

COPY

Assigned to: Lou Glee
Contract #: PO2905147

CONTRACT ROUTING SHEET

Date Prepared: 09/26/08

Need Date: _____

PROCESSING DEPARTMENT:

CONTRACTOR:

Department: CAO/Procurement & Contracts
Dept. Contact: Bonnie H. Rich
Phone #: 5940
Department Head Signature: *Bonnie H. Rich*

Name: Boilerplate approval of software maintenance POs with EULA
Address: _____
Phone: _____

2008 SEP 26 PM 12:11
DORADO COUNTY COUNSEL
Hand Released

CONTRACTING DEPARTMENT: CAO/Procurement & Contracts

Service Requested: Software maintenance
Contract Term: _____ Contract Value: \$0.00
Compliance with Human Resources requirements? Yes: _____ No: _____
Compliance verified by: _____

COUNTY COUNSEL: (Must approve all contracts and MOU's)

Approved: Disapproved: _____ Date: 9/26/08 By: *ZBY*
Approved: _____ Disapproved: _____ Date: _____ By: _____

PLEASE FORWARD TO RISK MANAGEMENT. THANKS!

RISK MANAGEMENT: (All contracts and MOU's except boilerplate grant funding agreements)

Approved: _____ Disapproved: _____ Date: _____ By: _____
Approved: _____ Disapproved: _____ Date: _____ By: _____

OTHER APPROVAL: (Specify department(s) participating or directly affected by this contract).

Departments: _____
Approved: _____ Disapproved: _____ Date: _____ By: _____
Approved: _____ Disapproved: _____ Date: _____ By: _____

International Passport Advantage Agreement



Part 1 - General Terms

Under this IBM International Passport Advantage Agreement ("Agreement"), IBM provides the Passport Advantage customer a way to obtain authorizations to use, update, and support selected Programs at volume pricing.

The Customer Originating Company and IBM Originating Company agree to coordinate the administration of this Agreement within their respective Enterprises. When used in this Agreement, "IBM" means the IBM Enterprise company that is providing Eligible Products, and "you" means the customer Enterprise company that is ordering them, subject to the Agreement. The Customer Originating Company is the legal entity within your Enterprise of which the entity that identifies itself as the "Originating Site" on an IBM International Passport Advantage Enrollment Form is a part. The IBM Originating Company is the legal entity within International Business Machines Corporation's Enterprise that accepts the Customer Originating Company's orders. This Agreement is entered into with the understanding that each of us is bound by its terms. Both of us agree to distribute copies of the Agreement to our respective participating Enterprise companies. "Enterprise" is defined in **2. Enterprise** below.

Products eligible under this Agreement ("Eligible Products") include commercially available IBM Programs, certain Programs that are subject to a third-party end user license agreement ("Non-IBM Programs"), Support for specified Non-IBM Programs and IBM Programs licensed under the terms of the IBM License for Non-Warranted Programs ("Selected Support"), authorizations to increase your use of a Program, IBM Trade-ups, Competitive Trade-ups, IBM Annual Software Subscription and Support Renewals, IBM Software Subscription and Support Reinstatement, Third Party Annual Software Subscription and Support Renewals, Third Party Software Subscription and Support Reinstatement, and Selected Support renewals.

The Customer Originating Company accepts the terms of this Agreement without modification, and each of its participating Enterprise companies accepts this Agreement without modification, by submitting an IBM International Passport Advantage Enrollment Form to IBM or the reseller(s) from whom they have chosen to obtain Eligible Products ("your reseller(s)"), as applicable. This Agreement is effective on the date IBM accepts your initial order for Eligible Products ("Effective Date") and remains in effect until the Customer Originating Company or the IBM Originating Company terminates it in accordance with **11. Agreement Termination**.

This Agreement, any applicable attachments, and any associated documents, i.e., Enrollment Form, Proofs of Entitlement and invoices (called "Associated Documents"), are the complete agreement regarding these transactions, and replace any prior oral or written communications between us concerning Passport Advantage. If there is a conflict among terms in the various documents, those of an attachment prevail over this Agreement and those of an Associated Document prevail over both of those documents. The terms of the sections of the IBM International Program License Agreement ("IPLA") entitled "Limitation of Liability," "General," and "Governing Law, Jurisdiction, and Arbitration," including their applicable Country-unique Terms, are also part of this Agreement and are incorporated by reference into this Agreement with the following changes:

- a. The term "Program" is replaced by the term "Eligible Product."
- b. If not otherwise stated in the Limitation of Liability section of the IPLA, the amount of any other actual direct damages up to the charges for the Program that is the subject of the claim for a fixed term license is 12 months' charges.
- c. The statement, "All of our rights, duties, and obligations are subject to the courts of the country in which You acquired the Program license" is replaced by the statement, "The rights, duties, and obligations of each of us are valid only in the country in which the transaction is performed or, if IBM agrees, the country where the Eligible Product is placed in productive use," except that all licenses are valid as specifically granted.
- d. The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by "the laws of the country in which the transaction is performed."

A copy of the IPLA in its entirety, either in a booklet or on a CD, is provided in the Passport Advantage Welcome Package. It is also available from IBM or its resellers and on the Internet at ibm.com/software/sla.

Once this Agreement is accepted, 1) unless prohibited by applicable law or specified otherwise, any reproduction of it or an Associated Document made by reliable means (for example, photocopy or facsimile) is considered an original and 2) all Eligible Products ordered under this Agreement are subject to it.

If IBM withdraws an Eligible Product from marketing, you will no longer be able to obtain it under this Agreement. If IBM withdraws a Program or a version of a Program from marketing, you may not increase its level of use, beyond the authorizations already acquired, on or after the effective date of withdrawal without IBM's prior written consent, which IBM will not unreasonably withhold.

The "Anniversary" is the first day of the month that follows the anniversary of the Effective Date, unless the Effective Date is the first day of a month, in which event the anniversary of the Effective Date is the Anniversary.

A "Program" is 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.

A "Term" is the period that begins either on the date IBM accepts your initial order (in the case of the initial Term) or on the Anniversary (in the case of subsequent Terms), and ends on the day immediately prior to the next Anniversary.

1. Eligible Products

Eligible Products are for use within your Enterprise only and may not be resold, rented, leased, or transferred to third parties. Any attempt to do so in violation of these provisions is void. In addition, such Eligible Products may not be used to provide commercial hosting or other commercial information technology services to third parties. If, as a result of your moving an Eligible Product across a border, any authority imposes a duty, tax, levy or fee (including withholding taxes, fees, customs or other duties for the import and export of any such Eligible Product), then you agree that you are responsible for, and will pay, any such duty, taxes, levy or other fees. This excludes those taxes based on IBM's net income.

Unless IBM specifies otherwise, it provides Non-IBM Programs and Third Party Software Subscription and Support (as defined in 1.3.1 Software Subscription and Support below) **WITHOUT WARRANTIES OF ANY KIND**. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to you.

1.1 IBM Programs

1.1.1 Proof of Entitlement:

IBM specifies a Program's authorized use in a Proof of Entitlement (called "PoE"). Examples of the measure of the level of authorized use include, but are not limited to, the number of copies, processors, or users. This PoE, supported by your matching paid invoice or receipt, is evidence of your level of authorized use. During the period this Agreement remains in effect, and for two years thereafter, IBM has the right to verify your compliance with this Agreement on your premises during your normal business hours and in a manner that minimizes disruption to your business. IBM may use an independent auditor for this with your prior approval, which you will not unreasonably withhold.

1.1.2 Versions and Platforms:

You may use Programs and their associated user documentation in any commercially available national language version up to the level of use authorized in the PoE. You are authorized to use the Program(s) that you obtain under this Agreement on any platform or operating system for which IBM currently makes Program code available under Passport Advantage unless the Program is designated as platform or operating system specific at the time you obtain it.

1.1.3 IBM Trade-ups:

Licenses for certain Programs that replace qualifying IBM Programs may be obtained for a reduced charge. You agree to terminate your use of the replaced IBM Programs when you install the replacement Programs.

1.1.4 Competitive Trade-ups:

Licenses for certain Programs that replace qualifying Non-IBM Programs (see **1.2. Non-IBM Programs** below) may be obtained for a reduced charge. You agree to terminate your use of the replaced Non-IBM Programs when you install the replacement Programs.

1.1.5 License:

IBM Programs obtained under this Agreement are governed by the terms of the IPLA. If there is a conflict between the terms of this Agreement and those of the IPLA, including its License Information document ("LI"), the terms of this Agreement prevail. The IPLA and its LIs are available on the Internet at ibm.com/software/sla.

1.2 Non-IBM Programs

License

The licensing of a Non-IBM Program obtained under this Agreement is governed by the terms of the third party end user license agreement that accompanies it. If there is a conflict between the terms of this Agreement and those of the third party end user license agreement, the terms of this Agreement prevail. IBM is not a party to the third party end user license agreement and assumes no obligations under it.

1.3 Software Subscription and Support and Selected Support

1.3.1 Software Subscription and Support

IBM provides software subscription and support ("IBM Software Subscription and Support") with each IBM Program licensed under the IPLA. Software Subscription and Support is a single offering not available as separate components. IBM does not provide IBM Software Subscription and Support for Non-IBM Programs or for Programs that are licensed under the IBM License Agreement for Non-Warranted Programs (together "Selected Programs"). Third parties may provide software subscription and support ("Third Party Software Subscription and Support") with Non-IBM Program licenses under the third parties' terms. For purposes of this Agreement, "software subscription and support" means both IBM Software Subscription and Support and Third Party Software Subscription and Support.

IBM Software Subscription and Support begins on the date of 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 the date of acquisition.

While IBM Software Subscription and Support is in effect for an IBM Program license:

- a. IBM will make available to you and authorize you to use the most current commercially available version, release, or update, should any be made available.
- b. IBM provides you assistance for your 1) routine, short duration installation and usage (how-to) questions; and 2) code-related questions ("Support"). Such Support for a particular version or release of a Program is available only until IBM or the third party, as applicable, withdraws Support for that Program's version or release. When Support is withdrawn, you must upgrade to a supported version or release of the Program in order to continue to receive Support. The IBM "Software Support Lifecycle" policy is available at <http://www-306.ibm.com/software/info/supportlifecycle/>.
- c. IBM provides assistance via telephone and, if available, electronic access, only to your information systems (IS) technical support personnel during the normal business hours (published prime shift hours) of your IBM support center. (This assistance is not available to your end users.) IBM provides Severity 1 assistance 24 hours a day, every day of the year. Consult the IBM Software Support Handbook for details at ibm.com/software/support.
- d. IBM may request that you allow it to remotely access your system to assist you in isolating the software problem cause. You remain responsible for adequately protecting your system and all data contained in it whenever IBM remotely accesses it with your permission.

IBM Software Subscription and Support does not include assistance for 1) the design and development of applications, 2) your use of IBM Programs in other than their specified operating environment or 3) failures caused by products for which IBM is not responsible under this Agreement.

1.3.2 Selected Support

Selected Programs eligible for Selected Support are listed at www.ibm.com/lotus/PASupportedSupportPrograms.

Selected Support begins on the date of 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 the date of acquisition.

While Selected Support is in effect for a Selected Program:

- a. IBM will make available to you Selected Program defect corrections, if any, that it develops.
- b. IBM provides you assistance for your 1) routine, short duration installation and usage (how-to) questions; and 2) code related questions. Selected Support for a particular version or release of a Program is available only until IBM withdraws Selected Support for that Program's version, release, or modification. When such Selected Support is withdrawn, you must upgrade to a supported

version or release of the Program in order to continue to receive such support. The IBM "Software Support Lifecycle" policy does not apply to Selected Support.

- c. IBM may provide you with assistance in designing and developing applications based on your subscription level.
- d. IBM may provide assistance via telephone and electronic access, depending on your location and the subscription level you acquire. Such assistance is provided only to your information systems (IS) technical support personnel during the normal business hours (published prime shift hours) of your IBM support center. Consult the IBM Software Support Handbook for details applicable to Selected Support at ibm.com/software/support.
- e. IBM may request that you allow it to remotely access your system to assist you in isolating the software problem cause. You remain responsible for adequately protecting your system and all data contained in it whenever IBM remotely accesses it with your permission.

IBM WARRANTS THAT IT PROVIDES IBM SOFTWARE SUBSCRIPTION AND SUPPORT AND SELECTED SUPPORT USING REASONABLE CARE AND SKILL. THIS WARRANTY IS YOUR EXCLUSIVE WARRANTY AND REPLACES ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

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

1.3.3 Automatic Annual Renewal of Software Subscription and Support and Selected Support

You may renew your expiring software subscription and support or Selected Support by written authorization to renew (e.g., order form, order letter, purchase order), prior to the expiration date, in accordance with the terms of this Agreement.

IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE, EXPIRING SOFTWARE SUBSCRIPTION AND SUPPORT AND SELECTED SUPPORT ARE AUTOMATICALLY RENEWED TO THE NEXT ANNIVERSARY UNDER THE AGREEMENT TERMS AND AT THE THEN CURRENT RENEWAL CHARGES UNLESS, PRIOR TO THE EXPIRATION DATE, IBM RECEIVES, EITHER DIRECTLY FROM YOU OR THROUGH YOUR RESELLER, AS APPLICABLE, YOUR WRITTEN NOTIFICATION THAT YOU DO NOT WANT TO RENEW. YOU AGREE TO PAY SUCH RENEWAL CHARGES.

Software subscription and support or Selected Support obtained or renewed on the Anniversary is renewable for an additional coverage period of 12 full months.

Software subscription and support or Selected Support obtained on a date other than the Anniversary is renewable at the next Anniversary for an additional coverage period of less than 12 full months for a prorated charge, thereby extending the coverage to the following Anniversary.

If you choose not to renew software subscription and support coverage for certain or all of your Program licenses and, at a later date, wish to again obtain coverage for any of those Program licenses, you must obtain IBM Software Subscription and Support Reinstatement or Third Party Software Subscription and Support Reinstatement, as applicable.

1.3.4 Withdrawal of software subscription and support or Selected Support for a particular Program

If IBM or the third party, as applicable, withdraws software subscription and support or Selected Support for a particular Program, you understand that

- a. IBM will not make software subscription and support renewal or Selected Support renewal available for that Program; and
- b. if you renewed IBM Software Subscription and Support for that IBM Program license or Selected Support for a Selected Program license prior to the notice of withdrawal, IBM, at its sole discretion, will either continue to provide IBM Software Subscription and Support or Selected Support to you for that Program license until the end of the then current coverage period or you may obtain a prorated refund. If you renewed Third Party Software Subscription and Support for that Non-IBM Program license prior to the notice, the third party will continue to provide Third Party Software Subscription and Support to you for that Non-IBM Program license until the end of the then current coverage period. Otherwise, you may obtain a prorated refund.

1.4 Fixed Term Licensing

As an option, IBM licenses certain Programs for a "Fixed Term." "Fixed Term" means that the duration of the license is the limited term so designated by IBM in the Program's PoE, beginning on the date that your order is accepted by IBM; on the calendar day following the expiration of a prior Fixed Term; or on the calendar day following the Anniversary date, as applicable.

Software Subscription and Support is included with each Fixed Term license and is in effect until the Fixed Term expires.

1.4.1 Automatic Renewal of Fixed Term Licenses

You may renew your expiring Fixed Term License by written authorization to renew (e.g., order form, order letter, purchase order), prior to the expiration date, in accordance with the terms of this Agreement.

IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE, EXPIRING FIXED TERM LICENSES ARE AUTOMATICALLY RENEWED FOR THE SAME DURATION AS THE EXPIRING TERM UNDER THE AGREEMENT TERMS AND AT THE THEN CURRENT RENEWAL CHARGES FOR SUCH PROGRAM LICENSES UNLESS, PRIOR TO THE EXPIRATION DATE, IBM RECEIVES, EITHER DIRECTLY FROM YOU OR THROUGH YOUR RESELLER, AS APPLICABLE, YOUR WRITTEN NOTIFICATION THAT YOU DO NOT WANT TO RENEW. YOU AGREE TO PAY SUCH RENEWAL CHARGES.

If you choose not to renew the Fixed Term License, you agree to discontinue use of the Program on the expiration date.

If, after the expiration date, you choose to resume use of the Program, you must pay charges associated with an initial Fixed Term License rather than a Fixed Term License renewal.

1.4.2 Anniversary Coordination

For Fixed Terms of six months or more only, initial or subsequent Fixed Terms entered into on a date other than the Anniversary may be renewed at the next Anniversary for an additional period, at a prorated renewal charge, in order to extend the Fixed Term to the following Anniversary.

1.4.3 Withdrawal of Fixed Term License for a particular Program

If IBM or the third party, as applicable, withdraws Fixed Term licensing for a particular Program, you understand that:

- a. you may not renew the Fixed Term License for that Program; and
- b. if you renewed the Fixed Term License for a Program prior to the notice of withdrawal, you will, at IBM's or the third party's sole discretion, either (a) continue to use the Program under the Fixed Term licensing terms until the end of the then current Fixed Term or (b) obtain a prorated refund.

2. Enterprise

An Enterprise includes any legal entity that, by more than 50%, owns, is owned by, or is under common ownership with the Originating Company. The Originating Company is the legal entity that is authorized to execute and administer this Agreement on behalf of an Enterprise. The Originating Company need not be a "company" and may be the entire Enterprise.

3. Site

"Site" means any defined entity, such as a physical location or organizational unit, e.g., a department, division, subsidiary or cost center, of your Enterprise.

The Originating Company Site is defined as the "Originating Site."

Any Site that subsequently enrolls under this Agreement is defined as an "Additional Site."

In addition to acquiring Eligible Products from IBM, the Originating Site and the Additional Sites may each select a primary reseller from whom they will obtain Eligible Products. A Site may choose to replace its primary reseller at any time upon giving IBM one month's written notice.

IBM provides the primary reseller for each Site with access to complete information concerning the Site's software subscription and support renewals, including software subscription and support renewals for entitlements not originally obtained for the Site from that primary reseller.

The Customer Originating Company is responsible for all Sites' compliance with the terms of this Agreement.

4. Obtaining Eligible Products

To obtain additional authorizations to use Programs under Passport Advantage you must have already obtained the Program code.

IBM's "money-back guarantee" only applies the first time you license the IBM Program. If an IBM Program license is for a fixed term that is subject to renewal, you may obtain a refund only if you return the Program and its PoE within the first 30 days of its initial term.

Under Passport Advantage, each Eligible Product, including CEO Product Categories, is assigned Suggested Volume Price ("SVP") points.

"CEO Product Categories" (groupings of Eligible Products) are obtained on a per-user basis. You must obtain your first CEO Product Category ("Primary Product Category") for all Users within your Enterprise and for not less than the number of Users specified in the CEO Product Categories Table at ibm.com/software/passportadvantage. A "User" is an individual to whom a machine capable of copying, using, or extending the use of Programs has been assigned.

You may obtain additional CEO Product Categories if you meet the minimum number of Users requirement specified in the CEO Product Category in the CEO Product Categories Table at ibm.com/software/passportadvantage. However, you need not obtain additional CEO Product Categories for all Users within your Enterprise.

A User may use any or all of the Programs included in a chosen CEO Product Category. However, all IBM Programs that are used for client access must be obtained from the same CEO Product Category as the server Program they access.

CEO Product Categories: Additions and Deletions

IBM may add Eligible Products to or delete Eligible Products from any CEO Product Category. If IBM deletes an Eligible Product from a CEO Product Category, you may continue to use the deleted Eligible Product but you may not exceed the number of Users enrolled prior to the deletion.

Increasing the number of Users

In the event you increase the number of Users, you must obtain an authorization to use the CEO Product Category for each new User.

Decreasing the number of Users

You will notify IBM in writing prior to your next Anniversary in the event your total number of Users decreases. Decreases may result from a reorganization, restructuring, or sale of one or more of your Sites. A reduction in the number of Users of a temporary or seasonal nature does not qualify as a decrease. Following a decrease in the number of Users, a lower SVP Level may result. If the level of authorized use of a CEO Product Category drops below the minimum number of Users applicable to that CEO Category, you may not renew IBM Software Subscription and Support on a CEO Product Category basis.

5. Relationship SVP Level

The initial Relationship SVP ("RSVP") Level is established by the point value of the initial order. The initial order must be for a minimum of 500 points. If you obtain additional Eligible Products during a Term, you may attain higher RSVP Levels. The higher RSVP Level applies only when you obtain additional Eligible Products after the higher level is attained, except where the point value of an individual order by itself exceeds the point requirement for a higher SVP level. In such case, the higher SVP level applies to the order.

At the first and each subsequent Anniversary, the RSVP Level is set, based on the Eligible Products you have obtained during the previous Term. If, in a subsequent Term, the point value of the Eligible Products you obtain during that Term is less than the point value necessary to maintain the current RSVP Level, then at the next Anniversary the RSVP Level will be reduced to reflect the level at which you are currently obtaining Eligible Products but not by more than one RSVP Level.

Relationship SVP Level Table:

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

6. Resellers

When you order Eligible Products from your IBM reseller(s), IBM is not responsible for 1) their actions, 2) any additional obligations they have to you, or 3) any products or services that they supply to you under their agreements. When you obtain Eligible Products from a reseller, the reseller sets the charges and payment terms.

7. Payment

- a. When you obtain Eligible Products from your IBM reseller(s), you pay your reseller directly.
- b. When you obtain Eligible Products from IBM,
 - (1) you agree to pay as IBM specifies in its invoice or equivalent document, including any late payment fee; and
 - (2) if any authority imposes a duty, tax, levy or fee (excluding those based on IBM's net income) upon Eligible Products, then you agree to pay that amount as IBM specifies or supply exemption documentation.
- c. The amount payable for a Program license may either be a one-time charge or a charge for a fixed term, depending on the type of license.

8. Mutual Responsibilities

Both of us agree that, under this Agreement:

- a. all information exchanged is non-confidential. If either of us requires the exchange of confidential information, it will be made under a signed confidentiality agreement; and
- b. each of us may communicate with the other by electronic means and such communication is acceptable as a signed writing to the extent permissible under applicable law. Both of us agree that for all electronic communications, an identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity.
- c. IBM grants you only the licenses and rights specified. No other licenses or rights (including licenses or rights under patents) are granted.

9. Assignment

You may not assign this Agreement in whole or in part, without IBM's prior written consent. Any attempt to do so is void. IBM will not unreasonably withhold this consent.

The assignment of this Agreement, in whole or in part, within the Enterprise of which either of us is a part or to a successor organization by merger or acquisition does not require the consent of the other. IBM is also permitted to assign its rights to payments under this Agreement without obtaining your consent. It is not considered an assignment for IBM to divest a portion of its business in a manner that similarly affects all of its customers.

10. Changes to the Agreement Terms

IBM may change the terms of this Agreement by giving the Customer Originating Company three months' written notice by letter or e-mail. Such change applies as of the date IBM specifies in the notice. You agree that you have consented to any such change if you do not notify IBM in writing, prior to the effective date specified in IBM's written notice, that you disagree with the change. IBM may add or withdraw Eligible Products or change an Eligible Product's SVP or point value at any time. Otherwise, for a change to be valid, both the Customer Originating Company and the IBM Originating Company must sign it. Additional or different terms in any order or written communication from you are void.

11. Agreement Termination

The Customer Originating Company may terminate this Agreement without cause on one month's written notice.

The IBM Originating Company may terminate this Agreement on three months' written notice. If you obtained or renewed IBM Software Subscription and Support for any IBM Programs prior to the notice of termination, IBM, at its sole discretion, will either continue to provide IBM Software Subscription and Support to you for those Programs until the end of the then current coverage period or give you a prorated refund. If you obtained or renewed Third Party Software Subscription and Support for any Non-IBM Programs prior to the notice of termination, the third party may continue to provide Third Party Software Subscription and Support to you for that Non-IBM Program license until the end of the then current coverage period. If the third party licensor does not do so, you may obtain a prorated refund.

The Customer Originating Company will be considered to have terminated this Agreement if neither it nor any of its participating Enterprise companies have placed orders for Eligible Products for 24 consecutive months nor have software subscription and support in effect.

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

Any terms of this Agreement which by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees.

12. Geographic Scope

The terms of this Agreement apply in countries where 1) IBM markets its Eligible Products directly or 2) its Eligible Products have been announced as otherwise available.

Part 2 - Country-unique Terms

The terms of this Agreement apply for all countries except that the following terms are country amendments that replace or modify terms in Part 1 for the identified country.

AMERICAS

ANGUILLA, ANTIGUA/BARBUDA, ARUBA, BARBADOS, BERMUDA, BRITISH VIRGIN ISLANDS, CAYMAN ISLANDS, DOMINICA, GRENADA, GUYANA, ST. KITTS, ST. LUCIA, ST. MAARTEN, ST. VINCENT, TORTOLA, BELIZE, BOLIVIA, COSTA RICA, DOMINICAN REPUBLIC, EL SALVADOR, HAITI, HONDURAS, GUATEMALA, NICARAGUA, PANAMA, PARAGUAY, BRAZIL, MEXICO, URUGUAY, CHILE, ARGENTINA, ECUADOR, COLOMBIA, PERU, VENEZUELA, BAHAMAS, JAMAICA, NETHERLANDS ANTILLES, SURINAME, TRINIDAD & TOBAGO, TURKS & CAICOS ISLANDS, AND MONTSERRAT.

1. Eligible Products

The following replaces the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 1.3.3 Automatic Annual Renewal of Software Subscription and Support and Selected Support:

IBM will renew, for an additional payment, expiring software subscription and support for all of your Program licenses and Selected Support for all of your Selected Program licenses to the next Anniversary if IBM or your reseller receives (1) your order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current coverage period or (2) your payment within 30 days of your receipt of the software subscription and support or Selected Support, as applicable, invoice for the next coverage period.

