

Appendix E to DIR Contract No. DIR-SDD-2108



International Passport Advantage Agreement

Under this IBM Customer Service Agreement (“IBM International Passport Advantage Agreement” or “IPAA”), IBM provides the DIR Customer a way to obtain authorizations to use, update, and support selected Programs at volume pricing.

1. The DIR Customer and IBM Originating Company agree to coordinate the administration of this IPAA within their respective entities. When used in this IPAA, “IBM” means the IBM company that is providing Eligible Products, and “you” means the customer entity, also identified herein as the DIR Customer, that is ordering them, subject to this IPAA. The DIR Customer is the legal entity that identifies itself as the “Originating Site” on an IBM Customer Service Enrollment Form. The IBM Originating Company is the legal entity within International Business Machines Corporation that accepts the DIR Customer’s orders. This IPAA is entered into with the understanding that each of us is bound by its terms.

2. Products eligible under this IPAA (“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 IBM SAAS 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, annual IBM Software Subscription and Support renewals, IBM Software Subscription and Support Reinstatement, annual Third Party Software Subscription and Support renewals, Third Party Software Subscription and Support Reinstatement, and Selected Support renewals.

3. The DIR Customer accepts the terms of this IPAA as modified herein, and each other DIR Customer accepts this IPAA as modified herein, by submitting an IBM Customer Service Enrollment Form to IBM. This IPAA is effective on the date IBM accepts the DIR Customer initial order for Eligible Products (“Effective Date”) and remains in effect until the DIR Customer or the IBM Originating Company terminates it in accordance with Appendix A, Section 10. B. Termination of DIR Contract Number DIR-SDD-2108 as modified.

4. The DIR Contract No. DIR-SDD-2108, this IPAA, any applicable Attachments, Terms of Use, and any associated Transaction 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 IPAA those of the Terms of Use prevail over those of an Attachment and this IPAA and those of a Transaction Document prevail over those of this IPAA, the Terms of Use, and an Attachment. In the event of a conflict between the DIR Contract No. DIR-SDD-2108 and this IPAA, applicable attachments, or associated documents, the DIR Contract prevails. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.

A copy of the IPLA in its entirety is included in Appendix D, IPLA.

Once this IPAA 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 IPAA are subject to it.

If IBM withdraws an Eligible Product from marketing, you will no longer be able to obtain it under this IPAA. 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. If IBM withdraws an Eligible Product, Program or version of a program from marketing, IBM shall notify DIR and request an Amendment to the IBM DIR Contract No. DIR-SDD-2108.

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 the DIR Customer 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.

Programs acquired under this IPAA are acquired in and for use in the United States of America only. If Programs are acquired in or used in any other country, country-specific terms will apply.

1.1 General Agreement Structure

This IPAA is organized in seven Parts:

Part 1 – General includes terms regarding Agreement Structure, Attachments and Transaction Documents, Definitions, Payment, RSVP Level, Changes to Agreement Terms, Eligible Products, Intellectual Property Protection, Limitation of Liability, General Principles of Our Relationship, Agreement Termination, Compliance Verification, and Geographic Scope and Governing Law.

Part 2 – Warranties includes terms regarding Warranty for IBM Programs, Warranty for IBM Software Subscription and Support and Selected Support, Warranty for IBM Machine Components of IBM Appliances, Warranty for IBM SaaS, and Extent of Warranty.

Part 3 – Programs and Subscription and Support includes terms regarding IBM Programs, Programs in a Virtualization Environment, Additional Terms, CEO Product Categories, and Software Subscription and Support and Selected Support, Customer Data and Databases, Annual Renewal of Software Subscription and Selected Support, Withdrawal of Software, Subscription and Support or Selected Support for a particular Program.

Part 4 - IBM SaaS includes terms regarding Ownership, Customer’s Right to Use, Subscription to IBM SaaS, IBM SaaS Technical Support, Content, and Termination of IBM SaaS.

Part 5 – ICA Programs includes License, Authorized Use, Customer’s Additional Obligations, Actions Customer may not take, Distributed System License Option, Program Services, Appliances Verification, License Termination, Warranty for ICA Programs, Acceptance of ICA Programs, Definitions for ICA Programs.

Part 6 – Additional Terms includes Taxes, General Principles of our Relationship.

Part 7 – Appliances includes terms regarding Virtual Appliance, Appliances Comprising Both Program and Machine Components, Program Components and Machine Components.

1.2 Attachments and Transaction Documents

Attachments and Transaction Documents are part of the IPAA only for those transactions to which they apply. Each transaction is separate and independent from other transactions.

1.3 Definitions

The definitions listed below are only applicable to this document, Appendix E to DIR Contract No. DIR-SDD-2108, unless otherwise specified.

Additional Site – any Site that subsequently enrolls under this IPAA.

Anniversary – 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.

Appliance – an Eligible Product, designed for a particular function and not for general purpose computing tasks, that may be a Program (in the case of a “Virtual Appliance”) or composed of a Program Component, a Machine Component, and any Machine Code Component that IBM may provide to Customer.

Audit Reports – a set of reports available in the IBM License Metric Tool (“ILMT”), or by another method acceptable to IBM as specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> . These reports provide the Processor Value Unit (“PVU”) license requirements based on the Virtualization Capacity available to the Eligible Sub-Capacity Product.

CEO User – an individual to whom a machine has been assigned that is capable of copying, using, or extending the use of Programs in a CEO Product Category.

Content – information, software, and data, including, without limitation, any Personal Data, hypertext markup language files, scripts, programs, recordings, sound, music, graphics, images, applets, or servlets that are created, provided, uploaded, or transferred by Customer and any user authorized by Customer.

Commercial (when capitalized) - of, connected with, or engaged in commerce and mercantile. Does not include payment or collection of fees, taxes or penalties by or on behalf of a Governmental entity.

Customer – the customer entity that is ordering Eligible Products. DIR Customer is defined in Section 3.A. of Appendix A of the DIR Contract No. DIR-SDD-2108.

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

Date of Installation –

- a. for a Customer-set-up Machine Component, the date on Customer’s purchase invoice or sales receipt for the Appliance is the Date of Installation, unless IBM or Customer’s IBM reseller informs Customer otherwise.
- b. for an IBM Machine Component that IBM is responsible for installing, the business day after the day IBM installs it or, if Customer defers installation, makes it available to Customer for subsequent installation by IBM.

Effective Date – the date IBM accepts Customer’s initial order for Eligible Products.

Eligible Operating System Technology – an operating system for which Sub-Capacity Licensing is available and specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html>.

Eligible Processor Technology – a processor technology for which Sub-Capacity Licensing is available and specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html>.

