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- (8) in **Taiwan**: the laws of Taiwan;

#### EUROPE, MIDDLE EAST, AND AFRICA

- (9) in **Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan**: the laws of Austria;
- (10) in **Algeria, Andorra, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis and Futuna**: the laws of France;
- (11) in **Estonia, Latvia, and Lithuania**: the laws of Finland;
- (12) in **Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe**: the laws of England; and

- (13) in **South Africa, Namibia, Lesotho, and Swaziland**: the laws of the Republic of South Africa.

## 14.2 Jurisdiction

*The following paragraph pertains to jurisdiction and replaces Subsection 14.2 (Jurisdiction) as it applies for those countries identified below:*

All rights, duties, and obligations are subject to the courts of the country in which Licensee obtained the Program license except that in the countries identified below all disputes arising out of or related to this Agreement, including summary proceedings, will be brought before and subject to the exclusive jurisdiction of the following courts of competent jurisdiction:

### AMERICAS

- (1) In **Argentina**: the Ordinary Commercial Court of the city of Buenos Aires;
- (2) in **Brazil**: the court of Rio de Janeiro, RJ;
- (3) in **Chile**: the Civil Courts of Justice of Santiago;
- (4) in **Ecuador**: the civil judges of Quito for executory or summary proceedings (as applicable);
- (5) in **Mexico**: the courts located in Mexico City, Federal District;
- (6) in **Peru**: the judges and tribunals of the judicial district of Lima, Cercado;
- (7) in **Uruguay**: the courts of the city of Montevideo;
- (8) in **Venezuela**: the courts of the metropolitan area of the city of Caracas;

### EUROPE, MIDDLE EAST, AND AFRICA

- (9) in **Austria**: the court of law in Vienna, Austria (Inner-City);
- (10) in **Algeria, Andorra, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, France, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Monaco, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis and Futuna**: the Commercial Court of Paris;
- (11) in **Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe**: the English courts;
- (12) in **South Africa, Namibia, Lesotho, and Swaziland**: the High Court in Johannesburg;
- (13) in **Greece**: the competent court of Athens;
- (14) in **Israel**: the courts of Tel Aviv-Jaffa;
- (15) in **Italy**: the courts of Milan;
- (16) in **Portugal**: the courts of Lisbon;
- (17) in **Spain**: the courts of Madrid; and
- (18) in **Turkey**: the Istanbul Central Courts and Execution Directorates of Istanbul, the Republic of Turkey.



### 14.3 Arbitration

*The following paragraph is added as a new Subsection 14.3 (Arbitration) as it applies for those countries identified below. The provisions of this Subsection 14.3 prevail over those of Subsection 14.2 (Jurisdiction) to the extent permitted by the applicable governing law and rules of procedure:*

#### ASIA PACIFIC

**(1) In Cambodia, India, Laos, Philippines, and Vietnam:**

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

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

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

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

**(2) In the People's Republic of China:**

In case no settlement can be reached, the disputes will be submitted to China International Economic and Trade Arbitration Commission for arbitration according to the then effective rules of the said Arbitration Commission. The arbitration will take place in Beijing and be conducted in Chinese. The arbitration award will be final and binding on both parties. During the course of arbitration, this agreement will continue to be performed except for the part which the parties are disputing and which is undergoing arbitration.

**(3) In Indonesia:**

Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement. 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 Agreement or any transaction under it more than two years after the cause of action arose; and ii) after such time limit, any legal action arising out of this Agreement or any transaction under it and all respective rights related to any such action lapse.

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration that shall be held in Jakarta, Indonesia in accordance with the rules of Board of the Indonesian National Board of Arbitration (Badan Arbitrase Nasional Indonesia or "BANI") then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third

arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the chairman of the BANI. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

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

All proceedings shall be conducted, including all documents presented in such proceedings, in the English and/or Indonesian language.

## **EUROPE, MIDDLE EAST, AND AFRICA**

- (4) In **Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan:**

All disputes arising out of this Agreement or related to its violation, termination or nullity will be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Center of the Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with these rules. The arbitration will be held in Vienna, Austria, and the official language of the proceedings will be English. The decision of the arbitrators will be final and binding upon both parties. Therefore, pursuant to paragraph 598 (2) of the Austrian Code of Civil Procedure, the parties expressly waive the application of paragraph 595 (1) figure 7 of the Code. IBM may, however, institute proceedings in a competent court in the country of installation.

- (5) In **Estonia, Latvia, and Lithuania:**

All disputes arising in connection with this Agreement will be finally settled in arbitration that will be held in Helsinki, Finland in accordance with the arbitration laws of Finland then in effect. Each party will appoint one arbitrator. The arbitrators will then jointly appoint the chairman. If arbitrators cannot agree on the chairman, then the Central Chamber of Commerce in Helsinki will appoint the chairman.

## **AMERICAS COUNTRY AMENDMENTS**

### **CANADA**

#### **10.1 Items for Which IBM May be Liable**

*The following replaces Item 1 in the first paragraph of this Subsection 10.1 (Items for Which IBM May be Liable):*

1) damages for bodily injury (including death) and physical harm to real property and tangible personal property caused by IBM's negligence; and

#### **13. General**

*The following replaces Item 13.d:*

- d. Licensee agrees to comply with all applicable export and import laws and regulations, including those of that apply to goods of United States origin and that prohibit or limit export for certain uses or to certain users.

*The following replaces Item 13.i:*

- i. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is IBM responsible for any third party claims against Licensee except as permitted by the Limitation of Liability section above for bodily injury

(including death) or physical harm to real or tangible personal property caused by IBM's negligence for which IBM is legally liable to that third party.

*The following is added as Item 13.m:*

- m. For purposes of this Item 13.m, "Personal Data" refers to information relating to an identified or identifiable individual made available by one of the parties, its personnel or any other individual to the other in connection with this Agreement. The following provisions apply in the event that one party makes Personal Data available to the other:
- (1) General
    - (a) Each party is responsible for complying with any obligations applying to it under applicable Canadian data privacy laws and regulations ("Laws").
    - (b) Neither party will request Personal Data beyond what is necessary to fulfill the purpose(s) for which it is requested. The purpose(s) for requesting Personal Data must be reasonable. Each party will agree in advance as to the type of Personal Data that is required to be made available.
  - (2) Security Safeguards
    - (a) Each party acknowledges that it is solely responsible for determining and communicating to the other the appropriate technological, physical and organizational security measures required to protect Personal Data.
    - (b) Each party will ensure that Personal Data is protected in accordance with the security safeguards communicated and agreed to by the other.
    - (c) Each party will ensure that any third party to whom Personal Data is transferred is bound by the applicable terms of this section.
    - (d) Additional or different services required to comply with the Laws will be deemed a request for new services.
  - (3) Use

Each party agrees that Personal Data will only be used, accessed, managed, transferred, disclosed to third parties or otherwise processed to fulfill the purpose(s) for which it was made available.
  - (4) Access Requests
    - (a) Each party agrees to reasonably cooperate with the other in connection with requests to access or amend Personal Data.
    - (b) Each party agrees to reimburse the other for any reasonable charges incurred in providing each other assistance.
    - (c) Each party agrees to amend Personal Data only upon receiving instructions to do so from the other party or its personnel.
  - (5) Retention

Each party will promptly return to the other or destroy all Personal Data that is no longer necessary to fulfill the purpose(s) for which it was made available, unless otherwise instructed by the other or its personnel or required by law.
  - (6) Public Bodies Who Are Subject to Public Sector Privacy Legislation

For Licensees who are public bodies subject to public sector privacy legislation, this Item 13.m applies only to Personal Data made available to Licensee in connection with this Agreement, and the obligations in this section apply only to Licensee,

except that: 1) section (2)(a) applies only to IBM; 2) sections (1)(a) and (4)(a) apply to both parties; and 3) section (4)(b) and the last sentence in (1)(b) do not apply.