The following replaces the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 1.4.1 Automatic Renewal of Fixed Term Licenses:

IBM will renew, for an additional payment, expiring Fixed Term Licenses for all of your Program licenses for the same duration as the expiring term if IBM or your reseller receives (1) your order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current term or (2) your payment within 30 days of your receipt of the Fixed Term License invoice for the next term.

ARGENTINA, CHILE, COLOMBIA, ECUADOR, MEXICO, PERU, VENEZUELA, URUGUAY

7. Payment

The following replaces 7b(1) :

Amounts are due upon receipt of invoice and payable as IBM specifies in an Associated Document. The currency for payment of amounts due is US dollars or the equivalent in local currency as follows:

1. As long as the country operates in a free currency exchange market, you and IBM agree that IBM will accept payment in the applicable country national currency calculated at the country official exchange rate published by the bank specified in an Associated Document on the date payment is made.
2. If the government of a country establishes any restriction or limitation on its free currency exchange markets, you agree to make payments to IBM in US dollars to a bank account in New York, NY, USA, designated by IBM in the Associated Document, provided that such payment is not illegal under country law. If such method of payment is forbidden by country law, you agree to pay the amount indicated in the Associated Document in country national currency, calculated at the official exchange rate which is in use for the remittance of dividends and net earnings to foreign investors outside the country.

You agree to pay accordingly, including any late payment fee. The late payment fee is calculated and payable in US dollars at two percent (or the maximum rate allowed by local law if such is less than two percent) of the delinquent amount due per each thirty day period during which any delinquent balance remains unpaid.

BRAZIL

7. Payment

The following replaces 7b(1) :

Amounts due are expressed in local currency.

Amounts are due upon receipt of invoice and payable in local currency as IBM specifies in an Associated Document. You agree to pay accordingly, including any late payment fee. Delinquent amounts are subject to monetary correction based on the inflation index called the "General Price Index" calculated by Getulio Vargas Foundation (IGP-M/FGV), plus interest at the rate of one percent per month, both calculated "pro rata die." The late payment fee is calculated against the resultant delinquent amount at the following rates:

1. two percent of the delinquent amount due per the first thirty day period during which any delinquent balance remains unpaid, plus
2. ten percent for each successive thirty day period during which any delinquent balance remains unpaid.

8. Mutual Responsibilities

The following replaces 8b:

- b. each of us may communicate with the other by electronic means and such communication is acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity;

10. Changes to the Agreement Terms

The following replaces the fourth sentence in this section:

IBM may add or withdraw Eligible Products at any time. IBM may increase SVP with notice. IBM's ability to increase such charges, rates and minimums will be subject to the requirements of Brazilian law.

MEXICO

10. Changes to the Agreement Terms

The following is added after the third sentence:

For those Eligible Products priced in Mexican currency, IBM may increase SVP by giving you fifteen days' written notice.

UNITED STATES OF AMERICA

1. Eligible Products

The following sentence is added at the end of the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 1.3.3 Automatic Annual Renewal of Software Subscription and Support and Selected Support:

YOU MAY TERMINATE SOFTWARE SUBSCRIPTION AND SUPPORT FOR A PROGRAM OR SELECTED SUPPORT FOR A SELECTED PROGRAM LICENSE AT ANY TIME AFTER THE FIRST ANNIVERSARY ON ONE MONTH'S WRITTEN NOTICE, EITHER DIRECTLY TO IBM OR THROUGH YOUR IBM RESELLER, AS APPLICABLE, IF IBM HAS NOT RECEIVED YOUR WRITTEN AUTHORIZATION (e.g., order form, order letter, purchase order) TO RENEW YOUR EXPIRING SOFTWARE SUBSCRIPTION AND SUPPORT OR SELECTED SUPPORT. IN SUCH EVENT, YOU MAY OBTAIN A PRORATED REFUND.

The following sentence is added at the end of the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 1.4.1 Automatic Renewal of Fixed Term Licenses:

YOU MAY TERMINATE A PROGRAM'S FIXED TERM LICENSE AT ANY TIME AFTER ITS INITIAL TERM ON ONE MONTH'S WRITTEN NOTICE, EITHER DIRECTLY TO IBM OR THROUGH YOUR IBM RESELLER, AS APPLICABLE, IF IBM HAS NOT RECEIVED YOUR WRITTEN AUTHORIZATION (e.g., order form, order letter, purchase order) TO RENEW YOUR EXPIRING FIXED TERM LICENSE. IN SUCH EVENT, YOU MAY OBTAIN A PRORATED REFUND.

ASIA PACIFIC

AUSTRALIA

7. Payment

The following paragraph is added after 7b:

All charges or other amounts payable under this Agreement are specified to include applicable goods and services tax ("GST").

The following paragraph replaces 7b(2) in its entirety:

If any government or authority imposes a duty, tax (other than income tax), levy, or fee, on the Agreement or on the Eligible Product itself, that is not otherwise provided for in the amount payable, you agree to pay it when IBM invoices you. If the rate of GST changes, IBM may adjust the charge or other amount payable to take into account that change from the date the change becomes effective.

CAMBODIA, LAOS, PEOPLE'S REPUBLIC OF CHINA, VIETNAM, BANGLADESH, BHUTAN, NEPAL, BRUNEI, FIJI HONG KONG, INDIA, INDONESIA, JAPAN, REPUBLIC OF KOREA, MACAO, MALAYSIA, MALDIVES, MONGOLIA, BURMA (aka MYANMAR), PAPUA NEW GUINEA, PHILIPPINES, SAMOA, SOLOMON ISLANDS, SRI LANKA, TAIWAN, THAILAND, CHRISTMAS ISLANDS, COCOS (KEELING) ISLANDS, COOK ISLANDS, EAST TIMOR, HEARD & MCDONALD ISLANDS, KIRIBATI, NAURU, NIUE, NORFOLK ISLAND, TOKELAU, TONGA, AND TUVALU

1. Eligible Products

The following replaces the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 1.3.3 Automatic Annual Renewal of Software Subscription and Support and Selected Support:

IBM will renew, for an additional payment, expiring software subscription and support for all of your Program licenses or Selected Support for all of your Selected Program licenses to the next Anniversary if IBM or your reseller receives (1) your order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current coverage period or (2) your payment within 30 days of your receipt of the software subscription and support or Selected Support, as applicable, invoice for the next coverage period.

The following replaces the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 1.4.1 Automatic Renewal of Fixed Term Licenses:

IBM will renew, for an additional payment, expiring Fixed Term Licenses for all of your Program licenses for the same duration as the expiring term if IBM or your reseller receives (1) your order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current term or (2) your payment within 30 days of your receipt of the Fixed Term License invoice for the next term.

INDONESIA

11. Agreement Termination

The following paragraph is added just prior to the last paragraph:

We both waive in this regard, the provision of article 1266 of the Indonesian Civil Code to the extent the article provision requires such court decree for the termination of an agreement creating mutual obligations.

JAPAN

2. Site

The following paragraph is added after the fifth paragraph of this section

In the event IBM receives personal information in conjunction with the performance of this Agreement, IBM agrees to handle such personal information in accordance with the attachment entitled Provisions for Handling Personal Information or Memorandum of Understanding on Handling Personal Information signed separately by the parties.

7. Payment

Add the following sentence:

You agree to pay within 30 days from our invoice date.

11. Agreement Termination

The following paragraph is added to this section:

When all or a substantial portion of either party's assets, credits or business are so changed as to make continued performance of that party's obligations impracticable or impossible, the other party may terminate this Agreement with prior written notice.

EUROPE, MIDDLE EAST, AFRICA (EMEA)

EMEA-WIDE

7. Payment

The following replaces 7b(1) for the following countries except as noted:

Amounts are due and payable upon receipt of invoice. You agree to pay accordingly, including any late payment charges.

If payment is not made within 30 days from the date of invoice, (or in the case of quarterly advance billing of recurring charges, within 60 days from the date of invoice), you may be subject to late payment charges.

The late payment charges are calculated as follows:

Belgium and Luxembourg:

Replace the first sentence in the second paragraph of the above EMEA-wide text with the following:

Any amounts not paid within the terms stated on the IBM invoice will be subject to a late payment fee that will be equal to 1% per period of 30 days, based on the outstanding balance VAT included, until paid in full. Late payment fees due will have to be paid at the end of each period of 30 days.

Denmark and Sweden:

Interest according to the Late Payment Interest Act apportioned to the number of days of delay.

Estonia, Latvia and Lithuania:

2% per month apportioned to the number of days of delay.

Finland:

Interest according to the Act on interest rate apportioned to the number of days of delay.

France:

In compliance with the law of May 15th, 2001 any late payment fee is payable the day following the payment date specified on the invoice without any need for a reminder and its rate is equal to the European Central Bank rate for its most recent refinancing operation plus 7 points.

Germany:

Late payment fees will be calculated according to the German statutory rate.

In the second paragraph of the above EMEA-wide text replace both usages of "date of invoice" with the following:

due date

Greece:

The following replaces the above EMEA-wide text:

Amounts are due and payable upon receipt of invoice. If payment is not made within 30 days from the date of invoice, you may be subject to late payment fees.

The late payment fees will be calculated, per day of actual delay, from the due date of the invoice, based on the maximum rate of late payment fee allowed by law.

Italy:

Replace the final paragraph of the above EMEA-wide text with the following:

The late payment charges will be calculated, per day of actual delay, based on the prime rate published by the Italian Banking Association ABI in effect on the last day of the month the payment has been received by IBM, increased by three points.

In case of no payment or partial payment and following a formal credit claim procedure or trial IBM might initiate, the late payment fee will be calculated from the due date of the invoice based on the prime rate published by the Italian Banking Association ABI in effect on the last day of the month the payment was due, increased by three points. IBM can transfer the credit to a factoring company; if we do so we will advise you in writing.

Netherlands:

The following replaces the second and third sentences of the EMEA-wide text:

If payment is not made within 30 days from the date of invoice, you will be in default without the necessity of a default notice. In such case you will be subject to late payment fees of 1% per month.

Norway:

Interest according to the Late Payment Interest Act apportioned to the number of days of delay.

South Africa, Namibia, Lesotho, Swaziland:

Such charges shall accrue daily from the date payment must have been received by IBM, and will be equal to 2% (two percent) above the ruling prime rate (of a bank designated by IBM) on any outstanding payment.

Spain:

Such fees will be calculated applying 1% of the charges per month to the number of days of delay.

UK and Ireland:

Such charges will be calculated at a monthly rate of 2% of the invoice amount, or as permitted by applicable law.

UK, Ireland, South Africa, Namibia, Lesotho, Swaziland:

Add the following:

IBM's rights relating to late payment charges shall be in addition to any other right that IBM may have in the event that you fail to make any payment due to IBM under this Agreement.

IBM reserves the right to require payment in advance of delivery or other security for payment.

ALBANIA, ARMENIA, AZERBAIJAN, BELARUS, BOSNIA-HERZEGOVINA, BULGARIA, CROATIA, GEORGIA, HUNGARY, KAZAKHSTAN, KYRGYZSTAN, MACEDONIA, MOLDOVA, MONTENEGRO, POLAND, ROMANIA, RUSSIA, SERBIA, SLOVAKIA, SLOVENIA, TAJIKISTAN, TURKMENISTAN, UKRAINE, UZBEKISTAN, JORDAN, KENYA, LEBANON, LIBERIA, PAKISTAN, SIERRA LEONE, SOMALIA, WEST BANK/GAZA, YEMEN, BAHRAIN, KUWAIT, OMAN, QATAR, SAUDI ARABIA, UNITED ARAB EMIRATES

1. Eligible Products

The following replaces the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 1.3.3 Automatic Annual Renewal of Software Subscription and Support and Selected Support:

IBM will renew, for an additional payment, expiring software subscription and support for all of your Program licenses or Selected Support for all of your Selected Program licenses to the next Anniversary if IBM or your reseller receives (1) your order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current coverage period or (2) your payment within 30 days of your receipt of the software subscription and support or Selected Support, as applicable, invoice for the next coverage period.

The following replaces the paragraph that begins "IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE" in 1.4.1 Automatic Renewal of Fixed Term Licenses:

IBM will renew, for an additional payment, expiring Fixed Term Licenses for all of your Program licenses for the same duration as the expiring term if IBM or your reseller receives (1) your order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current term or (2) your payment within 30 days of your receipt of the Fixed Term License invoice for the next term.

AUSTRIA and GERMANY

1. Eligible Products

The second paragraph is deleted.

The following is added at the end of, and as part of, 1.2. Non-IBM Programs:

Warranty:

- (1) Warranty is provided for a period of twelve months, beginning at the date of delivery. Consumers are at least entitled to claim warranty defects within the limitation period provided by law.
- (1) IBM warrants that each non-IBM Program, when used in the specified operating environment, relates to its functions and conforms to its specifications. In case a non-IBM Program is

delivered without specifications, IBM only warrants that the non-IBM Program information correctly describes the non-IBM Program, and that the non-IBM Program can be used according to the non-IBM Program information.