Eligible Products – commercially available IBM Programs, Non-IBM Programs, Selected Support, authorizations to increase Customer’s use of a Program, IBM Trade-ups, Competitive Trade-ups, Annual IBM Software Subscription and Support Renewals, IBM Software Subscription and Support Reinstatement, Annual Third Party Software Subscription and Support Renewals, Third Party Software Subscription and Support Reinstatement, Selected Support renewals, and IBM SaaS and Appliances. An Eligible Product becomes subject to this IPAA when IBM accepts Customer’s order by i) sending Customer a Transaction Document, ii) making the Program or IBM SaaS available to Customer or, when applicable, shipping the Appliance, or iii) providing the support, service, or solution.

Eligible Sub-Capacity Product – a Product for which Sub-Capacity Licensing is available and specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html>.

Eligible Virtualization Environment – a server or a group of servers cooperating as a single computing entity that contain an Eligible Processor Technology, an Eligible Operating System Technology, and an Eligible Virtualization Technology.

Eligible Virtualization Technology – a virtualization technology for which Sub-Capacity Licensing is available and specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html>. An Eligible Virtualization Technology is capable of restricting processor capacity to a subset of the total physical capacity, sometimes referred to as partition, LPAR, or virtual machine.

Engineering Change – an update to modify certain aspects of the design of an installed Machine Component, including without limitation the design of a certain Machine Component part(s) or Machine Code Component.

Fixed Term – a definite period of time specified by IBM in a Transaction Document, for example, in a Program’s PoE.

Full Capacity – The total number of physical processor cores activated and available for use on a server.

IBM – the IBM company that is providing Eligible Products.

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

IBM Originating Company – the legal entity within International Business Machines Corporation's entity that accepts the Customer Originating Company's orders.

IBM Program – a Program acquired under this IPAA and subject to the IPLA, including its LI.

IBM Software as a Service (“IBM SaaS”) – offerings IBM makes available to Customer remotely through the Internet providing access to (i) functionality of Programs, (ii) infrastructure, and (iii) technical support. IBM SaaS is not a Program but may require Customer to download enabling software in order to use it. IBM SaaS is an Eligible Product.

IBM SaaS User – one who accesses IBM SaaS using a user account identification and password associated with Customer's IBM SaaS account and provided by Customer.

IBM Software Subscription and Support – software subscription and support provided for IBM Programs licensed under the IPLA. See **3.5.1 IBM Software Subscription and Support** for further description.

ICA Programs – IBM Programs typically licensed under the terms of the IBM Customer Agreement (ICA) and, for the purposes of this IPAA, governed by the terms in Part 5 of this IPAA. Most ICA Programs are monthly-license charge software but may also include server or mainframe software.

ILMT – the IBM License Metric Tool

IPLA – IBM's International Program License Agreement in effect as of the effective date of DIR Contract No. DIR-SDD-2108.

License Information (“LI”) – a document that provides information and any additional terms specific to a Program. The Program's LI is available at <http://www.ibm.com/software/sla/>. The LI can also be found in the Program's directory, by the use of a system command, or as a booklet included with the Program.

Machine Code Component – microcode, basic input/output system code (called “BIOS”), utility programs, device drivers, diagnostics, and any other code (all subject to any exclusions in the license provided with it) delivered with an IBM Machine Component for the purpose of enabling the Machine Component's function, as stated in its Specifications.

Machine Component – a hardware device, features, conversions, Upgrades, elements, or accessories, or any combination of them. The term "Machine Component" includes an IBM Machine Component and any non-IBM Machine Component (including other equipment) that IBM may provide to Customer.

Non-IBM Program – a Program that 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.

Originating Site – Originating Company Site.

Personal Data – any information that can be used to identify a specific individual, such as name, email address, home address, or phone number that is provided to IBM to store, process, or transfer on Customer's behalf.

Processor Chip – Electronic circuitry containing one or more Processor Cores that plugs into a Processor Socket.

Processor Core – A physical functional unit within a computing device that interprets and executes program instructions and consists of at least one instruction control unit and one or more arithmetic and logic units. A multi-core technology allows two or more Processor Cores to be active on a single Processor Chip. A System z Integrated Facility for Linux (IFL) engine is considered a single Processor Core.

Processor Socket – Electronic circuitry that accepts a Processor Chip.

Processor Value Unit (“PVU”) – A metric used by IBM to assign a value to a Processor Core. Processor Value Unit (PVU) is a unit of measure by which the Program can be licensed. The number of PVU entitlements required is based on the processor technology (defined within the PVU Table above by Processor Vendor, Brand, Type and Model Number) and by the number of processors made available to the Program. IBM continues to define a processor, for the purpose of PVU-based licensing, to be each processor core on a chip (socket). A dual-core processor chip, for example, has two processor cores.

The Licensee can deploy the Program using either Full Capacity licensing or Virtualization Capacity (Sub-Capacity) licensing according to the Passport Advantage Sub-Capacity Licensing Terms. If using Full Capacity licensing, the Licensee must obtain PVU entitlements sufficient to cover all activated processor cores in the physical hardware environment made available to or managed by the Program, except for those servers from which the Program has been permanently removed. If using Virtualization Capacity licensing, the Licensee must obtain entitlements sufficient to cover all activated processor cores made available to or managed by the Program, as defined according to the Virtualization Capacity License Counting Rules. The Processor Value Unit licensing model is described at http://www.ibm.com/software/lotus/passportadvantage/pvu_licensing_for_customers.html.

Program – 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.

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

Proof of Entitlement (“PoE”) – the document in which IBM specifies an Eligible Product’s level of authorized use. This PoE, supported by Customer’s matching paid invoice or receipt, is evidence of Customer’s level of authorized use.

RSVP – Relationship Suggested Volume Price.

Selected Program – a Non-IBM Program or an IBM Program licensed under the terms of the IBM License for Non-Warranted Programs.

Selected Support – Support for specified Selected Programs.

Service Provider – an entity that provides information technology services for end user customers.

Site – any defined entity, such as a physical location or organizational unit, e.g., a department, division, subsidiary or cost center, of Customer’s entity and for which IBM assigns a Passport Advantage Site Number. The DIR Customer Site is defined as the “originating Site.”

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

Sub-Capacity Licensing – Licensing of Eligible Sub-Capacity Products based on Virtualization Capacity.

Subscription Period – the time during which IBM SaaS is made available to Customer as specified in the applicable Transaction Document.

SVP – Suggested Volume Price.

Term – the period that begins either on the date IBM accepts Customer’s 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.

Terms of Use (“ToU”) – additional terms under which IBM makes IBM SaaS offerings available to Customer and viewed at <http://www.ibm.com/software/sla/sladb.nsf/sla/tou/>.