## **PERU**

### **10. Limitation of Liability**

*The following is added to the end of this Section 10 (Limitation of Liability):*

Except as expressly required by law without the possibility of contractual waiver, Licensee and IBM intend that the limitation of liability in this Limitation of Liability section applies to damages caused by all types of claims and causes of action. If any limitation on or exclusion from liability in this section is held by a court of competent jurisdiction to be unenforceable with respect to a particular claim or cause of action, the parties intend that it nonetheless apply to the maximum extent permitted by applicable law to all other claims and causes of action.

#### **10.1 Items for Which IBM May be Liable**

*The following is added at the end of this Subsection 10.1:*

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

## **UNITED STATES OF AMERICA**

### **5. Taxes**

*The following is added at the end of this Section 5 (Taxes)*

For Programs delivered electronically in the United States for which Licensee claims a state sales and use tax exemption, Licensee agrees not to receive any tangible personal property (e.g., media and publications) associated with the electronic program.

Licensee agrees to be responsible for any sales and use tax liabilities that may arise as a result of Licensee's subsequent redistribution of Programs after delivery by IBM.

### **13. General**

*The following is added to Section 13 as Item 13.m:*

U.S. Government Users Restricted Rights – Use, duplication or disclosure is restricted by the GSA IT Schedule 70 Contract with the IBM Corporation.

*The following is added to Item 13.f:*

Each party waives any right to a jury trial in any proceeding arising out of or related to this Agreement.

## **ASIA PACIFIC COUNTRY AMENDMENTS**

### **AUSTRALIA**

#### **5. Taxes**

*The following sentences replace the first two sentences of Section 5 (Taxes):*

If any government or authority imposes a duty, tax (other than income tax), levy, or fee, on this Agreement or on the Program itself, that is not otherwise provided for in the amount payable, Licensee agrees to pay it when IBM invoices Licensee. 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.

## **8.1 Limited Warranty**

*The following is added to Subsection 8.1 (Limited Warranty):*

The warranties specified this Section are in addition to any rights Licensee may have under the Competition and Consumer Act 2010 or other legislation and are only limited to the extent permitted by the applicable legislation.

## **10.1 Items for Which IBM May be Liable**

*The following is added to Subsection 10.1 (Items for Which IBM May be Liable):*

Where IBM is in breach of a condition or warranty implied by the Competition and Consumer Act 2010, IBM's liability is limited to the repair or replacement of the goods, or the supply of equivalent goods. Where that condition or warranty relates to right to sell, quiet possession or clear title, or the goods are of a kind ordinarily obtained for personal, domestic or household use or consumption, then none of the limitations in this paragraph apply.

## **HONG KONG SAR, MACAU SAR, AND TAIWAN**

*As applies to licenses obtained in Taiwan and the special administrative regions, phrases throughout this Agreement containing the word "country" (for example, "the country in which the original Licensee was granted the license" and "the country in which Licensee obtained the Program license") are replaced with the following:*

- (1) In **Hong Kong SAR**: "Hong Kong SAR"
- (2) In **Macau SAR**: "Macau SAR" except in the Governing Law clause (Section 14.1)
- (3) In **Taiwan**: "Taiwan."

## **INDIA**

### **10.1 Items for Which IBM May be Liable**

*The following replaces the terms of Items 1 and 2 of the first paragraph:*

1) liability for bodily injury (including death) or damage to real property and tangible personal property will be limited to that caused by IBM's negligence; and 2) as to any other actual damage arising in any situation involving nonperformance by IBM pursuant to, or in any way related to the subject of this Agreement, IBM's liability will be limited to the charge paid by Licensee for the individual Program that is the subject of the claim.

## **13. General**

*The following replaces the terms of Item 13.g:*

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

## **INDONESIA**

### **3.3 Term and Termination**

*The following is added to the last paragraph:*

Both parties waive the provision of article 1266 of the Indonesian Civil Code, to the extent the article provision requires such court decree for the termination of an agreement creating mutual obligations.

## **JAPAN**

### **13. General**

*The following is inserted after Item 13.f:*

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

## **MALAYSIA**

### **10.2 Items for Which IBM Is not Liable**

*The word "SPECIAL" in Item 10.2b is deleted.*

## **NEW ZEALAND**

### **8.1 Limited Warranty**

*The following is added:*

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

### **10. Limitation of Liability**

*The following is added:*

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

## **PEOPLE'S REPUBLIC OF CHINA**

### **4. Charges**

*The following is added:*

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

## **PHILIPPINES**

### **10.2 Items for Which IBM Is not Liable**

*The following replaces the terms of Item 10.2b:*

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

## **SINGAPORE**

### **10.2 Items for Which IBM Is not Liable**

*The words "SPECIAL" and "ECONOMIC" are deleted from Item 10.2b.*

### **13. General**

*The following replaces the terms of Item 13.i:*

Subject to the rights provided to IBM's suppliers and Program developers as provided in Section 10 above (Limitation of Liability), a person who is not a party to this Agreement will have no right under the Contracts (Right of Third Parties) Act to enforce any of its terms.

## TAIWAN

### 8.1 Limited Warranty

*The last paragraph is deleted.*

### 10.1 Items for Which IBM May Be Liable

*The following sentences are deleted:*

This limit also applies to any of IBM's subcontractors and Program developers. It is the maximum for which IBM and its subcontractors and Program developers are collectively responsible.

## EUROPE, MIDDLE EAST, AFRICA (EMEA) COUNTRY AMENDMENTS

### EUROPEAN UNION MEMBER STATES

#### 8. Warranty and Exclusions

*The following is added to Section 8 (Warranty and Exclusion):*

In the European Union ("EU"), consumers have legal rights under applicable national legislation governing the sale of consumer goods. Such rights are not affected by the provisions set out in this Section 8 (Warranty and Exclusions). The territorial scope of the Limited Warranty is worldwide.

### EU MEMBER STATES AND THE COUNTRIES IDENTIFIED BELOW

**Iceland, Liechtenstein, Norway, Switzerland, Turkey, and any other European country that has enacted local data privacy or protection legislation similar to the EU model.**

#### 13. General

*The following replaces Item 13.e:*

- (1) **Definitions** – For the purposes of this Item 13.e, the following additional definitions apply:
  - (a) **Business Contact Information** – business-related contact information disclosed by Licensee to IBM, including names, job titles, business addresses, telephone numbers and email addresses of Licensee's employees and contractors. For Austria, Italy and Switzerland, Business Contact Information also includes information about Licensee and its contractors as legal entities (for example, Licensee's revenue data and other transactional information)
  - (b) **Business Contact Personnel** – Licensee employees and contractors to whom the Business Contact Information relates.
  - (c) **Data Protection Authority** – the authority established by the Data Protection and Electronic Communications Legislation in the applicable country or, for non-EU countries, the authority responsible for supervising the protection of personal data in that country, or (for any of the foregoing) any duly appointed successor entity thereto.
  - (d) **Data Protection & Electronic Communications Legislation** – (i) the applicable local legislation and regulations in force implementing the requirements of EU Directive 95/46/EC (on the protection of individuals with regard to the processing of personal data and on the free movement of such data) and of EU Directive 2002/58/EC (concerning the processing of personal data and the protection of privacy in the electronic communications sector); or (ii) for non-EU countries, the legislation and/or regulations passed in the applicable country relating to the protection of

personal data and the regulation of electronic communications involving personal data, including (for any of the foregoing) any statutory replacement or modification thereof.