- (2) IBM does not warrant uninterrupted or error-free operation of the non-IBM Program or that IBM will correct all program defects. The Customer is responsible for the results of the use of a non-IBM Program.
- (3) At IBM's discretion, warranty may also be provided by the Licensor himself.
- (4) In the event that IBM is unable to remedy a warranty defect within a reasonable period of time - even after an appropriate grace period - the Customer may in respect of this defect (at his discretion) demand a reduction of price, or rescission of contract. In case of minor defects or deviations, the Customer shall not be entitled to demand a rescission of the contract.
- (5) In addition, the limitation of liability provision will apply.
- (6) However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranty to you.

AUSTRIA

7. Payment

Replace the above EMEA-wide text in 7b(1) with the following:

Payment in full is due and payable without deduction upon receipt of invoice. You agree to pay accordingly, including any late payment fees. If the invoice amount is not received on IBM's account within 30 days, upon due date, IBM may charge late payment fees at the rate indicated in the Associated Document.

AUSTRIA, DENMARK, ESTONIA, FINLAND, LATVIA, LITHUANIA, NORWAY, SWEDEN:

7. Payment

The following is omitted in 7b(2):

(excluding those based on IBM's net income)

BELGIUM, FRANCE, UK, IRELAND, SOUTH AFRICA, NAMIBIA, LESOTHO, SWAZILAND:

7. Payment

Delete 7b(2).

EGYPT

8. Mutual Responsibilities

Delete 8b.

FRANCE

10. Changes to the Agreement Terms

The following is added to this section:

If you disagree with the change, you may terminate the transaction by notifying IBM, in writing, within fifteen days after the date of IBM's notification to you of the change.

All notices will be sent to the other party by registered letter.

11. Agreement Termination

The following is added after the fourth paragraph:

All notices will be sent to the other party by registered letter.

NETHERLANDS

7. Payment

Add the following paragraphs to 7b(1):

We may apply your payment to your other outstanding invoices.

Our rights relating to late payment charges shall be in addition to any other right that we may have in the event that you fail to make any payment due to us under this Agreement.

We reserve the right to also base our decision on the conclusion of an agreement with you on your solvency and to require payment in advance of delivery or other security for payment.

Your obligation to pay is unconditional and shall not be subject to any abatement, reduction, set-off, defense, counter-claim interruption, deferment or recoupment.

Replace 7b(2) with the following:

You agree to pay all taxes and duties, regardless of their qualification, unless specified otherwise on the invoice.

SOUTH AFRICA, NAMIBIA, LESOTHO, SWAZILAND

7. Payment

Add the following additional sentence:

When you make payment by cheque, payment is deemed to have been made only when your cheque has been received by IBM and our relevant account has been credited by IBM's authorised bankers.

SWITZERLAND

1. Eligible Products

The following is added to 1.2. Non-IBM Programs:

No liability of whatever sort is accepted or warranty granted by IBM.

8. Mutual Responsibilities

Delete 8b.

TURKEY

7. Payment

The following replaces 7b(1)

Amounts are due and payable upon receipt of invoice. You agree to pay accordingly, including any late payment charges.

If payment is not made within 30 days from the date of invoice, you may be subject to late payment charges.

Add the following to the end of this section:

You are responsible for all banking charges (including, but not limited to, LC charges, commissions, stamps, and extensions) incurred within and outside of Turkey.

Mike Ross IBM eSSR

Mark Ross

10/17/2008

Your obligation to pay is unconditional and shall not be subject to any abatement, reduction, set-off, defense, counter-claim interruption, deferment or recoupment.

Replace 7b(2) with the following:

You agree to pay all taxes and duties, regardless of their qualification, unless specified otherwise on the invoice.

SOUTH AFRICA, NAMIBIA, LESOTHO, SWAZILAND

7. Payment

Add the following additional sentence:

When you make payment by cheque, payment is deemed to have been made only when your cheque has been received by IBM and our relevant account has been credited by IBM's authorised bankers.

SWITZERLAND

1. Eligible Products

The following is added to 1.2. Non-IBM Programs:

No liability of whatever sort is accepted or warranty granted by IBM.

8. Mutual Responsibilities

Delete 8b.

TURKEY

7. Payment

The following replaces 7b(1)

Amounts are due and payable upon receipt of invoice. You agree to pay accordingly, including any late payment charges.

If payment is not made within 30 days from the date of invoice, you may be subject to late payment charges.

Add the following to the end of this section:

You are responsible for all banking charges (including, but not limited to, LC charges, commissions, stamps, and extensions) incurred within and outside of Turkey.



International Passport Advantage Agreement

Enrollment Form

Please provide all requested information in order to be enrolled or to update your information.

You enroll in, and obtain Eligible Products under, Passport Advantage subject to the terms of the IBM International Passport Advantage Agreement ("the Agreement") and the Attachment for Sub-Capacity Terms. IBM Programs that you obtain under this Agreement are governed by the terms of the IBM Program License Agreement ("IPLA"). If there is a conflict between the terms of the Agreement, including the Attachment for Sub-Capacity Terms, if applicable, and those of the IPLA, including its License Information document ("LI"), the terms of the Agreement prevail. A Non-IBM Program that you obtain under the Agreement 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.

By enrolling, you

- a. acknowledge that you have had the opportunity to read and understand the Agreement, including the Attachment for Sub-Capacity Terms, and the IPLA before you completed this form; and
- b. accept the terms of these documents* and represent and warrant that you have full authority to do so on behalf of the enrolling Site.

This enrollment is for (check one):

| | | |
|--|--|---|
| <input checked="" type="checkbox"/> Originating Site** | <input type="checkbox"/> Additional Site* | <input type="checkbox"/> Site Information Update |
| <p>By checking the Originating Site box above, an Originating Site enrolling for the first time also accepts the terms of the Attachment for Sub-Capacity Terms. Originating Sites must check the box below if they have not already accepted the Attachment for Sub-Capacity Terms in a prior enrollment and wish to take advantage of Sub-Capacity Terms. Enter your Passport Advantage Agreement and Site numbers in the space provided below for updating existing Site information below, and submit. Only an Originating Site may check box below.</p> <p><input type="checkbox"/> Attachment for Sub-Capacity Terms</p> | | |

If this is an enrollment for an Originating Site**, please indicate customer type (check one***):

- Commercial
- Government***
- Academic Volume Option (Attachment for Academic Volume Option applies)

* Note: If you are an Additional Site, you accept the terms of the Attachment for Sub-Capacity Terms only if your Originating Site has already accepted these terms.

** Note: The Originating Site Primary Contact must, if applicable, complete and submit with their enrollment form, an Authorized Additional Site Schedule listing any and all potential Additional Sites. Failure to do so may result in delay in processing Additional Site enrollments. An Additional Site is required to be part of the Originating Site's Enterprise as defined in Section 2 of the Agreement. By completing this form as an Additional Site, you certify that this requirement has been met.

*** Note: If you are a Government customer enrolling under Commercial terms, please check both "Government" and "Commercial" options above. If you are a Government customer and not enrolling under Commercial terms, the Attachment for Government Option applies.

If enrolling an Additional Site, please indicate Passport Advantage Agreement Number: 162427

If updating existing Site information, please indicate Passport Advantage Agreement and Site numbers: 7023280

Please indicate which industry best describes your business:

- AEROSPACE & DEFENSE
- AUTOMOTIVE
- BANKS
- CHEMICAL & PETROLEUM
- COMPUTER SERVICES
- CONSUMER PRODUCT GOODS

- EDUCATION
- FINANCIAL MARKETS
- INSURANCE
- LIFE SCIENCES
- OTHER PRODUCTION INDUSTRIES
- TELECOMMUNICATIONS
- UTILITIES
- OTHER (Please Specify) _____
- ELECTRONICS
- GOVERNMENT
- HEALTH
- MEDIA & ENTERTAINMENT
- RETAIL
- TRAVEL & TRANSPORTATION

How many people work in your company across all locations?

- 1 - 1,000
- 1,000 Plus

For each contact information box below, please complete all details, including the optional check box concerning promotional and marketing communications from IBM and its business partners. By completing this form and providing us with information on behalf of other individuals in your organization, you certify that you have confirmed that they agree to your providing their data on the form. If you indicate, for any of the contacts listed, that you or they DO wish to receive promotional and/or marketing material, we will use the contact information for these purposes too, as well as generally in connection with your Passport Advantage Agreement.

Primary Contact (required):

The Primary Contact is to complete this form. IBM will communicate with you, the Primary Contact, regarding changes to the Agreement or other contractual issues. If the Primary Contact is the only contact specified, IBM may consider the Primary Contact to be the sole contact for all purposes.

(No Post Office Box addresses, please)

It is your responsibility to promptly notify IBM of any change of address, including e-mail address.

Please provide your full legal company name

| | | |
|---|---------------------------------------|--|
| Company Name: <i>EL Dorado County</i> | | |
| Contact Name: <i>Tom Straling</i> | | |
| Street Address: <i>360 Talc Line, Information Technologies</i> | | |
| City: <i>Placerville</i> | State/Province: <i>CA</i> | ZIP Code/Postal Code: <i>95667</i> |
| Country: <i>USA</i> | Telephone/Ext: <i>530-626-5495</i> | Fax: <i>530-626-6342</i> |
| E-mail Address: <i>Tom.Straling@EGCgov.us</i> | | |
| VAT Number <If not called VAT, use country equivalent> | | IBM Customer Number <i>272 8873</i> |

IBM will not use this information for any purpose beyond the scope of this Passport Advantage Agreement.

Administration Contact (if different from the Primary Contact above):

The person you designate in this information box is responsible for requesting and authorizing account information changes, Web and tool access, etc. In addition, IBM will send the Administration Contact documents including Software Subscription and Support Renewal notices, software upgrade availability notifications, Proofs of Entitlement, etc. You will have access to your Proofs of Entitlement online via Passport Advantage Online to confirm your authorized use of IBM software. Electronic Proofs of Entitlement will also be sent via e-mail to your

Administration Contact and/or to your Business Partner when you obtain new licenses or renew Software Subscription and Support.

(No Post Office Box addresses, please)

Please provide your full legal company name It is your responsibility to promptly notify IBM of any change of address, including e-mail address.

| | | |
|-----------------|-----------------|-----------------------|
| Company Name: | | |
| Contact Name: | | |
| Street Address: | | |
| City: | State/Province: | ZIP Code/Postal Code: |
| Country: | Telephone/Ext: | Fax: |
| E-mail Address: | | |

IBM will not use this information for any purpose beyond the scope of this Passport Advantage Agreement.

Site Technical Contact:

The Site Technical Contact specified below is responsible for overall support compliance for this Passport Advantage site and maintaining authorizations for support-related Web and tool access. This contact will also receive a letter with important Technical Support Information concerning access to IBM Software Support. It is your responsibility to promptly notify IBM of any change of address, including e-mail address.

Please provide your full legal company name

| | | |
|--|-----------------------------|-----------------------------|
| Company Name: EL DORADO COUNTY | | |
| Contact Name: Tom Sterling | | |
| Street Address: 360 Fair Lane, Information Tech Building | | |
| City: PLACERVILLE | State/Province: CA | ZIP Code/Postal Code: 95667 |
| Country: USA | Telephone/Ext: 530-421-5415 | Fax: 530-426-6842 |
| E-mail Address: | | |

IBM will not use this information for any purpose beyond the scope of this Passport Advantage Agreement.

Language:

Please indicate your default language preference for software media: WE DO NOT ACCEPT BCS14

For countries where there is more than one official language (for example, Canada, Switzerland, and Belgium), please indicate in which official language you wish to receive communications from IBM regarding your Passport Advantage relationship: English

Please note that while IBM will make all reasonable efforts to meet your request, media and communications may not be available in all languages.

Passport Advantage Primary Reseller, if applicable for this enrollment:

Please provide the full legal company name

| | | |
|--|-----------------|-----------------------|
| Primary Reseller Company Name VARIES BY YEAR | | |
| Contact Name: | | |
| Street Address: | | |
| City: | State/Province: | ZIP Code/Postal Code: |
| Country: | Telephone/Ext: | Fax: |
| E-mail Address: | | |

Authorized Signature

Except as modified by the IBM International Passport Advantage Agreement and any applicable attachment, use of IBM Programs is governed by the IBM International Program License Agreement.

By signing below, each of us agrees to the terms of the IBM International Passport Advantage Agreement as well as to those of any applicable attachment. Once signed, unless prohibited by local law or specified otherwise, any reproduction of this Enrollment Form, the IBM International Passport Advantage Agreement or its Attachment(s) made by reliable means (for example, photocopy or facsimile) is considered an original.


Agreed to:

(Customer Legal Name)

Agreed to:

<IBM Legal Entity>

By



Authorized Signature

Name (type or print): **Tom Straling**

Title: **TECHNOLOGY OFFICER**

Date: **10-22-08**

Customer address:

**EIDORADO COUNTY
360 FAIR LANE
PLACERVILLE CA 95667**

By



Authorized Signature

Name (type or print): **MIKE ROSS**

Title: **COULAGE SOFTWARE SALES MANAGER**

Date: **10/28/2008**

IBM address:

**2710 GATEWAY OAKS DRIVE
SOUTH BUEHNIG - SUITE 200
SACRAMENTO, CA 95841**

After signing, please return a copy of this Attachment to the local "IBM address" shown above.



