the Civil Code.

In paragraph o, delete the 2nd sentence:

In Bulgaria, Croatia, Serbia, and Slovenia: Delete the 2nd sentence that says: "Neither party will bring a legal action arising out of or related to the Agreement more than two years after the cause of action arose".

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

In Lithuania:, except as provided by law

In paragraph o, replace the second sentence with:

In Poland: Neither party will bring a legal action arising out of or related to the Agreement more than three years after the cause of action arose, except for an action of non-payment which will be brought no more than 2 years after payment is due.

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

In Latvia and Ukraine: three

In Slovakia: four

In paragraph o, add to the end of the third sentence that says: "Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control":

In paragraph o, third sentence, modify the sentence: "Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control" as follows:

In Ukraine: Neither party is responsible for failure to fulfill its non-monetary obligations due to causes or regulatory changes beyond its control, including but not limited to import, export and economic sanctions requirements of the United States.

Add the following at the end of the section as new paragraph r:

In Czech Republic:

- j. Client expressly accepts the terms of this agreement which include the following important commercial terms: i) limitation and disclaimer of liability for defects (Warranties); ii) IBM's right to verify Client's usage data and other information affecting the calculation of charges (License Verification), iii) limitation of Client's entitlement to damages (Liability and Intellectual Property Protection); iv) binding nature of export and import regulations (Governing Laws and Geographic Scope); v) shorter limitation periods (General Terms); vi) exclusion of applicability of provisions on adhesion contracts (General Terms); and vii) acceptance of the risk of a change of circumstances (General Terms).

In Hungary:

- r. By entering into this Agreement, Client confirms that Client was sufficiently informed of all the provisions of this Agreement and had the opportunity to negotiate those terms. The following provisions may significantly deviate from the provisions generally applied by Hungarian law and both parties accept those provisions by signing the Agreement: IPPA Acceptance; Content and Data Protection; Warranties; Charges, Taxes, Payment, and Verification; Liability and Intellectual Property Protection; Termination; Governing Laws and Geographic Scope; General Terms, Program License;

Term Licenses and Renewal; Full Capacity and Virtualization Requirements; Selected Support, CEO (Complete Enterprise Option) Product Categories; Appliances; and Cloud Services.

In Italy:

- r. Pursuant to the art. 1341 and 1342 of Italian Civil Code, Client expressly accepts the following articles of this Agreement: IPPA Acceptance; Content and Data Protection; Warranties; Charges, Taxes, Payment, and Verification, including License Verification and Volume Pricing; Liability and Intellectual Property Protection; Termination; Governing Laws and Geographic Scope; General Terms; Program License, including IBM Software Subscription and Support; Term Licenses and Renewal, including Subscription License, Monthly License, Fixed Term License, and Term License Renewal; Full Capacity and Virtualization Requirements, including EPs in a Virtualization Environment (Sub-Capacity or Container Licensing), Sub-Capacity Licensing, Container Licensing, Client Reporting Responsibilities, and Excess Use Resolution; Selected Support; CEO (Complete Enterprise Option) Product Categories; Appliances, including Appliance Services; and Cloud Services.

In Romania:

- r. The Client expressly accepts, the following standard clauses that may be deemed 'unusual clauses' as per the provisions of article 1203 Romanian Civil Code: clauses 3, 4, 5, 7, and 8n. The Client hereby acknowledges that it was sufficiently informed of all the provisions of this Agreement, including the clauses mentioned above, it properly analyzed and understood such provisions and had the opportunity to negotiate the terms of each clause.

Section 9. Appliances

In paragraph d, the first sentence, add all countries listed in the following after "United States":

In Portugal, Spain, Switzerland, and Turkiye: , Portugal, Spain, Switzerland and Turkiye,