- (e) **IBM Group** – International Business Machines Corporation of Armonk, New York, USA, its subsidiaries, and their respective Business Partners and subcontractors.
- (2) Licensee authorizes IBM:
  - (a) to process and use Business Contact Information within IBM Group in support of Licensee including the provision of support services, and for the purpose of furthering the business relationship between Licensee and IBM Group, including, without limitation, contacting Business Contact Personnel (by email or otherwise) and marketing IBM Group products and services (the "Specified Purpose"); and
  - (b) to disclose Business Contact Information to other members of IBM Group in pursuit of the Specified Purpose only.
- (3) IBM agrees that all Business Contact Information will be processed in accordance with the Data Protection & Electronic Communications Legislation and will be used only for the Specified Purpose.
- (4) To the extent required by the Data Protection & Electronic Communications Legislation, Licensee represents that (a) it has obtained (or will obtain) any consents from (and has issued (or will issue) any notices to) the Business Contact Personnel as are necessary in order to enable IBM Group to process and use the Business Contact Information for the Specified Purpose.
- (5) Licensee authorizes IBM to transfer Business Contact Information outside the European Economic Area, provided that the transfer is made on contractual terms approved by the Data Protection Authority or the transfer is otherwise permitted under the Data Protection & Electronic Communications Legislation.

## AUSTRIA

### 8.2 Exclusions

*The following is deleted from the first paragraph:*

## MERCHANTABILITY, SATISFACTORY QUALITY

### 10. Limitation of Liability

*The following is added:*

The following limitations and exclusions of IBM's liability do not apply for damages caused by gross negligence or willful misconduct.

#### 10.1 Items for Which IBM May Be Liable

*The following replaces the first sentence in the first paragraph:*

Circumstances may arise where, because of a default by IBM in the performance of its obligations under this Agreement or other liability, Licensee is entitled to recover damages from IBM.

*In the second sentence of the first paragraph, delete entirely the parenthetical phrase:*

*"(including fundamental breach, negligence, misrepresentation, or other contract or tort claim)".*



## **10.2 Items for Which IBM Is Not Liable**

*The following replaces Item 10.2b:*

- b. indirect damages or consequential damages; or

## **BELGIUM, FRANCE, ITALY, AND LUXEMBOURG**

### **10. Limitation of Liability**

*The following replaces the terms of Section 10 (Limitation of Liability) in its entirety:*

Except as otherwise provided by mandatory law:

#### **10.1 Items for Which IBM May Be Liable**

IBM's entire liability for all claims in the aggregate for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this Agreement or due to any other cause related to this Agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if IBM is at fault) or of such cause, for a maximum amount equal to the charges (if the Program is subject to fixed term charges, up to twelve months' charges) Licensee paid for the Program that has caused the damages.

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

#### **10.2 Items for Which IBM Is Not Liable**

**UNDER NO CIRCUMSTANCES IS IBM OR ANY OF ITS PROGRAM DEVELOPERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL, EXEMPLARY OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; AND / OR 3) LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES.**

### **10.3 Suppliers and Program Developers**

The limitation and exclusion of liability herein agreed applies not only to the activities performed by IBM but also to the activities performed by its suppliers and Program developers, and represents the maximum amount for which IBM as well as its suppliers and Program developers are collectively responsible.

## **GERMANY**

### **8.1 Limited Warranty**

*The following is inserted at the beginning of Section 8.1:*

The Warranty Period is twelve months from the date of delivery of the Program to the original Licensee.

### **8.2 Exclusions**

*Section 8.2 is deleted in its entirety and replaced with the following:*

Section 8.1 defines IBM's entire warranty obligations to Licensee except as otherwise required by applicable statutory law.

## 10. Limitation of Liability

*The following replaces the Limitation of Liability section in its entirety:*

- a. IBM will be liable without limit for 1) loss or damage caused by a breach of an express guarantee; 2) damages or losses resulting in bodily injury (including death); and 3) damages caused intentionally or by gross negligence.
- b. In the event of loss, damage and frustrated expenditures caused by slight negligence or in breach of essential contractual obligations, IBM will be liable, regardless of the basis on which Licensee is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), per claim only up to the greater of 500,000 euro or the charges (if the Program is subject to fixed term charges, up to 12 months' charges) Licensee paid for the Program that caused the loss or damage. A number of defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one default.
- c. In the event of loss, damage and frustrated expenditures caused by slight negligence, IBM will not be liable for indirect or consequential damages, even if IBM was informed about the possibility of such loss or damage.
- d. In case of delay on IBM's part: 1) IBM will pay to Licensee an amount not exceeding the loss or damage caused by IBM's delay and 2) IBM will be liable only in respect of the resulting damages that Licensee suffers, subject to the provisions of Items a and b above.

## 13. General

*The following replaces the provisions of 13.g:*

Any claims resulting from this Agreement are subject to a limitation period of three years, except as stated in Section 8.1 (Limited Warranty) of this Agreement.

*The following replaces the provisions of 13.i:*

No right or cause of action for any third party is created by this Agreement, nor is IBM responsible for any third party claims against Licensee, except (to the extent permitted in Section 10 (Limitation of Liability)) for: i) bodily injury (including death); or ii) damage to real or tangible personal property for which (in either case) IBM is legally liable to that third party.

## IRELAND

### 8.2 Exclusions

*The following paragraph is added:*

Except as expressly provided in these terms and conditions, or Section 12 of the Sale of Goods Act 1893 as amended by the Sale of Goods and Supply of Services Act, 1980 (the "1980 Act"), all conditions or warranties (express or implied, statutory or otherwise) are hereby excluded including, without limitation, any warranties implied by the Sale of Goods Act 1893 as amended by the 1980 Act (including, for the avoidance of doubt, Section 39 of the 1980 Act).

## IRELAND AND UNITED KINGDOM

### 2. Agreement Structure

*The following sentence is added:*

Nothing in this paragraph shall have the effect of excluding or limiting liability for fraud.

## 10.1 Items for Which IBM May Be Liable

*The following replaces the first paragraph of the Subsection:*

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

Circumstances may arise where, because of a Default by IBM in the performance of its obligations under this Agreement or other liability, Licensee is entitled to recover damages from IBM. Regardless of the basis on which Licensee is entitled to claim damages from IBM and except as expressly required by law without the possibility of contractual waiver, IBM's entire liability for any one Default will not exceed the amount of any direct damages, to the extent actually suffered by Licensee as an immediate and direct consequence of the default, up to the greater of (1) 500,000 euro (or the equivalent in local currency) or (2) 125% of the charges (if the Program is subject to fixed term charges, up to 12 months' charges) for the Program that is the subject of the claim. Notwithstanding the foregoing, the amount of any damages for bodily injury (including death) and damage to real property and tangible personal property for which IBM is legally liable is not subject to such limitation.

## 10.2 Items for Which IBM is Not Liable

*The following replaces Items 10.2b and 10.2c:*

- b. special, incidental, exemplary, or indirect damages or consequential damages; or
- c. wasted management time or lost profits, business, revenue, goodwill, or anticipated savings.

# 国际程序许可协议

## 第一部分 – 通用条款

下载、安装、复制、访问、单击“接受”按钮，或以其他方式使用程序，即表明被许可方同意本协议的条款。如果您代表被许可方接受此类条款，则您陈述并保证您拥有完全的授权以使该被许可方接受此类条款的约束。如果您不同意此类条款，

- 则请勿下载、安装、复制、访问、单击“接受”按钮，或使用程序；并且
- 立即将未使用的介质、文档和权利证明退还至提供方，以便获得您所支付金额的退款。如果下载了程序，那么请销毁程序的所有副本。

### 1. 定义

**“授权使用”** – 被许可方被授权执行或运行程序的指定级别。该级别可按用户数、百万个服务单位（MSUs）、处理器价值单元（PVUs）和其他 IBM 指定的使用级别进行计量。

**“IBM”** – 国际商业机器公司（International Business Machines Corporation）或其任一子公司。

**“许可信息”（“LI”）** – 提供与特定程序相关的信息或任何附加条款的文件。程序的 LI 可通过以下站点获取：[www.ibm.com/software/sla](http://www.ibm.com/software/sla)。该 LI 也可以通过使用系统命令在程序目录下找到，或者作为手册与程序一起提供。