International Program License Agreement

国际软件许可协议

國際程式授權合約

Mezinárodní licenční smlouva pro programy

Conditions Internationales d'Utilisation de Logiciels IBM

Internationale Nutzungsbedingungen für Programmpakete

Accordo Internazionale di Licenza di Programmi (IPLA)

プログラムのご使用条件

프로그램 라이선스 계약(IPLA)

Międzynarodowa Umowa Licencyjna na Program

Acordo Internacional de Licenciamento do Programa

Acuerdo Internacional de Programas Bajo Licencia (IPLA)

Uluslararası Program Lisans Sözleşmesi

International Program License Agreement

Part 1 - General Terms

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, OR USING THE PROGRAM YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS,

- DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, OR USE THE PROGRAM; AND
- PROMPTLY RETURN THE PROGRAM AND PROOF OF ENTITLEMENT TO THE PARTY FROM WHOM YOU ACQUIRED IT TO OBTAIN A REFUND OF THE AMOUNT YOU PAID. IF YOU DOWNLOADED THE PROGRAM, CONTACT THE PARTY FROM WHOM YOU ACQUIRED IT.

"IBM" is International Business Machines Corporation or one of its subsidiaries.

"License Information" ("LI") is a document that provides information specific to a Program. The Program's LI is available at <http://www.ibm.com/software/sla/>. The LI may also be found in a file in the Program's directory, by the use of a system command, or as a booklet which accompanies the Program.

"Program" is 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.

A "Proof of Entitlement" ("PoE") is evidence of Your authorization to use a Program at a specified level. That level may be measured, for example, by the number of processors or users. The PoE is also evidence of Your eligibility for warranty, future upgrade prices, if any, and potential special or promotional opportunities. If IBM does not provide You with a PoE, then IBM may accept the original paid sales receipt or other sales record from the party (either IBM or its reseller) from whom You acquired the Program, provided that it specifies the name of the Program and the usage level acquired.

"You" and "Your" refer either to an individual person or to a single legal entity.

This Agreement includes Part 1 - General Terms, Part 2 - Country-unique Terms (if any), License Information, and Proof of Entitlement and is the complete agreement between You and IBM regarding the use of the Program. It replaces any prior oral or written communications between You and IBM concerning Your use of the Program. The terms of Part 2 and License Information may replace or modify those of Part 1. To the extent there is a conflict between the terms of this Agreement and those of the IBM International Passport Advantage Agreement, the terms of the latter agreement prevail.

1. Entitlement

License

The Program is owned by IBM or an IBM supplier, and is copyrighted and licensed, not sold.

IBM grants You a nonexclusive license to use the Program when You lawfully acquire it.

You may 1) use the Program up to the level of use specified in the PoE and 2) make and install copies, including a backup copy, to support such use. The terms of this license apply to each copy You make. You will reproduce all copyright notices and all other legends of ownership on each copy, or partial copy, of the Program.

If You acquire the Program as a program upgrade, after You install the upgrade You may not use the Program from which You upgraded or transfer it to another party.

You will ensure that anyone who uses the Program (accessed either locally or remotely) does so only for Your authorized use and complies with the terms of this Agreement.

You may not 1) use, copy, modify, or distribute the Program except as provided in this Agreement; 2) reverse assemble, reverse compile, or otherwise translate the Program except as specifically permitted by law without the possibility of contractual waiver; or 3) sublicense, rent, or lease the Program.

IBM may terminate Your license if You fail to comply with the terms of this Agreement. If IBM does so, You must destroy all copies of the Program and its PoE.

Money-back Guarantee

If for any reason You are dissatisfied with the Program and You are the original licensee, You may obtain a refund of the amount You paid for it, if within 30 days of Your invoice date You return the Program and its PoE to the party from whom You obtained it. If You downloaded the Program, You may contact the party from whom You acquired it for instructions on how to obtain the refund.

Program Transfer

You may transfer a Program and all of Your license rights and obligations to another party only if that party agrees to the terms of this Agreement. When You transfer the Program, You must also transfer a copy of this Agreement, including the Program's PoE. After the transfer, You may not use the Program.

2. Charges

The amount payable for a Program license is a one-time charge.

One-time charges are based on the level of use acquired which is specified in the PoE. IBM does not give credits or refunds for charges already due or paid, except as specified elsewhere in this Agreement.

If You wish to increase the level of use, notify IBM or the party from whom You acquired it and pay any applicable charges.

If any authority imposes a duty, tax, levy or fee, excluding those based on IBM's net income, upon the Program, then You agree to pay the amount specified or supply exemption documentation. You are responsible for any personal property taxes for the Program from the date that You acquire it.

3. Limited Warranty

IBM warrants that when the Program is used in the specified operating environment it will conform to its specifications. The warranty applies only to the unmodified portion of the Program. IBM does not warrant uninterrupted or error-free operation of the Program or that IBM will correct all Program defects. You are responsible for the results obtained from the use of the Program.

IBM provides You with access to IBM databases containing information on known Program defects, defect corrections, restrictions, and bypasses at no additional charge. Consult the IBM Software Support Guide for further information at <http://www.ibm.com/software/support>. IBM will maintain this information for at least one year after the original licensee acquires the Program ("Warranty Period").

If the Program does not function as warranted during the Warranty Period and the problem cannot be resolved with information available in the IBM databases, You may return the Program and its PoE to the party (either IBM or its reseller) from whom You acquired it and receive a refund in the amount You paid. If You downloaded the Program, You may contact the party from whom You acquired it for instructions on how to obtain the refund.

THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THAT PERIOD. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

THESE WARRANTIES GIVE YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE OR JURISDICTION TO JURISDICTION.

4. Limitation of Liability

Circumstances may arise where, because of a default on IBM's part or other liability, You are entitled to recover damages from IBM. In each such instance, regardless of the basis on which You may be entitled to claim damages from IBM, (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM is liable for no more than 1) damages for bodily injury (including death) and damage to real property and tangible personal property and 2) the amount of any other actual direct damages up to the charges for the Program that is the subject of the claim.

This limitation of liability also applies to IBM's Program developers and suppliers. It is the maximum for which they and IBM are collectively responsible.

UNDER NO CIRCUMSTANCES IS IBM, ITS PROGRAM DEVELOPERS OR SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:

1. LOSS OF, OR DAMAGE TO, DATA;
2. SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR
3. LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

5. General

1. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.
2. In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.
3. You agree to comply with all applicable export and import laws and regulations.
4. You agree to allow IBM to store and use Your contact information, including names, phone numbers, and e-mail addresses, anywhere they do business. Such information will be processed and used in connection with our business relationship, and may be provided to contractors, Business Partners, and assignees of IBM for uses consistent with their collective business activities, including communicating with You (for example, for processing orders, for promotions, and for market research).
5. Neither You nor IBM will bring a legal action under this Agreement more than two years after the cause of action arose unless otherwise provided by local law without the possibility of contractual waiver or limitation.
6. Neither You nor IBM is responsible for failure to fulfill any obligations due to causes beyond its control.
7. This Agreement will not create any right or cause of action for any third party, nor will IBM be responsible for any third party claims against You except, as permitted by the Limitation

of Liability section above, for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable.

6. Governing Law, Jurisdiction, and Arbitration

Governing Law

Both You and IBM consent to the application of the laws of the country in which You acquired the Program license to govern, interpret, and enforce all of Your and IBM's rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

The United Nations Convention on Contracts for the International Sale of Goods does not apply.

Jurisdiction

All of our rights, duties, and obligations are subject to the courts of the country in which You acquired the Program license.

Part 2 - Country-unique Terms

AMERICAS

ARGENTINA: Governing Law, Jurisdiction, and Arbitration (Section 6): *The following exception is added to this section:*

Any litigation arising from this Agreement will be settled exclusively by the Ordinary Commercial Court of the city of Buenos Aires.

BRAZIL: Governing Law, Jurisdiction, and Arbitration (Section 6): *The following exception is added to this section:*

Any litigation arising from this Agreement will be settled exclusively by the court of Rio de Janeiro, RJ.

CANADA: General (Section 5): *The following replaces item 7:*

7. This Agreement will not create any right or cause of action for any third party, nor will IBM be responsible for any third party claims against You except as permitted by the Limitation of Liability section above for bodily injury (including death) or physical harm to real or tangible personal property caused by IBM's negligence for which IBM is legally liable.

Governing Law, Jurisdiction, and Arbitration (Section 6): *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws in the Province of Ontario

PERU: Limitation of Liability (Section 4): *The following is added at the end of this section:*

In accordance with Article 1328 of the Peruvian Civil Code, the limitations and exclusions specified in this section will not apply to damages caused by IBM's willful misconduct ("dolo") or gross negligence ("culpa inexcusable").

UNITED STATES OF AMERICA: General (Section 5): *The following is added to this section:*

U.S. Government Users Restricted Rights - Use, duplication or disclosure restricted by the GSA ADP Schedule Contract with the IBM Corporation.

Governing Law, Jurisdiction, and Arbitration (Section 6): *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of the State of New York, United States of America

ASIA PACIFIC

AUSTRALIA: Limited Warranty (Section 3): *The following is added:*

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

Limitation of Liability (Section 4): *The following is added:*

Where IBM is in breach of a condition or warranty implied by the Trade Practices Act 1974, IBM's liability is limited to the repair or replacement of the goods, or the supply of equivalent goods. Where that condition or warranty relates to right to sell, quiet possession or clear title, or the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, then none of the limitations in this paragraph apply.

Governing Law, Jurisdiction, and Arbitration (Section 6): *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of the State or Territory in which You acquired the Program license

CAMBODIA, LAOS, and VIETNAM: Governing Law, Jurisdiction, and Arbitration (Section 6): *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of the State of New York, United States of America

The following is added to this section:

Arbitration

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Center ("SIAC Rules") then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the SIAC. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

HONG KONG S.A.R. and MACAU S.A.R. of China: Governing Law, Jurisdiction, and Arbitration (Section 6): *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of Hong Kong Special Administrative Region of China

INDIA: Limitation of Liability (Section 4): *The following replaces the terms of items 1 and 2 of the first paragraph:*

1) liability for bodily injury (including death) or damage to real property and tangible personal property will be limited to that caused by IBM's negligence; and 2) as to any other actual damage arising in any situation involving nonperformance by IBM pursuant to, or in any way

related to the subject of this Agreement, IBM's liability will be limited to the charge paid by You for the individual Program that is the subject of the claim.

General (Section 5): *The following replaces the terms of item 5:*

If no suit or other legal action is brought, within three years after the cause of action arose, in respect of any claim that either party may have against the other, the rights of the concerned party in respect of such claim will be forfeited and the other party will stand released from its obligations in respect of such claim.

Governing Law, Jurisdiction, and Arbitration (Section 6): *The following is added to this section:*

Arbitration

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Bangalore, India in accordance with the laws of India then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Bar Council of India. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

JAPAN: General (Section 5): *The following is inserted after item 5:*

Any doubts concerning this Agreement will be initially resolved between us in good faith and in accordance with the principle of mutual trust.

MALAYSIA: Limitation of Liability (Section 4): *The word "SPECIAL" in item 2 of the third paragraph is deleted:*

NEW ZEALAND: Limited Warranty (Section 3): *The following is added:*

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

Limitation of Liability (Section 4): *The following is added:*

Where Programs are not acquired for the purposes of a business as defined in the Consumer Guarantees Act 1993, the limitations in this Section are subject to the limitations in that Act.

PEOPLE'S REPUBLIC OF CHINA: Charges (Section 2): *The following is added:*

All banking charges incurred in the People's Republic of China will be borne by You and those incurred outside the People's Republic of China will be borne by IBM.

Governing Law, Jurisdiction, and Arbitration (Section 6): *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of the State of New York, United States of America (except when local law requires otherwise)

PHILIPPINES: Limitation of Liability (Section 4): *The following replaces the terms of item 2 of the third paragraph:*

2. special (including nominal and exemplary damages), moral, incidental, or indirect damages or for any economic consequential damages; or

Governing Law, Jurisdiction, and Arbitration (Section 6): *The following is added to this section:*

Arbitration

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Metro Manila, Philippines in accordance with the laws of the Philippines then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Philippine Dispute Resolution Center, Inc. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

SINGAPORE: Limitation of Liability (Section 4): *The words "SPECIAL" and "ECONOMIC" are deleted from item 2 of the third paragraph.*

General (Section 5): *The following replaces the terms of item 7:*

Subject to the rights provided to IBM's suppliers and Program developers as provided in Section 4 above (Limitation of Liability), a person who is not a party to this Agreement shall have no right under the Contracts (Right of Third Parties) Act to enforce any of its terms.

TAIWAN: Limited Warranty (Section 3): The last paragraph is deleted.