Third Party Software Subscription and Support – software subscription and support provided under the third party’s terms for Non-IBM Programs. See **3.5.1 Software Subscription and Support** for further description.

Upgrade – a change to a Machine Component to modify, add, remove, enable, or disable a certain Machine Component resource or function. Each such change can be accomplished through a Machine Component conversion, or through the conversion, addition, removal, or exchange of a Machine Component’s feature(s), but only to the extent announced and supported by IBM for the Machine Component.

Virtualization Capacity – the highest peak processor capacity available to an Eligible Sub-Capacity Product when deployed on an Eligible Virtualization Environment in accordance with the rules specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html>.

1.4 Payment

(1) When you obtain Eligible Products from IBM, you agree:

(a) to pay in accordance with Section 7.C. of Appendix A of DIR Contract No. DIR-SDD-2108.

- (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 or another explanation for why such tax does not apply. As stated above, in Section 4.F. of the DIR Contract No. DIR-SDD-2108, Texas-based DIR Customers under this IPAA are exempt from the assessment of Texas State sales, use and excise taxes per Section 151.309 of the Texas Tax Code, and from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).
- (2) 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, governed by Appendix C of DIR-SDD-2108.
- (3) For Programs delivered electronically in the United States for which Customer claims a state sales and use tax exemption, Customer agrees not to receive any tangible personal property (e.g., media and publications) associated with the electronic program.

1.5 RSVP Level

The initial "RSVP Level" is established by the point value of the initial order. If Customer acquires additional Eligible Products during a Term, Customer may attain higher RSVP Levels. The higher RSVP Level applies only when Customer acquires 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 Customer has acquired during the previous Term. If, in a subsequent Term, the point value of the Eligible Products Customer acquires 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 Customer is currently acquiring Eligible Products but not by more than one RSVP Level.

SVP/RSVP Level Table:

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

1.6 Changes to Agreement Terms

Changes to IPAA will be handled in accordance with Appendix A, Section 4.B of DIR Contract DIR-SDD-2108.

1.7 Eligible Products

Eligible Products are for use within the DIR organization or DIR Customer organization 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. As stated in Section 4.F. of the DIR Contract No. DIR-SDD-2108, Texas based DIR Customers under this IPAA are exempt from the assessment of State sales, use and excise taxes per Section 151.309 of the Texas Tax Code. Further, DIR Customers under this IPAA are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).

Unless IBM specifies otherwise, it provides Non-IBM Programs and Third Party Software Subscription and Support (as defined in (a) Software Subscription and Support of subsection 3. Software Subscription and Support and Selected Support below) **WITHOUT WARRANTIES OF ANY KIND**. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to you.

1.8 Intellectual Property Protection

In accordance with DIR Contract DIR-SDD-2108, Section 8.

1.9 Limitation of Liability

Limitation of Liability shall be in accordance with Section 9.K. of Appendix A of the DIR Contract Number DIR-SDD-2108.

1.10 General Principles of Our Relationship

1.10.1 Notices and Communications

To the extent permissible under applicable law, the parties consent to communicate with the other by the use of electronic means and facsimile transmissions to send and receive communications in connection with our business relationship arising out of this IPAA, and such communications are 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.

1.10.2 Assignment and Resale

Assignment shall be in accordance with Section 4.D. of Appendix A of DIR Contract No. DIR-SDD-2108.

1.10.3 Compliance with Laws

IBM will comply with laws applicable to IBM as a provider of information technology products and services and those applicable to IBM for IBM's performance under the Contract. IBM is not responsible for determining the requirements of laws applicable to Customer's conduct or Customer's business, including those relating to Eligible Products that Customer acquires under this IPAA, or that IBM's provision of or Customer's receipt of particular Eligible Products under this IPAA meets the requirements of such laws. Notwithstanding anything in this IPAA to the contrary, neither party is obligated to take any action that would violate law applicable to that party. **If an individual Customer has unique legal obligations effecting their purchase or use of product or service, it is Customer's responsibility to obtain confirmation from IBM that products or services it obtains satisfies those technical requirements.**

Each party agrees to comply with all applicable export and import laws and regulations including without limitation United States embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users.

1.10.4 Dispute Resolution

Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this IPAA. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this IPAA. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation, i) neither party will bring a legal action, regardless of form, arising out of or related to this IPAA or any transaction under it more than four years after the cause of action arose; and ii) after such time limit, any such claim and all respective rights related to the claim lapse.

1.10.5 Other Principles of Our Relationship

- a. Neither party grants the other the right to use its (or any of its entity's) trademarks, trade names, or other designations in any promotion or publication without prior written consent.
- b. To the extent allowable under the Texas Public Information Act, the exchange of any confidential information will be made under a separate, signed confidentiality agreement. However, to the extent confidential information is exchanged in connection with any Eligible Product under this IPAA, the applicable confidentiality agreement is incorporated into, and applicable to, this IPAA.
- c. This IPAA and any transaction under it do not create an agency, joint venture, or partnership between Customer and IBM. Subject to the Contract's provisions concerning confidential and intellectual property in DIR Contract No. DIR-SDD-2108, each party is free to enter into similar agreements with others to develop, acquire, or provide competitive products and services.
- d. Eligible Products may not be used to provide commercial hosting or other commercial information technology services to third parties.
- e. Where approval, acceptance, consent, or similar action by either party is required under this IPAA, such action will not be unreasonably delayed or withheld.
- f. Neither party is responsible for failure to fulfill any non-monetary obligations due to events beyond its control.

- g. Customer agrees that their use of IBM SaaS will comply with the IBM acceptable use policy at <http://www.ibm.com/services/us/imc/html/aup.html> and applicable data protection laws, to the extent allowable by Texas Public Information Act.
- h. As reasonably required by IBM to fulfill its obligations under this IPAA, Customer agrees to provide IBM with sufficient and safe access (including remote access) to Customer's facilities, systems, information, personnel, and resources, all at no charge to IBM. IBM is not responsible for any delay in performing or failure to perform caused by Customer's delay in providing such access or performing other Customer responsibilities under this IPAA.
- i. In entering into this IPAA, including each Attachment, ToU, and Transaction Document, neither party is relying on any representation that is not specified in DIR Contract Number DIR-SDD-2108 and this IPAA, including without limitation any representations concerning: i) performance or function of any Eligible Product, other than as expressly warranted in this IPAA; ii) the experiences or recommendations of other parties; or iii) any results or savings that Customer may achieve.
- j. Nothing in this IPAA affects any statutory rights of consumers that cannot be waived or limited by contract.
- k. In the event that any provision of DIR Contract Number DIR-SDD-2108 and this IPAA is held to be invalid or unenforceable, the remaining provisions of this IPAA remain in full force and effect.
- l. Neither You nor IBM will bring a legal action under this IPAA more than four (4) years after the cause of action arose unless otherwise provided by local law without the possibility of contractual waiver or limitation.
- m. Force Majeure shall be in accordance with Appendix A, Section 10.C. of DIR Contract Number DIR-SDD-2108.

