

International Passport Advantage Express Agreement

Part 1 – General Terms

The terms of the IBM International Passport Advantage Express Agreement (“Agreement”) govern this transaction in which you obtain certain “Eligible Products” from IBM or a reseller. “Eligible Products” include commercially available IBM Programs, certain Programs that are subject to a third-party end user license agreement (“Non-IBM Programs”), authorizations to increase your use of a Program, IBM Trade-ups, Competitive Trade-ups, IBM Annual Software Maintenance Renewals, IBM Software Maintenance Reinstatement, and Third Party Annual Software Maintenance Renewals and Third Party Software Maintenance Reinstatement.

You accept these terms by obtaining the Eligible Product from IBM or from a reseller. The “Effective Date” of this Agreement is the date IBM accepts the Eligible Product order, either directly from you or from your reseller. This Agreement, any associated documents, i.e., Attachments, Proofs of Entitlement and invoices (called “Associated Documents”), are the complete agreement regarding this transaction, and replace any prior oral or written communications between us concerning Passport Advantage Express. If there is a conflict among terms in the various documents, those of an Associated Document prevail over those of this Agreement. 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:

1. The term “Program” is replaced by the term “Eligible Product.”
2. 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.
3. 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 is available on the Internet at ibm.com/software/sla.

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.

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.

1. Eligible Products

Eligible Products are for use within your “Enterprise” only. An Enterprise means any legal entity that, by more than 50%, owns, is owned by, or is under common ownership with your “Site” of record. A Site is a defined entity, such as a physical location or organizational unit, e.g., a department, division, subsidiary or cost center that you provide to IBM or the reseller. 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 Maintenance **WITHOUT WARRANTIES OF ANY KIND**. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to you.

1. IBM Programs

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.

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 Express unless the Program is designated as platform or operating system specific at the time you obtain it.

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.

Competitive Trade-ups: Licenses for certain Programs that replace qualifying third party programs may be obtained for a reduced charge. You agree to terminate your use of the replaced third party programs when you install the replacement Programs.

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.

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.

3. Software Maintenance

IBM provides software maintenance ("IBM Software Maintenance") with each Program license. IBM does not provide IBM Software Maintenance for Non-IBM Programs. Third parties provide software maintenance ("Third Party Software Maintenance"), if any, with Non-IBM Program licenses under the third parties' terms. For purposes of this Agreement, "software maintenance" means both IBM Software Maintenance and Third Party Software Maintenance.

IBM Software Maintenance 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 prior month in the following year.

While IBM Software Maintenance 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 Guide for details at ibm.com/software/support.

IBM Software Maintenance 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.

IBM WARRANTS THAT IT PROVIDES IBM SOFTWARE MAINTENANCE 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.

Automatic Annual Software Maintenance Renewal

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.

EXPIRING SOFTWARE MAINTENANCE IS AUTOMATICALLY RENEWED TO THE NEXT ANNIVERSARY UNDER THE AGREEMENT TERMS AND AT THE RENEWAL CHARGES THEN IN EFFECT UNLESS, PRIOR TO THE EXPIRATION DATE, IBM RECEIVES, EITHER DIRECTLY FROM YOU OR THROUGH YOUR RESELLER, AS APPLICABLE,

- (a) **YOUR WRITTEN AUTHORIZATION (e.g., order form, order letter, purchase order) TO RENEW YOUR EXPIRING SOFTWARE MAINTENANCE; OR,**
- (b) **YOUR WRITTEN NOTIFICATION THAT YOU DO NOT WANT TO RENEW.**

IF IBM DOES NOT RECEIVE SUCH NOTICE BY THE EXPIRATION DATE, YOU AGREE TO PAY SUCH RENEWAL CHARGES.

If you choose not to renew software maintenance 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 Maintenance Reinstatement or Third Party Software Maintenance Reinstatement, as applicable.

If IBM or the third party, as applicable, withdraws software maintenance for a particular Program, you understand that

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

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 or the calendar day following the expiration of a prior Fixed Term.
Software Maintenance is included with each Fixed Term license and is in effect until the Fixed Term expires.

Automatic Renewal of Fixed Term Licenses

EXPIRING FIXED TERM LICENSES ARE AUTOMATICALLY RENEWED FOR THE SAME DURATION AS THE EXPIRING TERM UNDER THE AGREEMENT TERMS AND AT THE RENEWAL CHARGES THEN IN EFFECT FOR SUCH PROGRAM LICENSES UNLESS, PRIOR TO THE EXPIRATION DATE, IBM RECEIVES, EITHER DIRECTLY FROM YOU OR THROUGH YOUR RESELLER, AS APPLICABLE,

(a) YOUR WRITTEN AUTHORIZATION (e.g., order form, order letter, purchase order) TO RENEW YOUR EXPIRING FIXED TERM LICENSES; OR,

(b) YOUR WRITTEN NOTIFICATION THAT YOU DO NOT WANT TO RENEW.

IF IBM DOES NOT RECEIVE SUCH NOTICE PRIOR TO THE EXPIRATION DATE, YOU AGREE TO PAY SUCH RENEWAL CHARGES.

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.

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.

2. CEO Product Categories

"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.

3. Resellers

When you order Eligible Products from your IBM reseller, 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.

4. Payment

- 1. When you obtain Eligible Products from your IBM reseller, you pay your reseller directly.
- 2. When you obtain Eligible Products from IBM,
 - (a) you agree to pay as IBM specifies in its invoice or equivalent document, including any late payment fee; and
 - (b) 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.

5. 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.

6. General Principles of Our Relationship

- 1. Neither of us grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent.
- 2. IBM grants you only the licenses and rights specified. No other licenses or rights (including licenses or rights under patents) are granted.