**“程序”** – 下列各项，包括原件及其所有的完整的或部分的副本：1）机器可读的指令或数据；2）组件、文件和模块；3）音像内容（例如图像、文本、录音或图片）；以及 4）相关的许可材料（比如密钥和文档）。

**“权利证明”（“PoE”）** – 被许可方的授权使用证明。PoE 也是被许可方享有保修、将来的更新价格（如有）和可能的特别机会或促销机会的资格证明。如果 IBM 不向被许可方提供 PoE，则 IBM 可接受已付讫的收据正本或程序提供方（IBM 或其转售商）的其他销售记录作为 PoE，前提是此类收据或记录必须载明程序的名称以及所获得的使用级别。

**“保修期”** – 自原被许可方被授予程序许可之日起一年。

### 2. 协议结构

本协议包括：**第一部分 – 通用条款、第二部分 – 国家或地区特别条款**（如有）、LI 和权利证明，构成被许可方与 IBM 之间有关程序使用的完整协议。本协议替代被许可方与 IBM 之间有关程序使用的任何先前的口头或书面通信。第二部分的条款可能替代或修改第一部分的相应内容。如有冲突，LI 的条款优先于这两部分的规定。

### 3. 许可授予

程序由 IBM 或 IBM 供应商所有，受版权保护。程序系许可使用，而非出售。

IBM 授予被许可方执行以下操作的非专有许可，以便被许可方：1）在 PoE 中规定的授权使用级别内使用程序，2）制作和安装副本，以支持此类授权使用，3）制作备份副本，前提是：

- 被许可方已合法获取程序，并遵守本协议的条款；
- 不执行备份副本，除非被备份的程序无法执行；
- 被许可方须在程序的每一完整副本或部分副本中复制所有的版权声明和其他所有权说明；
- 被许可方须确保使用程序的所有人员（不论是本地或远程访问）都 1）仅为被许可方的利益使用程序；以及 2）遵守本协议的条款；
- 被许可方不得 1）使用、复制、修改或分发程序，除非本协议明确许可；2）对本程序进行反汇编、反编译或以其他方式翻译或反向工程；但法律明确许可且不得以约定放弃者除外；3）独立于程序而单独使用程序组件、文件、模块、音像内容或相关许可材料；或 4）再许可、出租或租赁程序；并且

- f. 如果被许可方获取本程序作为支持程序，那么被许可方只能将本程序用于支持主程序，并遵守主程序许可中的任何限制条款。或者，如果被许可方获取本程序作为主程序，那么被许可方只能将所有支持程序用于支持本主程序，并遵守本协议中的任何限制条款。本 f 项中的“支持程序”是属于另外一个 IBM 程序（“主程序”）的一部分的程序，并且在“主程序”的 LI 中被标识为“支持程序”。（要获取不带有这些限制的“支持程序”的单独许可，被许可方应联系其获取“支持程序”的供应方。）

此许可适用于被许可方制作的每份程序副本。

## **3.1 换购、更新、修订和补丁**

### **3.1.1 换购**

如果程序被换购程序替换，那么被替换程序的许可将立即被终止。

### **3.1.2 更新、修订和补丁**

被许可方获得程序的更新、修订或补丁时，被许可方须接受其 LI 中规定的适用于此类更新、修订或补丁的任何附加或不同的条款。如果未提供附加或不同条款，那么更新、修订和补丁只需遵守本协议的规定。如果程序被更新替换，被许可方同意立即停止对被替换程序的使用。

## **3.2 固定期限许可**

如果 IBM 授予固定期限的程序许可，那么被许可方的许可将在固定期间结束时被终止，除非被许可方和 IBM 同意续签许可协议。

## **3.3 期限和终止**

本协议在被终止前一直保持有效。

如果被许可方未能遵守本协议条款，则 IBM 可以终止被许可方的许可。

如果许可由于任何理由被任意一方终止，被许可方同意立即停止使用并销毁被许可方制作的程序的所有副本。如果本协议的任何条款因其性质致使其有效期超出本协议终止期限，那么这些条款应一直保持有效，直至履行完毕，并且适用于双方各自的继任者和受让人。

## **4. 费用**

费用基于 PoE 中规定的所获得的授权使用级别。对于应付或已付款项，IBM 不予贷记金额或退款，除非本协议中另有规定。

如果被许可方希望提高授权使用级别，那么被许可方必须提前通知 IBM 或经授权的 IBM 经销商，并支付任何适用的费用。

## **5. 税收**

如有任何政府机构对程序征收税款或其他费用（不包括基于 IBM 净收入的部分），则被许可方须同意支付发票中规定的金额，或提供相关税费的豁免文件。获得程序之后，被许可方须自行负责支付有关程序的任何个人财产税。如果由于出口、进口、转让或在原被许可方获取许可的国家或地区之外访问或使用本程序，政府机构因此征收税款或其他费用，那么被许可方同意负责并支付征收的税款或费用。

## **6. 退款保证**

如果被许可方由于任何原因对程序不满意，并且是原被许可方，那么被许可方可以终止本许可，并获得就程序已支付金额的退款，前提是被许可方在 PoE 发给被许可方的 30 天内将本程序和 PoE 退还给其取得程序及权利证明的一方。如果许可是可进行续签的固定期限许可，那么只有被许可方在初始期限的前 30 天内退还本程序和 PoE，才能获得退款。如果被许可方下载了程序，则被许可方应与程序提供方联系以了解获得退款的指导。

## 7. 程序转让

仅当另一方同意本协议的条款时，被许可方可将程序和所有的许可权利和义务转让至该方。如果许可由于任何理由被任意一方终止，被许可方不得将程序转让给另一方。被许可方不得转让部分 1) 程序或 2) 程序的授权使用。被许可方转让程序时，还必须转让本协议的一份硬拷贝，包括 LI 和 PoE。转让之后，被许可方的许可将立即被终止。

## 8. 保证和除外条款

### 8.1 有限保证

IBM 保证：程序在其规定的操作环境中使用时符合其规格。程序的规格和规定操作环境的信息，可以在随本程序提供的文档（例如自述文件）中找到，也可通过 IBM 发布的其他信息（例如产品发布公告函）找到。被许可方同意：此类文档和其他程序内容仅以英文提供，除非当地法律规定不得约定放弃或限制。

该保证仅适用于程序未经修改的部分。IBM 不保证程序不中断或无错误运行，IBM 也不保证会纠正所有的程序瑕疵。对于使用程序所获得的结果，被许可方自行负责。

保修期内，IBM 向被许可方提供到 IBM 数据库的访问而不额外收费。该数据库包含已知程序缺陷、缺陷纠正、限制和旁路的有关信息。更多信息请参阅 IBM 软件支持手册：  
[www.ibm.com/software/support](http://www.ibm.com/software/support)。

如果程序在保修期限内未能如保证的那样运行，并且也不能通过使用 IBM 数据库中提供的信息得以解决，则被许可方可以将程序及其 PoE 退回至程序及其 PoE 的提供方（IBM 或其转售商）以获得被许可方所支付金额的退款。退回程序之后，被许可方的许可将立即被终止。如果被许可方下载了程序，则被许可方应与程序提供方联系以了解获得退款的指导。

### 8.2 除外条款

这些保证是对被许可方的全部保证，并取代所有其他明示的或暗含的保证或条件，包括但不限于任何暗含的有关适销性、令人满意的质量、适用于某种特定用途、权属的保证或条件以及任何不侵权的保证或条件。某些国家或司法辖区不允许排除明示的或暗含的保证，因此上述除外条款可能并不适用于被许可方。在此情况下，此类保证仅在保修期限内有效。任何保证在保修期限之后将不再适用。某些国家或司法辖区不允许限制暗含保证的期限，因此上述限制可能并不适用于被许可方。