1.11 Agreement Termination

Termination shall be handled in accordance with Section 10.B. of Appendix A of the DIR Contract No. DIR-SDD-2108 as modified. If you obtained or renewed IBM Software Subscription and Support for any IBM Programs or IBM SaaS 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 or IBM SAAS 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.

- 1.12 Either of us may terminate this IPAA 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 and the parties exhaust the dispute resolution process set forth in the Contract. Any terms of this IPAA which by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees.

1.13 Compliance Verification

For purposes of this **Section 1.12 (Compliance Verification)**, "Passport Advantage Terms" means 1) this IPAA and applicable Attachments, Transaction Documents, LI documents, and Terms of Use provided by IBM), including but not limited to those policies concerning backup, sub-capacity pricing, and migration.

The rights and obligations set forth in this **Section 1.12** remain in effect during the period the Eligible Product is the possession or control of Customer, and for two years thereafter.

1.13.1 Verification Process

Customer agrees to create, retain, and provide to IBM and its auditors accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that Customer's use of all Eligible Products is in compliance with the Passport Advantage Terms, including, without limitation, all of IBM's applicable licensing and pricing qualification terms. Customer is responsible for 1) ensuring that it does not exceed its authorized use, and 2) remaining in compliance with Passport Advantage Terms.

Upon reasonable notice, IBM may verify Customer's compliance with Passport Advantage Terms at all Sites and for all environments in which Customer uses (for any purpose) Eligible Products subject to Passport Advantage Terms. Such verification will be conducted in a manner that minimizes disruption to Customer's business, and may be conducted on Customer's premises, during normal business hours. IBM may use an independent auditor, at IBM's own expense, to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

1.13.2 Resolution

IBM will notify Customer in writing if any such verification indicates that Customer has used any Eligible Product in excess of its authorized use or is otherwise not in compliance with the Passport Advantage Terms. In the event IBM notifies Customer of any noncompliance based on excess use or deployment, Customer shall have sixty (60) days to review the report and request any corrections, adjustments, or revisions before IBM shall be entitled to invoice Customer, for any additional use or deployment. Customer agrees to promptly pay directly to IBM the charges that IBM specifies in an invoice for 1) any such excess use, 2) software subscription and support for such excess use for the lesser of the duration of such excess use or two years, and 3) any additional charges and other liabilities determined as a result of such verification.

1.14 Geographic Scope and Governing Law

1.14.1 Governing Law

As stated in Appendix A, Section 4.F. of the DIR Contract No. DIR-SDD-2108. Nothing herein shall be construed to waive the Sovereign Immunity of the State of Texas.

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

2. Warranties

Unless IBM specifies otherwise, the following warranties apply.

2.1 Warranty for IBM Programs

The warranty for an IBM Program is stated in its license agreement.

2.2 Warranty for IBM Software Subscription and Support and Selected Support

IBM warrants that it provides IBM Software Subscription and Support and Selected Support using reasonable care and skill.

2.3 Warranty for IBM Machine Components of IBM Appliances

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

IBM warrants that each IBM Machine Component is free from defects in materials and workmanship and conforms to its Specifications.

The warranty period for an IBM Machine Component is a fixed period commencing on its Date of Installation (also called "Warranty Start Date") and specified in a Transaction Document. During the warranty period, IBM provides repair and exchange service for the IBM Machine Component, without charge, under the type of service IBM designates in a Transaction Document for the IBM Machine Component. If an IBM Machine Component does not function as warranted during the warranty period and IBM is unable to either i) make it do so or ii) replace it with one that is at least functionally equivalent, Customer may return it to the party from whom Customer acquired it for a refund.

For an IBM Machine Component that IBM is responsible to install, if Customer elects to install the IBM Machine Component itself or have a third party install the IBM Machine Component, IBM may inspect the IBM Machine Component at Customer's expense before providing warranty service on the IBM Machine Component. If the IBM Machine Component is not in an acceptable condition for warranty service, as solely determined by IBM, Customer may request that IBM restore it to an acceptable condition for warranty service or Customer may withdraw its request for warranty service. IBM, at its sole discretion, will determine if restoration is possible. Restoration is provided as a billable service.

If the IBM Machine Component does not function as warranted during the warranty period, refer to the service documentation that shipped with the IBM Machine Component for support assistance and problem determination procedures.

If Customer is unable to resolve the problem with the service documentation, contact IBM or the reseller to obtain warranty service. Contact information for IBM is provided in the "Warranty Information" that ships with IBM Machine Component. If Customer does not register the IBM Machine Component with IBM, Customer may be required to present proof of purchase as evidence of Customer's entitlement to warranty service.

2.4 Warranty for IBM SaaS

The warranty for IBM SaaS is stated in the Terms of Use.

2.5 Extent of Warranty

THESE WARRANTIES ARE DEPARTMENT OF INFORMATION RESOURCES (DIR) CUSTOMER'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT. DISCLAIMER OF WARRANTY DOES NOT VOID OR LIMIT IBM'S INDEMNIFICATION OBLIGATION. **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.**

The warranties stated in Section 2.3 will not apply to the extent that there has been misuse (including, but not limited to, use of any Machine Component capacity or capability, other than that authorized by IBM in writing), accident, modification, unsuitable physical or operating environment, operation in other than the specified operating environment, improper maintenance by Customer or a third party, or failure or damage caused by a product for which IBM is not responsible. The warranty for IBM Machine Components is voided by removal or alteration of Machine Components or parts identification labels.

Items Not Covered by Warranty

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

IBM will identify in writing IBM Eligible Products that it does not warrant.

Unless otherwise specified in an Appendix, Attachment or Transaction Document, IBM provides non-IBM Eligible Products, **WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND**. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to Customer.

3. Programs and Subscription and Support

3.1 IBM Programs

To acquire additional authorizations to use Programs under this IPAA, Customer must have already acquired the Program code.

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 IPAA remains in effect, and for two years thereafter,

IBM has the right to verify your compliance with this IPAA on your premises during your normal business hours and in a manner that minimizes disruption to your business. IBM may use at its own expense, 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 IPAA 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.

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 Non-IBM Programs (see Subsection 1. 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) **License:** IBM Programs obtained under this IPAA are governed by the terms of the IPLA. If there is a conflict between the terms of this IPAA and those of the IPLA, including its License Information document ("LI"), the terms of this IPAA prevail. The IPLA and its LIs are available on the Internet at ibm.com/software/sla.