EUROPE, MIDDLE EAST, AFRICA (EMEA)

Limited Warranty (Section 3): *In the European Union, the following is added:*

In the European Union, consumers have legal rights under applicable national legislation governing the sale of consumer goods. Such rights are not affected by the Limited Warranty provision set out above at section 3 of this Agreement. The territorial scope of the Limited Warranty is worldwide.

Limitation of Liability (Section 4): *In Austria, Denmark, Finland, Greece, Italy, Netherlands, Norway, Portugal, Spain, Sweden and Switzerland, the following replaces the terms of this section in its entirety:*

Except as otherwise provided by mandatory law:

1. IBM's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this agreement or due to any other cause related to this agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if IBM is at fault) or of such cause, for a maximum amount equal to the charges You paid for the Program.

The above limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which IBM is legally liable.

2. **UNDER NO CIRCUMSTANCES IS IBM, OR ANY OF ITS PROGRAM DEVELOPERS, LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**
3. The limitation and exclusion of liability herein agreed applies not only to the activities performed by IBM but also to the activities performed by its suppliers and Program developers, and represents the maximum amount for which IBM as well as its suppliers and Program developers, are collectively responsible.

Limitation of Liability (Section 4): *In France and Belgium, the following replaces the terms of this section in its entirety:*

Except as otherwise provided by mandatory law:

1. IBM's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if IBM is at fault), for a maximum amount equal to the charges You paid for the Program that has caused the damages.

The above limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which IBM is legally liable.

2. **UNDER NO CIRCUMSTANCES IS IBM, OR ANY OF ITS PROGRAM DEVELOPERS, LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**
3. The limitation and exclusion of liability herein agreed applies not only to the activities performed by IBM but also to the activities performed by its suppliers and Program developers, and represents the maximum amount for which IBM as well as its suppliers and Program developers, are collectively responsible.

Governing Law, Jurisdiction, and Arbitration (Section 6)

Governing Law

The phrase "the laws of the country in which You acquired the Program license" is replaced by:

1) "the laws of Austria" in Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldavia, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia; 2) "the laws of France" in Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia,

Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis & Futuna; 3) "the laws of Finland" in Estonia, Latvia, and Lithuania; 4) "the laws of England" in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe; and 5) "the laws of South Africa" in South Africa, Namibia, Lesotho and Swaziland.

Jurisdiction

The following exceptions are added to this section:

1) In **Austria** the choice of jurisdiction for all disputes arising out of this Agreement and relating thereto, including its existence, will be the competent court of law in Vienna, Austria (Inner-City); 2) in **Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, West Bank/Gaza, Yemen, Zambia, and Zimbabwe** all disputes arising out of this Agreement or related to its execution, including summary proceedings, will be submitted to the exclusive jurisdiction of the English courts; 3) in **Belgium and Luxembourg**, for all disputes arising out of this Agreement or related to its interpretation or its execution, only the law and the courts of the capital of the country in which Your registered office and/or commercial office is located are competent; 4) in **France, Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis & Futuna** all disputes arising out of this Agreement or related to its violation or execution, including summary proceedings, will be settled exclusively by the Commercial Court of Paris; 5) in **Russia**, all disputes arising out of or in relation to the interpretation, the violation, the termination, the nullity of the execution of this Agreement shall be settled by Arbitration Court of Moscow; 6) in **South Africa, Namibia, Lesotho and Swaziland**, both of us agree to submit all disputes relating to this Agreement to the jurisdiction of the High Court in Johannesburg; 7) in **Turkey** all disputes arising out of or in connection with this Agreement shall be resolved by the Istanbul Central (Sultanahmet) Courts and Execution Directorates of Istanbul, the Republic of Turkey; 8) in each of the following specified countries, any legal claim arising out of this Agreement will be brought before, and settled exclusively by, the competent court of a) Athens for **Greece**, b) Tel Aviv-Jaffa for **Israel**, c) Milan for **Italy**, d) Lisbon for **Portugal**, and e) Madrid for **Spain**; and 9) in the **United Kingdom**, both of us agree to submit all disputes relating to this Agreement to the jurisdiction of the English courts.

Arbitration

In **Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldavia, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia** all disputes arising out of this Agreement or related to its violation, termination or nullity will be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Center of the Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with these rules. The arbitration will be held in Vienna, Austria, and the official language of the proceedings will be English. The decision of the arbitrators will be final and binding upon both parties. Therefore, pursuant to paragraph 598 (2) of the Austrian Code of Civil Procedure, the parties expressly waive the application of paragraph 595 (1) figure 7 of the Code. IBM may, however, institute proceedings in a competent court in the country of installation.

In **Estonia, Latvia and Lithuania** all disputes arising in connection with this Agreement will be finally settled in arbitration that will be held in Helsinki, Finland in accordance with the arbitration laws of Finland then in effect. Each party will appoint one arbitrator. The arbitrators

will then jointly appoint the chairman. If arbitrators cannot agree on the chairman, then the Central Chamber of Commerce in Helsinki will appoint the chairman.

AUSTRIA: Limited Warranty (Section 3): *The following is inserted at the beginning of this Section:*

The Warranty Period is twelve months from the date of delivery. The limitation period for consumers in action for breach of warranty is the statutory period as a minimum.

The warranty for a Program covers the functionality of the Program for its normal use and the Program's conformity to its specifications.

The final two paragraphs are replaced with the following:

This is our sole obligation to You, except as otherwise required by applicable statutory law.

General (Section 5): The following is added to item 4:

For purposes of this clause, contact information will also include information about You as a legal entity, for example revenue data and other transactional information.

GERMANY: Limited Warranty (Section 3): *The same changes apply as those in Limited Warranty (Section 3) under Austria above.*

Limitation of Liability (Section 4): *The following paragraph is added to this Section:*

The limitations and exclusions specified in this Section will not apply to damages caused by IBM intentionally or by gross negligence.

General (Section 5): *The following replace the terms of item 5:*

Any claims resulting from this Agreement are subject to a statute of limitation of three years, except as stated in Section 3 (Limited Warranty) of this Agreement.

HUNGARY: Limitation of Liability (Section 4): *The following is added at the end of this section:*

The limitation and exclusion specified herein shall not apply to liability for a breach of contract damaging life, physical well-being, or health that has been caused intentionally, by gross negligence, or by a criminal act.

The parties accept the limitations of liability as valid provisions and state that the Section 314.(2) of the Hungarian Civil Code applies as the acquisition price as well as other advantages arising out of the present Agreement balance this limitation of liability.

IRELAND: Limited Warranty (Section 3): *The following is added to this section:*

Except as expressly provided in these terms and conditions, all statutory conditions, including all warranties implied, but without prejudice to the generality of the foregoing, all warranties implied by the Sale of Goods Act 1893 or the Sale of Goods and Supply of Services Act 1980 are hereby excluded.

Limitation of Liability (Section 4): *The following replaces the terms of this section in its entirety:*

For the purposes of this section, a "Default" means any act, statement, omission, or negligence on the part of IBM in connection with, or in relation to, the subject matter of an Agreement in respect of which IBM is legally liable to You whether in contract or tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default occurring on the date of occurrence of the last such Default.

Circumstances may arise where, because of a Default, You are entitled to recover damages from IBM. This section sets out the extent of IBM's liability and Your sole remedy.

1. IBM will accept unlimited liability for (a) death or personal injury caused by the negligence of IBM, and (b) subject always to the **Items for Which IBM is Not Liable** below, for physical damage to Your tangible property resulting from the negligence of IBM.

2. Except as provided in item 1 above, IBM's entire liability for actual damages for any one Default will not in any event exceed the greater of 1) €125,000, or 2) 125% of the amount You paid for the Program directly relating to the Default. These limits also apply to any of IBM's suppliers and Program developers. They state the maximum for which IBM and such suppliers and Program developers are collectively responsible.

Items for Which IBM is Not Liable

Save with respect to any liability referred to in item 1 above, under no circumstances is IBM or any of its suppliers or Program developers liable for any of the following, even if IBM or they were informed of the possibility of such losses:

1. loss of, or damage to, data;
2. special, indirect, or consequential loss; or
3. loss of profits, business, revenue, goodwill, or anticipated savings.

ITALY: General (Section 5): *The following is added to this section:*

IBM and Customer (hereinafter, individually, "Party") shall comply with all the obligations of the applicable provisions of law and/or regulation on personal data protection. Each of the Parties will indemnify and keep the other Party harmless from any damage, claim, cost or expense incurred by the latter, directly and or indirectly, as a consequence of an infringement of the other Party of the mentioned provisions of law and/or regulations.

SLOVAKIA: Limitation of Liability (Section 4): *The following is added to the end of the last paragraph:*

The limitations apply to the extent they are not prohibited under §§ 373-386 of the Slovak Commercial Code.

General (Section 5): *The terms of item 5 are replaced with the following:*

THE PARTIES AGREE THAT ANY LEGAL OR OTHER ACTION RELATED TO A BREACH OF THIS AGREEMENT MUST BE COMMENCED NO LATER AS DEFINED BY THE LOCAL LAW (4 YEARS) FROM THE DATE ON WHICH THE CAUSE OF ACTION AROSE.

SOUTH AFRICA, NAMIBIA, LESOTHO, SWAZILAND: Limited Warranty (Section 3): *The following is added at the end of the first paragraph:*

notwithstanding any advice or assistance that IBM may have given to You prior to the selection of such Programs.

SWITZERLAND: General (Section 5): *The following is added to item 4:*

For purposes of this clause, contact information will also include information about You as a legal entity, for example revenue data and other transactional information.

UNITED KINGDOM: Limited Warranty (Section 3): *The following replaces the first sentence in the fourth paragraph of this section:*

THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Limitation of Liability (Section 4): *The following replaces the terms of this section in its entirety:*

For the purposes of this section, a "Default" means any act, statement, omission, or negligence on the part of IBM in connection with, or in relation to, the subject matter of an Agreement in respect of which IBM is legally liable to You, whether in contract or tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default.

Circumstances may arise where, because of a Default, You are entitled to recover damages from IBM. This section sets out the extent of IBM's liability and Your sole remedy.

1. IBM will accept unlimited liability for:
 - a. death or personal injury caused by the negligence of IBM;
 - b. any breach of its obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982, or any statutory modification or re-enactment of either such Section; and
 - c. subject always to the **Items for Which IBM is Not Liable** below, for physical damage to Your tangible property resulting from the negligence of IBM.
2. IBM's entire liability for actual damages for any one Default will not in any event, except as provided in item 1 above, exceed the greater of 1) £75,000, or 2) 125% of the amount You paid for the Program directly relating to the Default. These limits also apply to IBM's suppliers and Program developers. They state the maximum for which IBM and such suppliers and Program developers are collectively responsible.

Items for Which IBM is Not Liable

Save with respect to any liability referred to in item 1 above, under no circumstances is IBM or any of its suppliers or Program developers liable for any of the following, even if IBM or they were informed of the possibility of such losses:

1. loss of, or damage to, data;
2. special, indirect, or consequential loss; or
3. loss of profits, business, revenue, goodwill, or anticipated savings.



International Program License Agreement

国际软件许可协议

國際程式授權合約

Mezinárodní licenční smlouva pro programy

Conditions Internationales d'Utilisation de Logiciels IBM

Internationale Nutzungsbedingungen für Programmpakete

Accordo Internazionale di Licenza di Programmi (IPLA)

プログラムのご使用条件

프로그램 라이선스 계약(IPLA)

Międzynarodowa Umowa Licencyjna na Program

Acordo Internacional de Licenciamento do Programa

Acuerdo Internacional de Programas Bajo Licencia (IPLA)

Uluslararası Program Lisans Sözleşmesi

International Program License Agreement

Part 1 - General Terms

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, OR USING THE PROGRAM YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS,

- DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, OR USE THE PROGRAM; AND
- PROMPTLY RETURN THE PROGRAM AND PROOF OF ENTITLEMENT TO THE PARTY FROM WHOM YOU ACQUIRED IT TO OBTAIN A REFUND OF THE AMOUNT YOU PAID. IF YOU DOWNLOADED THE PROGRAM, CONTACT THE PARTY FROM WHOM YOU ACQUIRED IT.

"IBM" is International Business Machines Corporation or one of its subsidiaries.

"License Information" ("LI") is a document that provides information specific to a Program. The Program's LI is available at <http://www.ibm.com/software/sla/>. The LI may also be found in a file in the Program's directory, by the use of a system command, or as a booklet which accompanies the Program.

"Program" is 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.

A "Proof of Entitlement" ("PoE") is evidence of Your authorization to use a Program at a specified level. That level may be measured, for example, by the number of processors or users. The PoE is also evidence of Your eligibility for warranty, future upgrade prices, if any, and potential special or promotional opportunities. If IBM does not provide You with a PoE, then IBM may accept the original paid sales receipt or other sales record from the party (either IBM or its reseller) from whom You acquired the Program, provided that it specifies the name of the Program and the usage level acquired.

"You" and "Your" refer either to an individual person or to a single legal entity.