这些保证给予被许可方特定的法律权利。被许可方可能还拥有其他权利，此类权利视被许可方所在的国家或司法辖区而定。

此第 8 部分（保证和除外条款）的保证仅由 IBM 提供。但此 8.2 子节（除外条款）中的免责声明也适用于 IBM 的第三方代码供应商。这些供应商提供这些代码时不附带任何种类的保证或条件。此段落不排除 IBM 在本协议下的保证义务。

## 9. 被许可方数据和数据库

为帮助被许可方确定程序问题的根源，IBM 可能要求被许可方 1) 允许 IBM 远程访问被许可方的系统，或 2) 向 IBM 发送被许可方的信息和系统数据。但是，IBM 没有义务提供此类帮助，除非 IBM 和被许可方签订了单独的书面协议，规定 IBM 须向被许可方提供超出 IBM 在本协议下的保修义务的支持类型。任何情况下，IBM 将使用关于错误和问题的信息来改善其产品和服务，并帮助提供相关的支持。为了这些目的，IBM 可以使用 IBM 实体和分包商（包括被许可方所在国家或地区之外的一个或多个国家或地区的 IBM 实体和分包商），并且被许可方授权 IBM 这样做。

被许可方仍负责 1) 被许可方提供给 IBM 的任何数据库的数据和内容；2) 选择和实施关于数据访问、安全性、加密、使用和传输（包括任何可识别个人身份的信息）；以及 3) 备份和恢复任何数据库及已存储数据。被许可方将不向 IBM 发送任何数据形式或其他形式的可识别个人身份的信息或提供此类信息的访问。如果由于向 IBM 错误发送此类信息或 IBM 丢失或透露此类信息而造成损失，包括任何第三方索赔的损失，那么被许可方将负责支付合理的费用和其他款项。

## 10. 责任限制

第 10 部分（责任限制）中的限制和除外在不得以合同放弃权利的适用法律未作出禁止性规定的限度内完全适用。

### 10.1 IBM 可能承担责任的项目

如果发生因为 IBM 违约或须承担其他责任的情况，被许可方有权要求 IBM 赔偿损失。无论被许可方以何种依据要求 IBM 赔偿损失（包括重大违约、过失、失实陈述或其他合约或侵权方面的索赔），IBM 的全部责任仅限于 1）人身伤害（包括死亡）损害赔偿、不动产和有形动产的损害，以及 2）任何其他实际直接损害赔偿，赔偿额最高为 IBM 对作为索赔标的物的程序所收取的费用（如果程序按固定期限许可可收费，则最高为 12 个月的收费）。

此责任限制也适用于任何 IBM 的程序开发商和供应商。这是 IBM 与其程序开发商和供应商共同的最高赔偿限额。

### 10.2 IBM 不承担责任的项目

无论如何，IBM 及其程序开发商和供应商均不对下列各项负责，即使已被告知其发生的可能性：

- a. 数据的丢失或损坏；
- b. 特别的、附带的、惩罚性的或间接的损害赔偿，或任何后果性经济损害赔偿；或
- c. 利润、业务、收入、商誉或预期可节省金额的损失。

## 11. 合规性验证

此第 11 部分（合规性验证）中，“IPLA 程序条款”指的是 1）本协议和 IBM 提供的适用的补充协议和交易文件，以及 2）IBM 软件政策，该政策可在 IBM 软件政策站点（[www.ibm.com/softwarepolicies](http://www.ibm.com/softwarepolicies)）上找到，包括但不限于关于备份、次级容量定价和迁移的政策。

第 11 部分规定的权利和义务在程序被许可给被许可方的期限及之后两年内保持有效。

### 11.1 验证流程

被许可方同意创建、保留并向 IBM 及其审查员提供准确书面记录、系统工具输出结果以及其他系统信息，上述内容应充分以便提供被许可方对所有程序的使用均符合 IPLA 程序条款（包括但不限于所有 IBM 适用的许可和定价申请条款）的可审计的验证。被许可方负责 1）确保其使用不超出授权使用级别，以及 2）始终遵守 IPLA 程序条款。

在事先合理通知的情况下，IBM 可以验证被许可方为了任何目的在所有的地点以及所有环境中对受 IPLA 程序条款管辖的程序的使用是否遵守 IPLA 程序条款。此类验证将以尽量不干扰被许可方的业务的方式进行，并且可以在正常营业时间在被许可方的场所进行。IBM 可以使用独立审查员协助此类验证，但前提是 IBM 和此审查员签订适当的书面保密协议。

### 11.2 解决

如果任何此类验证显示被许可方对程序的使用超出其授权使用级别或者未遵守 IPLA 程序条款，那么 IBM 会书面通知被许可方。被许可方同意立即向 IBM 支付 IBM 在发票中指定的以下方面费用：1）任何此类超级别使用；2）超级别使用的期间或两年（以较短者为准）对此类超级别使用的支持；以及 3）此验证所确定的任何额外费用和其他责任。

## 12. 第三方声明

本程序可能包含第三方代码，这些代码由 IBM，而不是第三方，根据本协议向被许可方许可。随附的第三方代码的声明（第三方声明，如有）仅供告知被许可方。这些声明可以在程序的声明文件中找到。关于如何获取某些第三方代码的源代码的信息可以在第三方声明中找到。如果在第三方声明中，IBM 将第三方代码标识为“可修改第三方代码”，那么 IBM 授权被许可方 1）修改可修改第



三方代码，以及 2）对于可修改第三方代码直接接口的程序模块进行反向工程，前提是这样做的唯一目的是为了对被许可方对此类第三方代码的修改进行调试。IBM 的服务和支持义务（如有）仅适用于未经修改的程序。

13. 一般条款

- a. 本协议中的任何规定均不影响消费者拥有的，而且不得以协议形式加以限定或免除的法定权利。
- b. 除非被许可方与 IBM 之间以书面形式另行约定，对于 IBM 以有形的方式提供的程序，在将此程序交付给 IBM 指定的承运人之后，IBM 即完成了其装运和交付的义务。
- c. 如果本协议的任一条款规定被认定无效或不可执行，本协议的其余条款依然继续完全有效。
- d. 被许可方同意遵守所有适用的出口和进口法律及法规，包括美国禁运和制裁法规以及对出口到某些最终用户或用途的限制规定。
- e. 被许可方授权国际商业机器公司（International Business Machines Corporation）及其子公司（和其继承人和受让人、承包商及 IBM 业务合作伙伴）在其开展业务的任何地方存储和使用被许可方的业务联系信息，以开展与 IBM 产品和服务相关的业务或推进 IBM 与被许可方之间的业务关系。
- f. 在主张另一方未履行本协议下的义务前，一方应允许另一方有合理的机会来遵守协议。双方将努力通过友好方式解决双方之间与本协议相关的所有争议、分歧和权利主张。
- g. 除非适用法律另有规定而无法约定放弃或限制，否则：1）任何一方都不会在与本协议相关的索赔诉讼因发生超过两年后提起任何形式的法律诉讼；以及 2）在此类时间限制过期之后任何此类索赔以及与索赔相关的所有各自的权利都将归于无效。
- h. 无论是被许可方还是 IBM，均不对因其不可控制的原因而无法履行的任何义务负责。
- i. 本协议没有为任何第三方设立诉讼的权利或诉因，IBM 也不对任何第三方对被许可方的索赔负责，但如以上第 10.1 子节（IBM 可能承担责任的项目）所允许的，对于 IBM 应对第三方承担法律责任的人身伤害（包括死亡）或不动产或有形动产的索赔除外。
- j. 签署本协议时，双方均未依赖未在本协议中规定的任何陈述，包括但不限于关于以下方面的陈述：1）程序的性能或功能，以上第 8 部分（保证和除外条款）明确保证的除外；2）其他方的经验或建议；或 3）任何被许可方可能实现的结果或可节省金额。
- k. IBM 已经与某些组织（称作 IBM 业务合作伙伴）签署协议，以推广、营销和支持某些程序。IBM 业务合作伙伴依然独立于 IBM。对于 IBM 业务合作伙伴的行为和陈述或者对被许可方的义务，IBM 不承担责任。
- l. 被许可方与 IBM 的其他协议（比如 IBM 客户协议）下的许可和知识产权赔偿条款不适用于根据本协议授予的程序许可。