License: The licensing of a Non-IBM Program obtained under this IPAA 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 IPAA and those of the third party end user license agreement, the terms of this IPAA prevail. IBM is not a party to the third party end user license agreement and assumes no obligations under it.

If there is a conflict between the terms of this IPAA, including its Attachments and Transaction Documents and those of the IPLA, Appendix D of DIR Contract DIR-SDD-2108, including its LI, the terms of this IPAA prevail. The IPLA and its LIs are available on the Internet at <http://www.ibm.com/software/sla>.

3.2 Programs in a Virtualization Environment

3.2.1 Authorizations

- a. A PoE must be acquired for the total number of PVUs associated with the Virtualization Capacity available to an Eligible Sub-Capacity Product.
- b. Prior to an increase in an Eligible Sub-Capacity Product's Virtualization Capacity, Customer must first acquire sufficient additional authorizations, including IBM Software Subscription and Support, if applicable, to cover that increase.
- c. IBM does not give credits or refunds for charges already due or paid if an Eligible Product's use falls below the authorized level of use.

3.2.2 IBM's Responsibilities

IBM will make available and authorize Customer to use:

- a. the ILMT at no charge, when ordered by Customer. IBM provides the ILMT to Customer for Customer's compliance with these Sub-Capacity Licensing terms; and
- b. the information center included with the ILMT to aid Customer's compliance with these Sub-Capacity Licensing terms.

Customer may make copies of the ILMT and information center for Customer's compliance with these Sub-Capacity Licensing terms.

3.2.3 Customer's Responsibilities under Sub-Capacity Licensing Terms

Customer agrees to:

(a) install and configure the most current version of ILMT in accordance with the ILMT information center, within 90 days of Customer's first Eligible Sub-Capacity Product deployment on an Eligible Virtualization Environment, to enable Customer to collect Virtualization Capacity data by Eligible Sub-Capacity Product and generate Audit Reports in accordance with these Sub-Capacity Licensing terms. Exceptions to this requirement are:

- (1) when ILMT does not yet provide support for the Eligible Virtualization Environment

(2) if Customer's entity has fewer than 1,000 employees and contractors, Customer is not a Service Provider, and Customer has not contracted with a Service Provider to manage Customer's Eligible Virtualization Environment

(3) if the total physical capacity of Customer's entity servers with an Eligible Virtualization Environment, measured on a Full Capacity basis, but licensed using sub-capacity terms is less than 1,000 PVUs.

(4) when Customer's servers with Eligible Sub-Capacity Products are licensed to the Full Capacity of the servers

For these exceptions, use of ILMT, while recommended, is not required for Sub-Capacity Licensing. In lieu of ILMT, Customer is required to manually manage and track Customer's Eligible Virtualization Environment, and manually prepare Audit Reports documenting the Virtualization Capacity by Eligible Sub-Capacity Product for Customer's Eligible Virtualization Environment during each calendar or fiscal quarter. These Audit Reports must contain the information listed in the example Audit Report available at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html>. These Audit Reports must be prepared as frequently as is required to maintain a history of increases to Virtualization Capacity, but not less often than once per quarter, and must be maintained for at least two years to demonstrate ongoing compliance with these Sub-Capacity Licensing terms;

(b) promptly install new versions, releases, modifications, or code corrections ("fixes") of the ILMT that IBM makes available. Customer must subscribe to Tivoli Support notifications via <http://www.ibm.com/support/mynotifications> in order to be notified when these become available;

(c) not alter, modify, omit, delete, or otherwise misrepresent by any means, directly or indirectly, the:

(i) ILMT audit records;

(ii) ILMT, except for changes provided by IBM; or

(iii) Audit Reports that Customer submits to IBM.

(d) generate, using ILMT or manually, Audit Reports at least each calendar or fiscal quarter and retain for a period of not less than two years the Audit Reports and make these reports available to IBM upon notice as specified in Section 1.16. Failure to generate Audit Reports or make Audit Reports available to IBM will result in charging for Eligible Sub-Capacity Products under Full Capacity terms;

(e) assign a person in Customer's organization with authority to manage and promptly resolve any questions on Audit Reports or inconsistencies between Audit Report contents, license entitlement, or ILMT configuration;

(f) promptly place an order with IBM or Customer's IBM reseller if Audit Reports reflect Eligible Sub-Capacity Product use in excess of Customer's authorized level. IBM Software Subscription and Support coverage will be determined to begin at the time Customer exceeded Customer's authorized level.

3.3 Additional Terms

Product deployments that are not able to meet these Sub-Capacity Licensing requirements must be licensed using Full Capacity terms.

3.3.1 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.

3.3.2 Renewal of Fixed Term Licenses

Annual renewal options exercised by the Licensor's issuance of thirty (30) days advanced written notice and Customer's concurrence prior to the then-effective expiration date.

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 IPAA 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. 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.

CUSTOMER 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 CUSTOMER'S IBM RESELLER, AS APPLICABLE, IF IBM HAS NOT RECEIVED CUSTOMER'S WRITTEN AUTHORIZATION (e.g., order form, order letter, purchase order) TO RENEW CUSTOMER'S EXPIRING FIXED TERM LICENSE. IN SUCH EVENT, CUSTOMER MAY 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.

3.3.3 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 pro-rated renewal charge, in order to extend the Fixed Term to the following Anniversary.

3.3.4 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.

3.4 CEO Product Categories

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 the DIR Customer 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 entity. 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

If IBM adds Eligible Products to or deletes Eligible Products from any CEO Product Category, IBM must provide written notice to DIR and request amendment of this IPAA. 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.

3.5 Software Subscription and Support and Selected Support

(1) Software Subscription and Support and Selected Support

(a) Software Subscription and Support

IBM provides software maintenance ("IBM Software Subscription and Support") with each IBM Program licensed under the IPLA. 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 maintenance ("Third Party Software Subscription and Support") with Non-IBM Program licenses under the third parties' terms. For purposes of this IPAA, "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:

- (i) 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.
- (ii) IBM provides you assistance for your 1) routine, short duration installation and usage (how-to) questions; and 2) code-related questions (1) and 2) together constitute ("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/>.
- (iii) 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.
- (iv) 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 IPAA.

FOR THE AUTHORIZED USE OF EACH IBM PROGRAM INSTALLED AND IN SERVICE AT A CUSTOMER'S SITE, CUSTOMER HAS THE OPTION TO MAINTAIN IBM SOFTWARE SUBSCRIPTION AND SUPPORT FOR EITHER (a) ALL OF THE AUTHORIZED USE OR (b) NONE OF THE AUTHORIZED USE.