3. 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
4. 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.
5. Each of us will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations.

7. 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.

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.

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

International Passport Advantage Express Agreement

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, AND PARAGUAY.

1. Eligible Products

The following replaces the paragraph that begins "EXPIRING SOFTWARE MAINTENANCE IS AUTOMATICALLY RENEWED" in the Automatic Annual Software Maintenance Renewal subsection of 1.3. Software Maintenance:

IBM will renew, for an additional payment, expiring software maintenance for all of your 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 maintenance invoice for the next coverage period.

The following replaces the paragraph that begins "EXPIRING FIXED TERM LICENSES ARE AUTOMATICALLY RENEWED" in the Automatic Renewal of Fixed Term License subsection of 1.4. Fixed Term Licensing:

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

4. Payment

The following replaces 4.2. (a):

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 Transaction 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 Transaction 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

4. Payment

The following replaces 4.2. (a):

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.

6. Mutual Responsibilities

The following replaces 6.4.:

4. 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;

UNITED STATES OF AMERICA

1. Eligible Products

The following sentence is added at the end of the paragraph that begins "EXPIRING SOFTWARE MAINTENANCE IS AUTOMATICALLY RENEWED" in 1.3. Software Maintenance:

YOU MAY TERMINATE SOFTWARE MAINTENANCE FOR A PROGRAM 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 MAINTENANCE. IN SUCH EVENT, YOU MAY OBTAIN A PRORATED REFUND.

The following sentence is added at the end of the paragraph that begins "EXPIRING FIXED TERM LICENSES ARE AUTOMATICALLY RENEWED" in 1.4. Fixed Term Licensing:

YOU MAY TERMINATE A PROGRAM'S FIXED TERM LICENSE AT ANY TIME ON ONE MONTH'S WRITTEN NOTICE, EITHER DIRECTLY TO IBM YOU 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

4. Payment

The following paragraph is added after 4. 2:

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

The following paragraph replaces 4.2. (b) 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

1. Eligible Products

The following replaces the paragraph that begins "EXPIRING SOFTWARE MAINTENANCE IS AUTOMATICALLY RENEWED" in the Automatic Annual Software Maintenance Renewal subsection of 1.3. Software Maintenance:

IBM will renew, for an additional payment, expiring software maintenance for all of your 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 maintenance invoice for the next coverage period.

The following replaces the paragraph that begins "EXPIRING FIXED TERM LICENSES ARE AUTOMATICALLY RENEWED" in the Automatic Renewal of Fixed Term License subsection of 1.4. Fixed Term Licensing:

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.

JAPAN:

4. Payment

Add the following sentence:

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

REPUBLIC OF KOREA

1. Eligible Products

The following sentence is added at the end of the paragraph that begins "EXPIRING SOFTWARE MAINTENANCE IS AUTOMATICALLY RENEWED" in 1.3. Software Maintenance:

YOU MAY TERMINATE SOFTWARE MAINTENANCE FOR A PROGRAM 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 MAINTENANCE. IN SUCH EVENT, YOU MAY OBTAIN A PRORATED REFUND.

EUROPE, MIDDLE EAST, AFRICA (EMEA)

EMEA-WIDE

4. Payment

The following replaces 4. 2.(a) 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: due date

Greece:

The following replaces the above EMEA-wide text with the following:

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 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.

6. General Principles of Our Relationship

The following phrase is added at the beginning of item 4 in all EMEA countries unless a specific contradictory country term implies otherwise:

To the extent permissible under applicable law,

CEMA (CENTRAL EUROPE, MIDDLE EAST AND AFRICA) COUNTRIES:

6. General Principles of Our Relationship

The following phrase is added at the end of this section item 4:

All provisions of this Agreement apply to extent that they are not prohibited under applicable law.

ALBANIA, ARMENIA, AZERBAIJAN, BELARUS, BOSNIA-HERZEGOVINA, BULGARIA, CROATIA, FORMER YUGOSLAV REPUBLIC OF MACEDONIA-FYROM, GEORGIA, HUNGARY, KAZAKHSTAN, KIRGHIZIA, MOLDAVIA, POLAND, ROMANIA, RUSSIA, SERBIA AND MONTENEGRO, 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 "EXPIRING SOFTWARE MAINTENANCE IS AUTOMATICALLY RENEWED" in the Automatic Annual Software Maintenance subsection of 1.3. Software Maintenance:

IBM will renew, for an additional payment, expiring software maintenance for all of your 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 maintenance invoice for the next coverage period.

The following replaces the paragraph that begins "EXPIRING FIXED TERM LICENSES ARE AUTOMATICALLY RENEWED" in the Automatic Renewal of Fixed Term License subsection of 1.4. Fixed Term Licensing:

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, sub section 2. Non-IBM Programs:

Warranty:

- (b) 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.
- (c) 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.
- (d) 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.
- (e) At IBM's discretion, warranty may also be provided by the Licensor himself.
- (f) 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.
- (g) In addition, the limitation of liability provision will apply.
- (h) However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranty to you.

AUSTRIA:

4. Payment

Replace the above EMEA-wide text 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:

The following are omitted in 4.2.(b):

(excluding those based on IBM's net income)

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

4. Payment

Delete 4.2.(b).

EGYPT

6. General Principles of Our Relationship

Item 4 is deleted.

NETHERLANDS

4. Payment

Add the following paragraphs to 4.2. (a):

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 4. 2. (b) with:

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

SOUTH AFRICA, NAMIBIA, LESOTHO, SWAZILAND:

4. 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 sub section 2. Non-IBM Programs:

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

6. General Principles of Our Relationship

Item 4 is deleted.

TURKEY:

4. Payment

The following replaces 4. 2 (a)

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.

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

Delete 4. 2 (b)