14. 地理范围和适用法律

14.1 适用法律

双方均同意，被许可方获得程序许可所在的国家或地区的法律将管辖、解释和强制执行由本协议标的引起的或以任何方式与之相关的被许可方与 IBM 的权利、责任和义务，而不考虑法律冲突原则。

《联合国国际货物销售合同公约》不适用于本协议。

14.2 管辖权

双方的所有权利、责任和义务均受被许可方获得程序许可所在的国家或地区的法院的管辖。

第二部分 – 国家或地区特别条款

对于以下指定国家或地区中授予的许可，以下条款替代或修改第 1 部分中引用的条款。第 1 部分中未通过这些修正更改的所有条款均保持不变并保持其效力。此第 2 部分组织为：

- 第 1 部分的多个国家或地区修正，第 14 小节（适用法律和管辖权）以及
- 对其他协议条款的亚太国家或地区修正。



**第 1 部分的多个国家或地区修正，第 14 小节（适用法律和管辖权）**

**14.1 适用法律**

第 14.1 小节第一段的词语“被许可方获取程序许可所在的国家或地区”在以下国家或地区中替换为以下词语：

**亚太地区**

- (1) 在中国香港特别行政区和中国澳门特别行政区：香港特别行政区（“SAR”）的法律以及
- (2) 在台湾：台湾的法律。

**14.3 仲裁**

以下段落适用于以下国家或地区，因而添加为新的第 14.3 子节（仲裁）。在适用适用法律和程序规则允许的范围，该第 14.3 子节的条款优先于第 14.2 子节（管辖权）的条款：

**亚太地区**

在中华人民共和国：

如果未达成解决，争议将提交给中国国际经济贸易仲裁委员会，以根据该仲裁委员会当时有效的规则进行仲裁。仲裁将在北京以中文进行。仲裁决定具有最终效力并对双方具有约束力。仲裁期间，本协议将得到继续履行，但双方产生争议并正在进行仲裁的部分除外。

**在亚太地区国家或地区修正**

**在中国香港特别行政区、中国澳门特别行政区和台湾**

在对于适用于在台湾和特别行政区获取的许可，本协议全文中含有词语“国家或地区”的短语（例如“向原始被许可方授予许可的国家或地区”和“被许可方获取程序许可所在的国家或地区”）替换为以下短语：

- (1) 在中国香港特别行政区：“中国香港特别行政区”
- (2) 在中国澳门特别行政区“中国澳门特别行政区”，但适用法律条款（第 14.1 小节）除外
- (3) 在台湾：“台湾。”

**中华人民共和国**

**4. 费用**

添加以下内容：

所有在中华人民共和国之内发生的银行费用均由被许可方承担，在中华人民共和国以外发生的银行费用均由 IBM 承担。

**新加坡**

**10.2 IBM 不承担责任的项目**

词语“特别的”和“经济”被从第 10.2b 子节删除

**13. 一般条款**

以下内容替代第 13.i 项的条款：

按照以上第 10 小节（责任限制）向 IBM 的供应商和程序开发商提供的权利，不是本协议一方的人员没有权利（第三方权利）根据《合同法》来执行任何其条款。

8.1 有限保证

删除最后一段。

10.1 IBM 可能承担责任的项目

删除以下句子

此项排除也适用于任何 IBM 的程序开发商和供应商。这是 IBM 与其程序开发商和供应商共同的最高赔偿限额。

# 國際程式授權合約

## 第一部分 – 一般條款

被授權人一旦下載、安裝、複製、存取、按下「接受」按鈕或直接使用本「程式」，即表示被授權人同意本合約之條款。若 貴客戶係代表被授權人接受該等條款，則 貴客戶聲明並保證 貴客戶擁有充分權限得以使被授權人受此等條款拘束。若 貴客戶不同意本合約條款時，

- 請勿下載、安裝、複製、存取、按下「接受」按鈕或使用本「程式」；及
- 立即將未使用之媒體、說明文件及權利證明書退回原供貨廠商（IBM 或其轉銷商），並要求退還已付款項。若已下載本「程式」，則應銷毀本「程式」之一切複本。

### 1. 定義

「授權使用」 – 被授權人取得授權以執行本「程式」之特定層級。該層級之度量單元，得依使用者數量、百萬服務單元（“MSU”）、處理器價值單元（“PVU”）或其他 IBM 指定之使用層級為之。

「IBM」 – International Business Machines Corporation 或其子公司。

「授權手冊」（“LI”） – 內含某「程式」特定資訊及任何附加條款之文件。本「程式」之「授權手冊」可於 [www.ibm.com/software/sla](http://www.ibm.com/software/sla) 網站取得。本「授權手冊」亦可能位於本「程式」之某目錄內，以使用系統指令方式便可找到，此外，亦可能以小冊子形式檢附於本「程式」。

「程式」 – 程式原版及其全部或部分拷貝，包括：1) 機器可閱讀指令與資料；2) 元件、檔案及模組；3) 聲/影內容（如圖像、文稿、錄音，或照片等）；及 4) 相關授權著作物（如授權碼及說明文件等）。

「權利證明書」（“PoE”） – 被授權人之授權使用證明書。被授權人若要求提供保固服務或程式更新優惠價格或其他促銷優惠時，應出示該「權利證明書」。若 IBM 未提供「權利證明書」予被授權人，則 IBM 得接受提供「程式」予被授權人之原供貨廠商（指 IBM 或其轉銷商）所提供之原始已付款銷貨收據、發票或其他銷貨記錄作為「權利證明書」，惟該收據、發票或記錄需指明「程式」名稱及所得「授權使用」。

「保固期」 – 自原被授權人被賦予授權之當日起為期一年。

### 2. 合約架構

本合約包括**第一部分 – 一般條款**、**第二部分 – 各國專有條款**、「授權手冊」以及「權利證明書」，為有關被授權人使用本程式之完整合約，且取代被授權人先前與 IBM 所作之一切口頭或書面協議。第二部分條款得取代或修訂第一部分之條款。互有衝突者，「授權手冊」較該等二部分優先適用。

### 3. 授權

IBM 或 IBM 之供應商擁有本「程式」之著作權，本合約為授權合約而非著作權讓售合約。

IBM 賦予被授權人非專屬性授權，被授權人得依該授權行使下列行為：1) 依「權利證明書」載明之授權使用規定使用本「程式」；2) 製作及安裝多份複本以支援該授權使用；及 3) 製作備份；惟需符合下列規定：

- a. 被授權人已合法取得本「程式」，並遵守本合約之條款；
- b. 不執行該備份，但「程式」無法執行者不在此限；
- c. 被授權人複製本「程式」時，不論其係全部或部分複本，均需於該複本上複製本「程式」之一切著作權標示及其他有關之所有權利標示；
- d. 被授權人應確保任何人於使用本「程式」時（不論藉由本地或遠端存取），1) 僅於被授權人被授權的範圍內使用，2) 並能遵守本合約條款之規定；

- e. 除本合約明文許可外，被授權人不得：(1) 使用、複製、修改或散布本「程式」；(2) 逆向組合 (reverse assemble)、逆向編纂 (reverse compile)、逆向工程 (reverse engineer) 或以其他方法解譯本「程式」，但法律規定不得以契約限制者，不在此限；3) 獨立於該「程式」外而使用其任何元件、檔案、模組、聲/影內容或相關授權著作物；或 4) 轉授權、再授權或出租本「程式」；及
- f. 若被授權人取得之本「程式」為「支援程式」，被授權人僅得利用本「程式」支援「主要程式」，並受「主要程式」授權條款之拘束；或者，若被授權人取得之本「程式」為「主要程式」，被授權人僅得利用一切「支援程式」以支援本「程式」，並受本合約條款之拘束。基於本“f”項之目的，「支援程式」係指屬於其他 IBM 程式（「主要程式」）一部分之程式，並於「主要程式」授權手冊載明為「支援程式」。（若要取得未含該等限制之「支援程式」之個別授權，被授權人應與提供其「支援程式」之原供貨廠商聯絡。）