THERE IS NO OPTION FOR MAINTAINING IBM SOFTWARE SUBSCRIPTION AND SUPPORT COVERAGE FOR ONLY A PORTION OF AUTHORIZED USE INSTALLED AND IN SERVICE FOR AN IBM PROGRAM AT A CUSTOMER SITE.

CUSTOMER SHALL NOT USE ANY OF THE IBM SOFTWARE SUBSCRIPTION AND SUPPORT BENEFITS SPECIFIED IN THIS SECTION 3.5.1(a), INCLUDING THE APPLICATION OR USE OF ANY FIXES, UPDATES, OR UPGRADES, FOR IBM PROGRAMS FOR WHICH CUSTOMER HAS NOT FULLY PAID IBM SOFTWARE SUBSCRIPTION AND SUPPORT. IF CUSTOMER USES ANY OF THESE BENEFITS FOR WHICH IT HAS NOT FULLY PAID, THEN CUSTOMER AGREES TO ACQUIRE IBM SOFTWARE SUBSCRIPTION AND SUPPORT REINSTATEMENT SUFFICIENT TO COVER ALL SUCH UNAUTHORIZED USES OF SUCH BENEFITS AT THE THEN CURRENT APPLICABLE IBM PRICES.

(b) Selected Support

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

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:

- (i) IBM will make available to you Selected Program defect corrections, if any, that it develops.
- (ii) 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.
- (iii) IBM may provide you with assistance in designing and developing applications based on your subscription level.
- (iv) 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.
- (v) 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 IPAA for Selected Programs.

3.6 Customer Data and Databases

Unless otherwise agreed to between IBM and the DIR Customer in advance, Customer remains responsible for 1) any data and the content of any database Customer makes available to IBM, 2) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally-identifiable data), and 3) backup and recovery of any database and any stored data. Customer will not send or provide IBM access to any personally-identifiable information, whether in data or any other form.

3.7 Annual Renewal of Software Subscription and Selected Support

Annual Renewal option may be exercised by the Licensor's Issuance of thirty (30) days advanced written notice and Customer's concurrence prior to the then-effective expiration date.

IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE, EXPIRING SOFTWARE SUBSCRIPTION AND SUPPORT AND SELECTED SUPPORT ARE RENEWED TO THE NEXT ANNIVERSARY UNDER THE IPAA 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 THE RENEWAL CHARGES, IF APPLICABLE. 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.

CUSTOMER 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 CUSTOMER'S IBM RESELLER, AS APPLICABLE, IF IBM HAS NOT RECEIVED CUSTOMER'S WRITTEN AUTHORIZATION (e.g., order form, order letter, purchase order) TO RENEW CUSTOMER'S EXPIRING SOFTWARE SUBSCRIPTION AND SUPPORT OR SELECTED SUPPORT. IN SUCH EVENT, CUSTOMER MAY OBTAIN A PRORATED REFUND.

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

Software Subscription 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 pro-rated 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.

4. IBM SaaS

Customer agrees that IBM is not providing it with access to the Internet in order to use IBM SaaS and that Customer remains responsible for Internet access.

Customer acknowledges that International Business Machines Corporation and its subsidiaries (1) do not control the transfer of data over telecommunications facilities, including the Internet, and (2) in a public Internet environment cannot commit to particular confidentiality obligations.

The exchange of any confidential information made under a separate, signed confidentiality agreement with a DIR Customer does not apply to Content. IBM assumes no confidentiality obligations regarding Content, notwithstanding the terms of any separate confidentiality agreement between Customer and IBM.

4.1 Ownership

IBM and its suppliers own IBM SaaS. Customer agrees that title to, ownership of and all rights in and to patents, copyrights, trademarks, and all other intellectual property rights in IBM SaaS, and any copy or part of IBM SaaS will remain with IBM and its suppliers.

4.2 Customer's Right to Use

Customer may use an IBM SaaS offering in accordance with its Terms of Use, up to the specified level of use authorized in the Proof of Entitlement, on condition that:

- a. Customer accepts the Terms of Use of the IBM SaaS offering;
- b. Customer ensures that anyone who uses the IBM SaaS offering does so only on Customer's behalf and complies with the terms of DIR Contract DIR-SDD-2108 and this IPAA and the applicable Terms of Use; and
- c. Customer does not
 - (i) use, copy, modify, or make the IBM SaaS offering available, in whole or on part, to third parties except as expressly permitted in this IPAA and the applicable Terms of Use;
 - (ii) reverse assemble, reverse compile, otherwise translate, or reverse engineer the IBM SaaS offering, unless expressly permitted by applicable law without the possibility of contractual waiver;
 - (iii) use any of the IBM SaaS offering's components, files, modules, audio-visual content, or related licensed materials separately from that of the IBM SaaS offering;
 - (iv) rent, sublicense, or lease the IBM SaaS offering;
 - (v) create Internet "links" to or from the IBM SaaS offering; or
 - (vi) "frame" or "mirror" any content forming part of an IBM SaaS offering, other than on Customer's own intranets in connection with Customer's authorized use of the IBM SaaS offering.

4.3 Subscription to IBM SaaS

4.3.1 Terms for a Specific IBM SaaS Offering

The terms of a specific IBM SaaS offering are provided in its Terms of Use and may include without limitation definitions, description of subscription and services, charge metrics, and restrictions.

4.3.2 IBM SaaS Subscription Period

An IBM SaaS Subscription Period begins on the date that IBM notifies Customer that Customer has access to the subscribed offering. The end date of a Subscription Period as specified in a Transaction Document is the last day of a month.

During an IBM SaaS Subscription Period, Customer may increase Customer's subscribed level of an IBM SaaS offering.

Customer may not decrease Customer's subscribed level of an IBM SaaS offering during a Subscription Period but may decrease in a subsequent Subscription Period, unless decrease is a result of Non-Appropriation of Funds.

4.3.3 IBM SaaS Subscription Period Renewal

Annual Renewal option may be exercised by the Licensor's Issuance of thirty (30) days advanced written notice and Customer's concurrence prior to the then-effective expiration date.

4.4 IBM SaaS Technical Support

During an IBM SaaS Subscription Period:

- (a) IBM provides assistance, as specified in the ToU, for Customer's offering-specific, task-oriented questions regarding the use of IBM SaaS; and
- (b) IBM SaaS technical support is available only for the currently supported versions of IBM SaaS, client operating systems, Internet browsers, and software. IBM technical support is available during the normal business hours (published prime shift hours) of the IBM SaaS support center. Consult the Terms of Use for details applicable to a specific IBM SaaS offering.

4.5 Content

IBM provides only services for Content. IBM is not the publisher of Content transmitted within IBM SaaS.