This Agreement includes Part 1 - General Terms, Part 2 - Country-unique Terms (if any), License Information, and Proof of Entitlement and is the complete agreement between You and IBM regarding the use of the Program. It replaces any prior oral or written communications between You and IBM concerning Your use of the Program. The terms of Part 2 and License Information may replace or modify those of Part 1. To the extent there is a conflict between the terms of this Agreement and those of the IBM International Passport Advantage Agreement, the terms of the latter agreement prevail.

1. Entitlement

License

The Program is owned by IBM or an IBM supplier, and is copyrighted and licensed, not sold.

IBM grants You a nonexclusive license to use the Program when You lawfully acquire it.

You may 1) use the Program up to the level of use specified in the PoE and 2) make and install copies, including a backup copy, to support such use. The terms of this license apply to each copy You make. You will reproduce all copyright notices and all other legends of ownership on each copy, or partial copy, of the Program.

If You acquire the Program as a program upgrade, after You install the upgrade You may not use the Program from which You upgraded or transfer it to another party.

You will ensure that anyone who uses the Program (accessed either locally or remotely) does so only for Your authorized use and complies with the terms of this Agreement.

You may not 1) use, copy, modify, or distribute the Program except as provided in this Agreement; 2) reverse assemble, reverse compile, or otherwise translate the Program except as specifically permitted by law without the possibility of contractual waiver; or 3) sublicense, rent, or lease the Program.

IBM may terminate Your license if You fail to comply with the terms of this Agreement. If IBM does so, You must destroy all copies of the Program and its PoE.

Money-back Guarantee

If for any reason You are dissatisfied with the Program and You are the original licensee, You may obtain a refund of the amount You paid for it, if within 30 days of Your invoice date You return the Program and its PoE to the party from whom You obtained it. If You downloaded the Program, You may contact the party from whom You acquired it for instructions on how to obtain the refund.

Program Transfer

You may transfer a Program and all of Your license rights and obligations to another party only if that party agrees to the terms of this Agreement. When You transfer the Program, You must also transfer a copy of this Agreement, including the Program's PoE. After the transfer, You may not use the Program.

2. Charges

The amount payable for a Program license is a one-time charge.

One-time charges are based on the level of use acquired which is specified in the PoE. IBM does not give credits or refunds for charges already due or paid, except as specified elsewhere in this Agreement.

If You wish to increase the level of use, notify IBM or the party from whom You acquired it and pay any applicable charges.

If any authority imposes a duty, tax, levy or fee, excluding those based on IBM's net income, upon the Program, then You agree to pay the amount specified or supply exemption documentation. You are responsible for any personal property taxes for the Program from the date that You acquire it.

3. Limited Warranty

IBM warrants that when the Program is used in the specified operating environment it will conform to its specifications. The warranty applies only to the unmodified portion of the Program. IBM does not warrant uninterrupted or error-free operation of the Program or that IBM will correct all Program defects. You are responsible for the results obtained from the use of the Program.

IBM provides You with access to IBM databases containing information on known Program defects, defect corrections, restrictions, and bypasses at no additional charge. Consult the IBM Software Support Guide for further information at <http://www.ibm.com/software/support>. IBM will maintain this information for at least one year after the original licensee acquires the Program ("Warranty Period").

If the Program does not function as warranted during the Warranty Period and the problem cannot be resolved with information available in the IBM databases, You may return the Program and its PoE to the party (either IBM or its reseller) from whom You acquired it and receive a refund in the amount You paid. If You downloaded the Program, You may contact the party from whom You acquired it for instructions on how to obtain the refund.

THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THAT PERIOD. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

THESE WARRANTIES GIVE YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE OR JURISDICTION TO JURISDICTION.

4. Limitation of Liability

Circumstances may arise where, because of a default on IBM's part or other liability, You are entitled to recover damages from IBM. In each such instance, regardless of the basis on which You may be entitled to claim damages from IBM, (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM is liable for no more than 1) damages for bodily injury (including death) and damage to real property and tangible personal property and 2) the amount of any other actual direct damages up to the charges for the Program that is the subject of the claim.

This limitation of liability also applies to IBM's Program developers and suppliers. It is the maximum for which they and IBM are collectively responsible.

UNDER NO CIRCUMSTANCES IS IBM, ITS PROGRAM DEVELOPERS OR SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:

1. LOSS OF, OR DAMAGE TO, DATA;
2. SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR
3. LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

5. General

1. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.
2. In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.
3. You agree to comply with all applicable export and import laws and regulations.
4. You agree to allow IBM to store and use Your contact information, including names, phone numbers, and e-mail addresses, anywhere they do business. Such information will be processed and used in connection with our business relationship, and may be provided to contractors, Business Partners, and assignees of IBM for uses consistent with their collective business activities, including communicating with You (for example, for processing orders, for promotions, and for market research).
5. Neither You nor IBM will bring a legal action under this Agreement more than two years after the cause of action arose unless otherwise provided by local law without the possibility of contractual waiver or limitation.
6. Neither You nor IBM is responsible for failure to fulfill any obligations due to causes beyond its control.
7. This Agreement will not create any right or cause of action for any third party, nor will IBM be responsible for any third party claims against You except, as permitted by the Limitation

of Liability section above, for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable.

6. Governing Law, Jurisdiction, and Arbitration

Governing Law

Both You and IBM consent to the application of the laws of the country in which You acquired the Program license to govern, interpret, and enforce all of Your and IBM's rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

The United Nations Convention on Contracts for the International Sale of Goods does not apply.

Jurisdiction

All of our rights, duties, and obligations are subject to the courts of the country in which You acquired the Program license.

Part 2 - Country-unique Terms

AMERICAS

ARGENTINA: Governing Law, Jurisdiction, and Arbitration (Section 6): *The following exception is added to this section:*

Any litigation arising from this Agreement will be settled exclusively by the Ordinary Commercial Court of the city of Buenos Aires.

BRAZIL: Governing Law, Jurisdiction, and Arbitration (Section 6): *The following exception is added to this section:*

Any litigation arising from this Agreement will be settled exclusively by the court of Rio de Janeiro, RJ.

CANADA: General (Section 5): *The following replaces item 7:*

7. This Agreement will not create any right or cause of action for any third party, nor will IBM be responsible for any third party claims against You except as permitted by the Limitation of Liability section above for bodily injury (including death) or physical harm to real or tangible personal property caused by IBM's negligence for which IBM is legally liable.

Governing Law, Jurisdiction, and Arbitration (Section 6): *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws in the Province of Ontario

PERU: Limitation of Liability (Section 4): *The following is added at the end of this section:*

In accordance with Article 1328 of the Peruvian Civil Code, the limitations and exclusions specified in this section will not apply to damages caused by IBM's willful misconduct ("dolo") or gross negligence ("culpa inexcusable").

UNITED STATES OF AMERICA: General (Section 5): *The following is added to this section:*

U.S. Government Users Restricted Rights - Use, duplication or disclosure restricted by the GSA ADP Schedule Contract with the IBM Corporation.

Governing Law, Jurisdiction, and Arbitration (Section 6): *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of the State of New York, United States of America

ASIA PACIFIC

AUSTRALIA: Limited Warranty (Section 3): *The following is added:*

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

Limitation of Liability (Section 4): *The following is added:*

Where IBM is in breach of a condition or warranty implied by the Trade Practices Act 1974, IBM's liability is limited to the repair or replacement of the goods, or the supply of equivalent goods. Where that condition or warranty relates to right to sell, quiet possession or clear title, or the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, then none of the limitations in this paragraph apply.

Governing Law, Jurisdiction, and Arbitration (Section 6): *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of the State or Territory in which You acquired the Program license

CAMBODIA, LAOS, and VIETNAM: Governing Law, Jurisdiction, and Arbitration (Section 6): *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of the State of New York, United States of America

The following is added to this section:

Arbitration

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Center ("SIAC Rules") then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the SIAC. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

HONG KONG S.A.R. and MACAU S.A.R. of China: Governing Law, Jurisdiction, and Arbitration (Section 6): *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of Hong Kong Special Administrative Region of China

INDIA: Limitation of Liability (Section 4): *The following replaces the terms of items 1 and 2 of the first paragraph:*

1) liability for bodily injury (including death) or damage to real property and tangible personal property will be limited to that caused by IBM's negligence; and 2) as to any other actual damage arising in any situation involving nonperformance by IBM pursuant to, or in any way

related to the subject of this Agreement, IBM's liability will be limited to the charge paid by You for the individual Program that is the subject of the claim.

General (Section 5): *The following replaces the terms of item 5:*

If no suit or other legal action is brought, within three years after the cause of action arose, in respect of any claim that either party may have against the other, the rights of the concerned party in respect of such claim will be forfeited and the other party will stand released from its obligations in respect of such claim.

Governing Law, Jurisdiction, and Arbitration (Section 6): *The following is added to this section:*

Arbitration

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Bangalore, India in accordance with the laws of India then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Bar Council of India. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

JAPAN: General (Section 5): *The following is inserted after item 5:*

Any doubts concerning this Agreement will be initially resolved between us in good faith and in accordance with the principle of mutual trust.

MALAYSIA: Limitation of Liability (Section 4): *The word "SPECIAL" in item 2 of the third paragraph is deleted:*

NEW ZEALAND: Limited Warranty (Section 3): *The following is added:*

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

Limitation of Liability (Section 4): *The following is added:*

Where Programs are not acquired for the purposes of a business as defined in the Consumer Guarantees Act 1993, the limitations in this Section are subject to the limitations in that Act.

PEOPLE'S REPUBLIC OF CHINA: Charges (Section 2): *The following is added:*

All banking charges incurred in the People's Republic of China will be borne by You and those incurred outside the People's Republic of China will be borne by IBM.

Governing Law, Jurisdiction, and Arbitration (Section 6): *The phrase "the laws of the country in which You acquired the Program license" in the Governing Law subsection is replaced by the following:*

the laws of the State of New York, United States of America (except when local law requires otherwise)

PHILIPPINES: Limitation of Liability (Section 4): *The following replaces the terms of item 2 of the third paragraph:*

2. special (including nominal and exemplary damages), moral, incidental, or indirect damages or for any economic consequential damages; or

Governing Law, Jurisdiction, and Arbitration (Section 6): *The following is added to this section:*

Arbitration

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration which shall be held in Metro Manila, Philippines in accordance with the laws of the Philippines then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Philippine Dispute Resolution Center, Inc. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

SINGAPORE: Limitation of Liability (Section 4): *The words "SPECIAL" and "ECONOMIC" are deleted from item 2 of the third paragraph.*

General (Section 5): *The following replaces the terms of item 7:*

Subject to the rights provided to IBM's suppliers and Program developers as provided in Section 4 above (Limitation of Liability), a person who is not a party to this Agreement shall have no right under the Contracts (Right of Third Parties) Act to enforce any of its terms.

TAIWAN: Limited Warranty (Section 3): The last paragraph is deleted.

EUROPE, MIDDLE EAST, AFRICA (EMEA)

Limited Warranty (Section 3): *In the European Union, the following is added:*

In the European Union, consumers have legal rights under applicable national legislation governing the sale of consumer goods. Such rights are not affected by the Limited Warranty provision set out above at section 3 of this Agreement. The territorial scope of the Limited Warranty is worldwide.

Limitation of Liability (Section 4): *In Austria, Denmark, Finland, Greece, Italy, Netherlands, Norway, Portugal, Spain, Sweden and Switzerland, the following replaces the terms of this section in its entirety:*

Except as otherwise provided by mandatory law:

1. IBM's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this agreement or due to any other cause related to this agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if IBM is at fault) or of such cause, for a maximum amount equal to the charges You paid for the Program.

The above limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which IBM is legally liable.

2. **UNDER NO CIRCUMSTANCES IS IBM, OR ANY OF ITS PROGRAM DEVELOPERS, LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**
3. The limitation and exclusion of liability herein agreed applies not only to the activities performed by IBM but also to the activities performed by its suppliers and Program developers, and represents the maximum amount for which IBM as well as its suppliers and Program developers, are collectively responsible.

Limitation of Liability (Section 4): *In France and Belgium, the following replaces the terms of this section in its entirety:*

Except as otherwise provided by mandatory law:

1. IBM's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if IBM is at fault), for a maximum amount equal to the charges You paid for the Program that has caused the damages.

The above limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which IBM is legally liable.

2. **UNDER NO CIRCUMSTANCES IS IBM, OR ANY OF ITS PROGRAM DEVELOPERS, LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**
3. The limitation and exclusion of liability herein agreed applies not only to the activities performed by IBM but also to the activities performed by its suppliers and Program developers, and represents the maximum amount for which IBM as well as its suppliers and Program developers, are collectively responsible.

Governing Law, Jurisdiction, and Arbitration (Section 6)

Governing Law

The phrase "the laws of the country in which You acquired the Program license" is replaced by:

1) "the laws of Austria" in Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldova, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia; 2) "the laws of France" in Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia,

Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis & Futuna; 3) "the laws of Finland" in Estonia, Latvia, and Lithuania; 4) "the laws of England" in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe; and 5) "the laws of South Africa" in South Africa, Namibia, Lesotho and Swaziland.