本授權適用於被授權人製作之本「程式」各複本。

### 3.1 折價換購、更新程式、修正程式及修補程式

#### 3.1.1 折價換購

若本「程式」由折價換購「程式」取代，被取代「程式」之授權立即終止。

#### 3.1.2 更新程式、修正程式及修補程式

被授權人接收「程式」之更新程式、修正程式或修補程式時，表示被授權人接受該「授權手冊」內載明可適用於各該更新程式、修正程式或修補程式之任何附加條款或不同條款。若無附加條款或不同條款，則各該更新程式、修正程式或修補程式僅受本合約拘束。若本「程式」由更新程式取代，被授權人同意立即停止使用該被取代之「程式」。

### 3.2 固定期間授權

若 IBM 係提供本「程式」之固定期間授權，被授權人所取得之授權於期間迄日終止，惟被授權人與 IBM 同意展延者，不在此限。

### 3.3 合約期間與終止

本合約於終止前均屬有效。

被授權人未遵守本合約之條款者，IBM 得終止授權。

任一方當事人因故終止本授權時，被授權人同意立即停止使用並銷燬其持有之一切本「程式」複本。任何本合約中依其性質應於合約終止後存續之條款，於該條款完全履行前仍屬有效，亦適用於貴我雙方個別之繼受人及受讓人。

### 4. 計費

費用之計算，其依據為「權利證明書」載明之「授權使用」。IBM 就任何預付款項或其他已發生或已支付之費用不予退費，惟本合約另有規定者，不在此限。

若被授權人欲增加其「授權使用」，被授權人應事先通知 IBM 或 IBM 授權經銷商，並支付任何相關費用。

### 5. 税金

任何主管機關對本「程式」課以税金、公課或費用（不含對 IBM 之所得所課之稅款），被授權人同意依發票載明之金額支付，惟被授權人提供免稅文件者不在此限。自被授權人取得本「程式」之日起，貴客戶應該「程式」自行負責任何個人財產稅。若任何主管機構就本「程式」於原被授權人被賦予授權時所在國家或地區之境外所為本程式之匯入或匯出、轉讓、存取或使用課以税金，被授權人同意自行負責支付任何所課金額。

## 6. 退款保證

若被授權人因故不滿意本「程式」，且被授權人為原始被授權人，被授權人得終止本授權，並索回原已付款項，惟被授權人需於權利證明書核發日三十天內，將本「程式」及「權利證明書」退還提供本「程式」及「權利證明書」予被授權人之原供貨廠商。若該授權係屬可展延期間之固定期間授權，被授權人需於首次授權期間之前三十日內退還本「程式」及其「權利證明書」，始得取回已付款項。若被授權人已下載本「程式」，被授權人應與提供本「程式」予被授權人之原供貨廠商聯絡，並依其指示以取回已付款項。

## 7. 程式轉讓

只有在第三人同意本合約條款時，被授權人始得轉讓本「程式」及授權之相關權利義務。任一方當事人因故終止本授權後，被授權人即不得轉讓本「程式」予他人。被授權人不得部分轉讓 1) 本「程式」，或 2) 本「程式」之「授權使用」。被授權人轉讓本程式之同時，亦應交付一份本合約之印刷本，包括「授權手冊」及「權利證明書」。轉讓後，被授權人取得之授權即告終止。

## 8. 保證與除外條款

### 8.1 有限保證

IBM 保證當本「程式」使用於特定運作環境時，符合其規格。本「程式」之規格及特定運作環境資訊，可於本「程式」檢附說明文件（如 Readme 檔）或於 IBM 公佈之其他資訊（如通知函）中找到。被授權人同意，該等文件及其他「程式」內容可能僅以英文提供，但當地法律規定不得以契約限制者，不在此限。

此項保證僅適用於本「程式」未經修改之部分。IBM 不保證本程式之運作不會中斷或全無錯誤，亦不保證程式之一切缺陷均可改正。使用本「程式」所生之結果，由被授權人自行負責。

於保證期間，IBM 提供存取權予被授權人，使被授權人得以存取內含下列項目相關資訊之 IBM 資料庫，且不再收任何費用：本「程式」之已知瑕疵、瑕疵更正、限制及略過。請查閱 IBM Software Support Handbook，以取得進一步資訊，其網址如下：[www.ibm.com/software/support](http://www.ibm.com/software/support)。

於保證期間內，倘本「程式」之功能在使用於特定運作環境時無法符合其規格，且所生問題無法藉由 IBM 資料庫所提供之資訊獲得解決，被授權人得將本「程式」及其「權利證明書」退回原供貨廠商（IBM 或其經銷商），以取回已付款項。退回本程式後，被授權人取得之授權即告終止。若被授權人已下載本「程式」，被授權人應與提供本「程式」予被授權人之原供貨廠商聯絡，並依其指示以取回已付款項。

### 8.2 除外條款

以上為 IBM 對被授權人之全部保證責任，取代其他一切明示或默示之擔保（包括但不限於可售性、品質滿意度、符合特殊效用、所有權以及任何未涉侵權之保證。）倘法律規定不得排除明示或默示之保證，則上開除外條款不適用。在此種情況下，保證僅於保證期間有效。該期間後一切保證均喪失效力。倘法律規定不得限制默示保證之有效期間，則該限制無效。

此等保證賦予被授權人特定法定權利，根據不同國家或地區之規定，被授權人亦可能享有其他法定權利。

第 8 節之保證（「保證與除外條款」）僅由 IBM 提供，但第 8.2 子節中之免責聲明（「除外條款」）亦適用於提供第三人程式碼之 IBM 供應商。此等供應商提供該程式碼時，不含任何保證或條件。本段未廢除本合約規定之 IBM 保證義務。

## 9. 被授權人之資料與資料庫

為協助被授權人區隔本「程式」所致問題之成因，IBM 得要求被授權人 1) 允許 IBM 以遠端方式存取被授權人之系統，或 2) 傳送被授權人之資訊或系統資料至 IBM。IBM 並無義務提供前項協助，惟 IBM 與被授權人另立個別書面合約，且 IBM 依該合約同意為被授權人提供本合約規定保證義務以外之支援類型者，不在此限。IBM 應使用錯誤與問題相關資訊以改進其產品與服務，並

協助提供相關之支援供應項目。基於此等目的，IBM 得利用其他 IBM 實體與轉包商（包括位於被授權人所在國家或地區以外之一或多個國家或地區之該等實體與轉包商），且被授權人在此授權 IBM 此等運用作為。

惟就下列事項，被授權人仍應自行負責：1) 被授權人提供予 IBM 之任何資料及任何資料庫之內容；2) 選擇及實施有關資料之存取、安全、加密、使用及傳輸之程序與控管（包括任何可辨識個人身分之資料）；及 3) 備份及回復任何資料庫及任何儲存資料。被授權人不得傳送任何可辨識個人身分之數據資料或其他類型資料，或提供該等資訊之存取權限予 IBM。被授權人因其錯誤提供該等資訊予 IBM 之情事，致使 IBM 因遺失或揭露該等資訊所衍生合理費用及其他款項，包括因任何第三人之索賠所生費用及款項，應由被授權人負責。

## 10. 賠償上限

本第 10 節（「賠償上限」）中之限制與除外條款，除法律規定不得以契約限制之情況外，其他情況一律適用。

### 10.1 IBM 應負責賠償之項目

因 IBM 違約或其他可歸責事由，被授權人得向 IBM 請求損害賠償。無論被授權人基於何種權利請求賠償（包括重大違約、過失、不實陳述或其他契約請求或侵權行為），IBM 就各「程式」本身所發生或相關之全部請求或其他基於本合約所生之請求，IBM 之賠償責任僅限於 1) 人身傷害（包括死亡）之損害、不動產及有形個人資產之毀損；2) 其他實際直接損害，惟不得超過被授權人就該「程式」所支付之授權費用（若該「程式」為定期付款者，則上限為十二個月之費用）。