Customer has sole responsibility for the following:

- (a) ensuring the adequacy of any IBM SaaS elements to satisfy any Customer requirements;
- (b) all Content including, without limitation, its selection, creation, design, licensing, installation, accuracy, maintenance, testing, backup and support;
- (c) having all necessary authorizations to allow IBM and its subcontractors to host, cache, record, copy, and display Content, and Customer represents that it has and will keep in effect during its use of IBM SaaS all such authorizations and approvals necessary to grant IBM and its subcontractors these rights, and that such rights are provided at no charge to IBM. Customer retains all right, title, and interest in and to its Content; and
- (d) the selection and implementation of procedures and controls regarding access, security, encryption, use, transmission, and backup and recovery of Content.

Customer grants to IBM and its subcontractors a nonexclusive, irrevocable, worldwide, royalty-free, fully-paid, transferable license to host, cache, record, copy, and display Content, solely for the purpose of making IBM SaaS available.

4.6 Termination of IBM SaaS

IBM may withdraw the IBM SaaS in its entirety on 12 months' written notice to all then current Customers by letter or e-mail.

Notwithstanding anything to the contrary in this IPAA, IBM may also terminate Customer's access to the IBM SaaS due to Customer's breach of any of the applicable terms of this IPAA subject to exhaustion of the dispute resolution process set forth in the Contract.

5. ICA Programs

5.1 License

When IBM accepts Customer's order, IBM grants Customer a nonexclusive license to use the ICA Program only within Customer's entity in the United States. ICA Programs are owned by International Business Machines Corporation, one of its subsidiaries, or a third party and are copyrighted and licensed (not sold).

5.2 Authorized Use

Under each license, IBM authorizes Customer to:

- a. use the ICA Program's machine-readable portion on only the Designated Machine. If the Designated Machine is inoperable, Customer may use another machine temporarily. If the Designated Machine cannot assemble or compile the ICA Program, Customer may assemble or compile the ICA Program on another machine.

If Customer changes a Designated Machine previously identified to IBM, Customer agrees to notify IBM of the change and its effective date;

- b. use the ICA Program to the extent of authorizations Customer has obtained;
- c. make and install copies of the ICA Program, to support the level of use authorized, provided Customer reproduces the copyright notices and any other legends of ownership on each copy or partial copy; and
- d. use any portion of the ICA Program IBM i) provides in source form, or ii) marks restricted (for example, "Restricted Materials of IBM") only to --
 - (1) resolve problems related to the use of the ICA Program, and
 - (2) modify the ICA Program so that it will work together with other products.

5.3 Customer's Additional Obligations

For each ICA Program, Customer agrees to:

- a. comply with any additional terms in its Licensed Program Specifications or an Attachment or Transaction Document; however, in the case of conflict between any additional terms DIR Contract DIR-SDD-2108 prevails.
- b. ensure that anyone who uses it (accessed either locally or remotely) does so only for Customer's authorized use and complies with IBM's ICA Programs terms; and
- c. maintain a record of all copies and provide it to IBM at its request.

5.4 Actions Customer May Not Take

Customer agrees not to:

- a. reverse assemble, reverse compile, otherwise translate, or reverse engineer the ICA Program unless expressly permitted by applicable law without the possibility of contractual waiver; or
- b. sublicense, assign, rent, or lease the ICA Program or transfer it outside Customer's entity.

5.5 Distributed System License Option

For some ICA Programs, Customer may make a copy under a Distributed System License Option (called a "DSLO" copy). IBM charges less for a DSLO copy than for the original license (called the "Basic" license). In return for the lesser charge, Customer agrees to do the following while licensed under a DSLO:

- a. have a Basic license for the ICA Program;
- b. provide problem documentation and receive Program Services (if any) only through the location of the Basic license; and
- c. distribute to, and install on, the DSLO's Designated Machine, any release, correction, or bypass that IBM provides for the Basic license.

5.6 Program Services

IBM provides Program Services for warranted ICA Programs. If IBM can reproduce Customer's reported problem in the Specified Operating Environment, IBM will issue defect correction information, a restriction, or a bypass. IBM provides Program Services for only the unmodified portion of a current release of an ICA Program.

IBM provides Program Services i) on an on-going basis (with at least six months' written notice before IBM terminates Program Services), ii) until the date IBM specifies, or iii) for a period IBM specifies.

5.7 Compliance Verification

The Compliance Verification terms in Section 1.12 above apply to ICA Programs.

5.8 License Termination

Customer may terminate the license for an ICA Program at any time on one month's written notice to IBM.

For ICA Program licenses that Customer acquired for a one-time charge, replacement licenses may be acquired for an upgrade charge, if available. When Customer obtains licenses for these replacement ICA Programs, Customer agrees to terminate the license of the replaced ICA Programs when charges become due, unless IBM specifies otherwise.

IBM may terminate Customer's license if Customer fails to comply with the license terms. If IBM does so, Customer's authorization to use the ICA Program is also terminated.

To extent allowed by Record Retention laws and policies, Customer agrees to promptly destroy all copies of the Program after either party has terminated the license.

5.9 Warranty for ICA Programs

IBM warrants that each warranted ICA Program, when used in the Specified Operating Environment, will conform to its Specifications.

During the warranty period, IBM provides defect-related Program Services without charge. Program Services are available for a warranted ICA Program for at least one year following its general availability. The warranty period for an ICA Program expires when its Program Services are no longer available.

If an ICA Program does not function as warranted during the first year after Customer obtains its license and IBM is unable to make it do so, Customer may return the ICA Program and the charges Customer

paid for the license will be refunded. To be eligible, Customer must have obtained its license while Program Services (regardless of the remaining duration) were available for the ICA Program.

5.10 Acceptance of ICA Programs

- a. On the second business day after the Program's standard transit allowance period, or receipt of the Program, if earlier.
- b. For process charges, the date the materials for which the process charges apply are received by the Government.

Notwithstanding anything herein to the contrary, the parties agree as follows:

- (i) the ordering activity may negotiate an extension regarding the time of acceptance before issuing a delivery order.

5.11 Definitions for ICA Programs

Date of Installation – for a Program --

- (a) basic license, the second business day after the Program's standard transit allowance period,
- (b) copy, the date (specified in a Transaction Document) on which IBM authorizes Customer to make a copy of the Program, and
- (c) chargeable component (also called a feature), the date Customer uses the chargeable component or a copy. Customer agrees to notify IBM of the chargeable component's Date of Installation.

Designated Machine – either i) the machine on which Customer will use an ICA Program for processing and which IBM requires Customer to identify to IBM by type/model and serial number, or ii) any machine on which Customer uses the ICA Program if IBM does not require Customer to provide this identification.