Jurisdiction

The following exceptions are added to this section:

1) In **Austria** the choice of jurisdiction for all disputes arising out of this Agreement and relating thereto, including its existence, will be the competent court of law in Vienna, Austria (Inner-City); 2) in **Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, West Bank/Gaza, Yemen, Zambia, and Zimbabwe** all disputes arising out of this Agreement or related to its execution, including summary proceedings, will be submitted to the exclusive jurisdiction of the English courts; 3) in **Belgium and Luxembourg**, for all disputes arising out of this Agreement or related to its interpretation or its execution, only the law and the courts of the capital of the country in which Your registered office and/or commercial office is located are competent; 4) in **France, Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis & Futuna** all disputes arising out of this Agreement or related to its violation or execution, including summary proceedings, will be settled exclusively by the Commercial Court of Paris; 5) in **Russia**, all disputes arising out of or in relation to the interpretation, the violation, the termination, the nullity of the execution of this Agreement shall be settled by Arbitration Court of Moscow; 6) in **South Africa, Namibia, Lesotho and Swaziland**, both of us agree to submit all disputes relating to this Agreement to the jurisdiction of the High Court in Johannesburg; 7) in **Turkey** all disputes arising out of or in connection with this Agreement shall be resolved by the Istanbul Central (Sultanahmet) Courts and Execution Directorates of Istanbul, the Republic of Turkey; 8) in each of the following specified countries, any legal claim arising out of this Agreement will be brought before, and settled exclusively by, the competent court of a) Athens for Greece, b) Tel Aviv-Jaffa for Israel, c) Milan for Italy, d) Lisbon for Portugal, and e) Madrid for Spain; and 9) in **the United Kingdom**, both of us agree to submit all disputes relating to this Agreement to the jurisdiction of the English courts.

Arbitration

In **Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldavia, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia** all disputes arising out of this Agreement or related to its violation, termination or nullity will be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Center of the Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with these rules. The arbitration will be held in Vienna, Austria, and the official language of the proceedings will be English. The decision of the arbitrators will be final and binding upon both parties. Therefore, pursuant to paragraph 598 (2) of the Austrian Code of Civil Procedure, the parties expressly waive the application of paragraph 595 (1) figure 7 of the Code. IBM may, however, institute proceedings in a competent court in the country of installation.

In **Estonia, Latvia and Lithuania** all disputes arising in connection with this Agreement will be finally settled in arbitration that will be held in Helsinki, Finland in accordance with the arbitration laws of Finland then in effect. Each party will appoint one arbitrator. The arbitrators

will then jointly appoint the chairman. If arbitrators cannot agree on the chairman, then the Central Chamber of Commerce in Helsinki will appoint the chairman.

AUSTRIA: Limited Warranty (Section 3): *The following is inserted at the beginning of this Section:*

The Warranty Period is twelve months from the date of delivery. The limitation period for consumers in action for breach of warranty is the statutory period as a minimum.

The warranty for a Program covers the functionality of the Program for its normal use and the Program's conformity to its specifications.

The final two paragraphs are replaced with the following:

This is our sole obligation to You, except as otherwise required by applicable statutory law.

General (Section 5): The following is added to item 4:

For purposes of this clause, contact information will also include information about You as a legal entity, for example revenue data and other transactional information.

GERMANY: Limited Warranty (Section 3): *The same changes apply as those in Limited Warranty (Section 3) under Austria above.*

Limitation of Liability (Section 4): *The following paragraph is added to this Section:*

The limitations and exclusions specified in this Section will not apply to damages caused by IBM intentionally or by gross negligence.

General (Section 5): *The following replace the terms of item 5:*

Any claims resulting from this Agreement are subject to a statute of limitation of three years, except as stated in Section 3 (Limited Warranty) of this Agreement.

HUNGARY: Limitation of Liability (Section 4): *The following is added at the end of this section:*

The limitation and exclusion specified herein shall not apply to liability for a breach of contract damaging life, physical well-being, or health that has been caused intentionally, by gross negligence, or by a criminal act.

The parties accept the limitations of liability as valid provisions and state that the Section 314.(2) of the Hungarian Civil Code applies as the acquisition price as well as other advantages arising out of the present Agreement balance this limitation of liability.

IRELAND: Limited Warranty (Section 3): *The following is added to this section:*

Except as expressly provided in these terms and conditions, all statutory conditions, including all warranties implied, but without prejudice to the generality of the foregoing, all warranties implied by the Sale of Goods Act 1893 or the Sale of Goods and Supply of Services Act 1980 are hereby excluded.

Limitation of Liability (Section 4): *The following replaces the terms of this section in its entirety:*

For the purposes of this section, a "Default" means any act, statement, omission, or negligence on the part of IBM in connection with, or in relation to, the subject matter of an Agreement in respect of which IBM is legally liable to You whether in contract or tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default occurring on the date of occurrence of the last such Default.

Circumstances may arise where, because of a Default, You are entitled to recover damages from IBM. This section sets out the extent of IBM's liability and Your sole remedy.

1. IBM will accept unlimited liability for (a) death or personal injury caused by the negligence of IBM, and (b) subject always to the **Items for Which IBM is Not Liable** below, for physical damage to Your tangible property resulting from the negligence of IBM.

2. Except as provided in item 1 above, IBM's entire liability for actual damages for any one Default will not in any event exceed the greater of 1) €125,000, or 2) 125% of the amount You paid for the Program directly relating to the Default. These limits also apply to any of IBM's suppliers and Program developers. They state the maximum for which IBM and such suppliers and Program developers are collectively responsible.

Items for Which IBM is Not Liable

Save with respect to any liability referred to in item 1 above, under no circumstances is IBM or any of its suppliers or Program developers liable for any of the following, even if IBM or they were informed of the possibility of such losses:

1. loss of, or damage to, data;
2. special, indirect, or consequential loss; or
3. loss of profits, business, revenue, goodwill, or anticipated savings.

ITALY: General (Section 5): *The following is added to this section:*

IBM and Customer (hereinafter, individually, "Party") shall comply with all the obligations of the applicable provisions of law and/or regulation on personal data protection. Each of the Parties will indemnify and keep the other Party harmless from any damage, claim, cost or expense incurred by the latter, directly and or indirectly, as a consequence of an infringement of the other Party of the mentioned provisions of law and/or regulations.

SLOVAKIA: Limitation of Liability (Section 4): *The following is added to the end of the last paragraph:*

The limitations apply to the extent they are not prohibited under §§ 373-386 of the Slovak Commercial Code.

General (Section 5): *The terms of item 5 are replaced with the following:*

THE PARTIES AGREE THAT ANY LEGAL OR OTHER ACTION RELATED TO A BREACH OF THIS AGREEMENT MUST BE COMMENCED NO LATER AS DEFINED BY THE LOCAL LAW (4 YEARS) FROM THE DATE ON WHICH THE CAUSE OF ACTION AROSE.

SOUTH AFRICA, NAMIBIA, LESOTHO, SWAZILAND: Limited Warranty (Section 3): *The following is added at the end of the first paragraph:*

notwithstanding any advice or assistance that IBM may have given to You prior to the selection of such Programs.

SWITZERLAND: General (Section 5): *The following is added to item 4:*

For purposes of this clause, contact information will also include information about You as a legal entity, for example revenue data and other transactional information.

UNITED KINGDOM: Limited Warranty (Section 3): *The following replaces the first sentence in the fourth paragraph of this section:*

THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Limitation of Liability (Section 4): *The following replaces the terms of this section in its entirety:*

For the purposes of this section, a "Default" means any act, statement, omission, or negligence on the part of IBM in connection with, or in relation to, the subject matter of an Agreement in respect of which IBM is legally liable to You, whether in contract or tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default.

Circumstances may arise where, because of a Default, You are entitled to recover damages from IBM. This section sets out the extent of IBM's liability and Your sole remedy.

1. IBM will accept unlimited liability for:
 - a. death or personal injury caused by the negligence of IBM;
 - b. any breach of its obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982, or any statutory modification or re-enactment of either such Section; and
 - c. subject always to the **Items for Which IBM is Not Liable** below, for physical damage to Your tangible property resulting from the negligence of IBM.
2. IBM's entire liability for actual damages for any one Default will not in any event, except as provided in item 1 above, exceed the greater of 1) £75,000, or 2) 125% of the amount You paid for the Program directly relating to the Default. These limits also apply to IBM's suppliers and Program developers. They state the maximum for which IBM and such suppliers and Program developers are collectively responsible.

Items for Which IBM is Not Liable

Save with respect to any liability referred to in item 1 above, under no circumstances is IBM or any of its suppliers or Program developers liable for any of the following, even if IBM or they were informed of the possibility of such losses:

1. loss of, or damage to, data;
2. special, indirect, or consequential loss; or
3. loss of profits, business, revenue, goodwill, or anticipated savings.

DELL**QUOTATION**

QUOTE #: 456330971

Customer #: 4322484

Contract #: 70137

Customer Agreement #: Dell Std Terms

Quote Date: 10/27/08

Date: 10/28/08 4:07:23 PM

Customer Name: COUNTY OF EL DORADO

| | | | |
|----------------------|--------------|--------------------------------|---|
| TOTAL QUOTE AMOUNT: | \$105,840.32 | | |
| Product Subtotal: | \$98,456.10 | | |
| Tax: | \$7,384.22 | | |
| Shipping & Handling: | \$0.00 | | |
| Shipping Method: | Ground | Total Number of System Groups: | 0 |

| SOFTWARE & ACCESSORIES | | | |
|--|----------|----------------------------------|-------------|
| Product | Quantity | Unit Price | Total |
| DOMINO DESIGNER SW MAINT. (A0225427) | 4 | \$162.10 | \$648.40 |
| IBM Lotus Domino Enterprise Server Value Unit Annual SW Maintenance Renewal (A0723196) | 3400 | \$7.74 | \$26,316.00 |
| EasySync Pro Multi-Platform Easysync Pro N A Multiplatform SW Maintenance Renewa (A0660436) | 50 | \$13.79 | \$689.50 |
| Sametime Multi-Platform Sametime N A Multiplatform SW Maintenance Renewal, 12 Mon (A0511826) | 100 | \$11.11 | \$1,111.00 |
| NOTES WITH COLLABORATION. (A0225426) | 1450 | \$30.07 | \$43,601.50 |
| DB2 CONNECT ENTERPRISE EDITION 25 CONCURRENT USERS ANNUAL SW MAINT RNWL (A1184443) | 6 | \$1,632.45 | \$9,794.70 |
| IBM DB2 Enterprise Server Edition CPU Option Value Unit Annual SW Maintenance Re (A1214197) | 200 | \$60.08 | \$12,016.00 |
| IBM DB2 Express Edition CPU Option Value Unit Annual SW Maintenance Renewal (A1201579) | 100 | \$8.05 | \$805.00 |
| WEBSPPHERE APP SVR VU SUB SUP RNWL 1A LEV-E (A0917077) | 200 | \$7.05 | \$1,410.00 |
| IBM Tivoli Directory Server Value Unit Annual SW Maintenance Renewal (A0781666) | 100 | \$20.64 | \$2,064.00 |
| Number of S & A Items: 10 | | S&A Total Amount: \$98,456.10 | |

| | | | |
|----------------|-------------------------|------------|------------|
| SALES REP: | Jason Traynham | PHONE: | 5127285888 |
| Email Address: | Jason_Traynham@dell.com | Phone Ext: | 7285888 |

For your convenience, your sales representative, quote number and customer number have been included to provide you with faster service when you are ready to place your order. Orders may be faxed to the attention of your sales representative to 1-866-607-6914. You may also place your order online at www.dell.com/qto

This quote is subject to the terms of the agreement signed by you and Dell, or absent such agreement, to Dell's Terms of Sale.

Prices and tax rates are valid in the U.S. only and are subject to change.

****Sales/use tax is a destination charge, i.e. based on the "ship to" address on your purchase order. Please indicate your taxability status on your PO. If exempt, please fax exemption certificate to Dell Tax Department at 888-863-8778, referencing your customer number. If you have any questions regarding tax please call 800-433-9019 or email Tax_Department@dell.com. ****

All product and pricing information is based on latest information available. Subject to change without notice or obligation.

LCD panels in Dell products contain mercury, please dispose properly. Please contact Dell Financial Services' Asset Recovery Services group for EPA compliant disposal options at US_Dell_ARS_Requests@dell.com. Minimum quantities may apply.

Shipments to California: For certain products, a State Environmental Fee Of Up to \$10 per item may be applied to your invoice as early as Jan 1, 2005. Prices in your cart do not reflect this fee. More info: or refer to URL www.dell.com/environmentalfee

Libby Essinger
Manager, Public Contracts

PRINTED NAME

Libby Essinger

SIGNATURE

29 October 2008

DATE

** This quote and Dell's performance hereunder is subject to Dell Standard Terms and Conditions in lieu of any other terms and conditions.