Program – the following, including the original and all whole or partial copies:

- a. machine-readable instructions and data;
- b. components;
- c. audio-visual content (such as images, text, recordings, or pictures); and
- d. related licensed materials.

The term "Program" includes any ICA Program, Other IBM Program, or Non-IBM Program that IBM may provide to Customer. The term does not include Machine Code or Materials.

Specifications – information specific to a Product. IBM Machine Specifications are in a document entitled "Official Published Specifications." ICA Program Specifications are in a document entitled "Licensed Program Specifications."

Specified Operating Environment – the machines and programs with which an ICA Program is designed to operate, as described in its Licensed Program Specifications.

Country-Specific Terms: Programs acquired under this IPAA are acquired in and for use in the United States of America only. If Programs are acquired in or used in any other country, country-specific terms will apply. The "other country terms" can be found here: http://www-01.ibm.com/software/lotus/passportadvantage/pa_agreements.html

6. Appliances

6.1 Virtual Appliance

Customer is licensed to use the Program(s) pursuant to the terms of this Agreement.

6.2 Appliances Comprising Both Program and Machine Components

IBM provides Appliances comprising both Program Components and Machine Components as a single product. Customer shall not use either such component independently of the Appliance of which it is a part for any purpose.

6.3 Program Components

Customer is licensed to use the Program Component(s) pursuant to the terms of this Agreement, but only on the Machine Component supplied by IBM or an authorized reseller or any replacement of a Machine Component provided to Customer by IBM or an authorized reseller. Customer may not transfer its license to use the Program Component(s) to another Enterprise.

6.4 Machine Components

6.4.1 Production Status

Each IBM Machine Component is manufactured from parts that may be new or used. In some cases, an IBM Machine Component may not be new and may have been previously installed. Regardless, IBM's applicable warranty terms described in Part 2.3 apply.

6.4.2 Title and Risk of Loss

When IBM accepts Customer's order, IBM agrees to sell Customer the Machine Component described in a Transaction Document. IBM transfers title to Customer or, if applicable, Customer's lessor when the Machine Component is shipped to Customer or its designated location. However, IBM reserves a purchase money security interest in the Machine Component until IBM receives the amounts due. For a feature, conversion, or upgrade involving the removal of parts that become IBM's property, IBM reserves a security interest until IBM receives payment of all the amounts due and the removed parts. Customer authorizes IBM to file appropriate documents to permit IBM to perfect its security interest.

For each Machine Component, IBM bears the risk of loss or damage up to the time it is delivered to the IBM-designated carrier for shipment to Customer or Customer's designated location. Thereafter, Customer assumes the risk. Each Machine Component will be covered by insurance, arranged and paid for by IBM for Customer, covering the period until it is delivered to Customer or Customer's designated location. For any loss or damage, Customer must i) report the loss or damage in writing to IBM within 10 business days of delivery and ii) follow the applicable claim procedure.

6.4.3 Installation

a. Machine Component Installation

- (1) Customer agrees to provide an environment meeting the requirements for the Machine Component as specified in its published documentation.
- (2) Customer is responsible for installing a Customer-set-up Machine Component and a non-IBM Machine Component according to instructions provided by IBM or the Machine Component's manufacturer.
- (3) For a Machine Component that IBM is responsible for installing, IBM has standard installation procedures. IBM will successfully complete these procedures before it considers a Machine Component (other than a Machine Component for which Customer defers installation or a Customer-set-up Machine Component) installed. For an IBM Machine Component that IBM is responsible to install, if the IBM Machine Component is not made available for IBM to install within six months from shipment, installation will be subject to an installation charge.

b. Upgrades and Engineering Changes

- (1) IBM sells Upgrades for installation on Machine Components, and, in certain instances, only for installation on a designated, serial-numbered Machine Component. Within 30 days of the shipment of an Upgrade, Customer agrees to install the Upgrade or, if IBM is responsible for the installation, to allow IBM to install the Upgrade. Certain Upgrade orders may be terminated at IBM's discretion if not made available for IBM to install within 30 days of shipment, in which case Customer must return the Upgrade at Customer's expense. In all cases, if the Upgrade is

not made available for IBM to install within six months from the date IBM ships the Upgrade, installation will be subject to an installation charge.

- (2) Customer agrees to allow IBM to install mandatory Engineering Changes (such as those required for safety) on a Machine Component within 30 days of IBM's notice to Customer unless otherwise agreed to by the parties.

Many Upgrades and Engineering Changes require the removal of parts and the transfer of ownership and possession of the removed parts to IBM. Customer is responsible for the return of all removed parts to IBM upon installation of the Upgrade or Engineering Change. As applicable, Customer represents that Customer has permission from the owner and any lien holders to i) install Upgrades and Engineering Changes and ii) transfer ownership and possession of removed parts to IBM. Customer further represents that all removed parts are genuine, unaltered, and in good working order. A part that replaces a removed part will assume the warranty or maintenance service status of the replaced part.

6.4.4 Machine Code Component

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

http://www.ibm.com/servers/support/machine_warranties/support_by_product.html or by contacting an IBM representative. Machine Code license agreements may be amended by IBM from time to time. Such amended license terms will apply only to Machine Code Component that is supplied after such amended terms become effective.

A Machine Code Component is licensed only for use to enable a Machine Component to function in accordance with its Specifications and only for the capacity and capability for which Customer has acquired IBM's written authorization. Customer agrees to use the Machine Code Component only as specified in this Agreement and as may be further authorized or restricted in its applicable license agreement. Without limiting additional restrictions in the applicable license, Customer may not

- a. otherwise copy, display, transfer, adapt, modify, or distribute (electronically or otherwise) the Machine Code Component, except as IBM may authorize in the Machine Component's user documentation or in writing to Customer;
- b. reverse assemble, reverse compile, otherwise translate, or reverse engineer the Machine Code Component unless expressly permitted by applicable law without the possibility of contractual waiver;
- c. sublicense or assign the license for the Machine Code Component; or
- d. lease the Machine Code Component or any copy of it.

International Business Machines Corporation, one of its subsidiaries, or a third party owns the Machine Code Component including all copyrights in the Machine Code Component and all copies of the Machine Code Component (this includes the original Machine Code Component, copies of the original Machine Code Component, and copies made from copies). The Machine Code Component is copyrighted and licensed (not sold).

Title will not be transferred when IBM supplies features, conversions, or upgrades that consist solely of Machine Code Component.

The capacity of certain Machine Components may be limited by technological measures in the Machine Code Component. Customer agrees to IBM's implementation of such technological measures to limit Machine Component capacity.

6.4.5 Delivery

Delivery dates for Appliances with Machine Components are estimates unless otherwise specifically agreed in a Transaction Document. Transportation charges, if applicable, will be specified in a Transaction Document.