此項限制亦適用於任何 IBM 之「程式」開發者與供應商。此項限制係 IBM 及 IBM 之「程式」開發者與供應商之共同賠償上限。

### 10.2 IBM 毋需負責賠償之項目

在任何情況下，IBM、IBM 之「程式」開發者或供應商對下列情事均不負賠償責任，即使被告知該情事有可能發生時，亦同：

- a. 資料之滅失或毀損；
- b. 特殊損害、附帶損害、懲罰性損害、間接損害或任何衍生性經濟損害；或
- c. 所失利益、利潤、營業、收益、商譽或預期結餘等項之損失。

## 11. 查核條款

基於本 11 節（「查核條款」）之目的，「IPLA 程式條款」係指 1) 本合約與 IBM 所提供之相關契約修訂及交易文件；及 2) IBM 軟體規範（此等規範可於 IBM Software Policy 網站 ([www.ibm.com/softwarepolicies](http://www.ibm.com/softwarepolicies)) 找到），包括但不限於有關備份、子容量計價及移轉之原則。

本第 11 節所規定之權利義務，於任何本「程式」授權期間及其後二年內有效。

### 11.1 查核程序

被授權人同意作成、保留以下各項資料並將其提供予本公司及其稽核員：書面記錄、系統工具輸出及其他足以查核被授權人安裝及使用本「程式」時是否遵守 IPLA 程式條款（包括 IBM 之授權及計價條款）之系統資訊。被授權人就下列事項負責：1) 確保未逾其授權使用之範圍；及 2) 遵從 IPLA 程式條款。

IBM 為合理期間之通知後，得查核有關被授權人於一切地點或環境基於任何目的安裝或使用本「程式」時是否遵循本合約其他條款（包括相關之附件及交易文件）。該項查核，將以較不干擾被授權人業務之方式為之，並得於被授權人之正常上班時間內，在被授權人所在處所為之。IBM 得請求獨立稽核員協助進行該項查核，惟 IBM 應與該稽核員訂立適當之書面保密合約。



## 11.2 紛爭解決

如該項查核指出被授權人使用本「程式」時逾越其授權使用範圍或未遵守 IPLA 程式條款者，IBM 將以書面通知被授權人。被授權人同意立即支付 IBM 於發票載明之下列費用：1) 逾越授權使用範圍之任何使用行為之應付費用；2) 逾越授權使用範圍之使用期間所應支付之程式支援費用，惟最高不得超過二年；及 3) 因查核所致生之附加費用及其他賠償責任。

## 12. 第三人注意事項

本「程式」可能內含第三人程式碼，該程式碼係由 IBM（而非第三人）依本合約提供授權予被授權人。檢附之第三人程式碼注意事項（「第三人注意事項」）僅供被授權人參考之用。該等注意事項可於本「程式」之 NOTICES 檔中找到。有關如何取得某些第三人程式碼之資訊，可於「第三人注意事項」中找到。若 IBM 於「第三人注意事項」中指出第三人程式碼為「可修改第三人程式碼」，則 IBM 授予被授權人下列權利：1) 修改「可修改第三人程式碼」及 2) 對直接連結「可修改第三人程式碼」之「程式」模組進行還原工程，惟被授權人僅得基於就該第三人程式碼所為修改之除錯目的而為之。IBM 之服務與支援義務，僅適用於未修改之「程式」。

## 13. 一般條款

- a. 合約不影響任何不得以契約限制或拋棄之法定消費者權益。
- b. 若 IBM 係以有體物之形式提供「程式」予被授權人，IBM 於交付該等「程式」予 IBM 指定之運輸人時，即完成其出貨及交付之義務，但被授權人與 IBM 另有書面合意者，不在此限。
- c. 本合約中有任何條款被推定為失效或不能執行者，本合約之其餘條款仍具完整之法定效力。
- d. 被授權人同意遵從一切進出口相關法令規章，包括美國就若干終端使用行為或若干使用者所立出口禁運與制裁之法令規章及禁制令。
- e. 被授權人同意授權 International Business Machines Corporation (IBM) 及其子公司（及其繼受人與受讓人、承包商及 IBM 事業夥伴），得於其等進行業務之任何處所，執行有關產品及服務業務，或促進 IBM 與被授權人之業務關係時，得儲存並使用被授權人之業務聯絡資訊。
- f. 任一方於主張他方未依本合約履行其義務之前，均應給予他方有合理補正之機會。雙方應本於誠信原則解決雙方之間有關本合約之一切紛爭、爭論或主張。
- g. 除法律禁止以合約拋棄或限制之，否則：(1) 任一方均不得於訴訟事由發生逾二年後，就本合約或依其所為任何交易所生或相關事由提出任何形式之法律訴訟；且 (2) 於該時限後，就本合約或依其所為任何交易所生或相關事由提出之任何法律訴訟，及一切有關各該訴訟之個別權利，一律喪失其法律效力。
- h. 被授權人與 IBM 均無需對不可抗力因素造成之損害負責。
- i. 本合約不為任何第三人創設權利或訴訟法上之請求權，此外，任何第三人向被授權人提出之索賠要求，IBM 亦概不負責，但上列第 10.1 子節（「IBM 應負責賠償之項目」）另有規定，IBM 依法應對該第三人負責之人身傷害（包括死亡）或不動產、個人有形資產之毀損應負賠償之責，不在此限。
- j. 訂立本合約時，雙方當事人之任一方均未依賴本合約未載明之任何陳述，包括但不限於就以下各項所為之任何陳述：1) 以上第 8 節（「保證與除外條款」）未記載之本「程式」之效能或功能；2) 他方之經驗或建議；或 3) 被授權人可能達成之效果或盈餘。
- k. IBM 與某些機構（稱為「IBM 事業夥伴」）簽署合約，以推廣、銷售及支援某些「程式」。IBM 事業夥伴與 IBM 保持獨立及分開之關係。IBM 就 IBM 事業夥伴之行為或聲明，或其對被授權人應盡之義務，均不負責任。
- l. 被授權人與 IBM 所立其他合約（如「IBM 客戶合約」）之授權與智慧財產賠償條款，不適用於本合約賦予之程式授權。

## 14. 地域範圍及準據法

### 14.1 準據法

在不牽涉法律衝突原則之前提下，貴我雙方同意以被授權人取得本「程式」授權當地之法律為準據法，據以規範、解釋及執行本合約主題所衍生或相關之被授權人與 IBM 雙方之各別權利、職責及義務。

本合約不適用聯合國國際商品買賣契約公約之規定。

14.2 管轄

一切權利、職責及義務均受被授權人取得本「程式」授權當地之法庭管轄。

第二部分 – 各國專有條款

就於以下各國中賦予之授權，下列條款得取代或修改第一部分中之相關條款。第一部分所列之任何條款，如未經此處修訂者，效力維持不變。本第二部分之內容編排如下：

- 第一部分第 14 節（「準據法與管轄」）之多種國家修訂條款；及
- 其他合約條款之亞太國家修訂條款。

第一部分第 14 節（「準據法與管轄」）之多種國家修訂條款

14.1 準據法

第 14.1 節「準據法」第一段之「被授權人取得「程式」授權當地之法律」文句，於下列國家或地區中應由下列文句取代：

亞太地區

- (1) 在香港特別行政區與澳門特別行政區：香港特別行政區 (Hong Kong Special Administrative Region, "SAR") 之法律；及
- (2) 在台灣：台灣之法律。

14.3 仲裁

適用於下列以粗體指出之國家或地區時，下列段落應增為第 14.3 節（「仲裁」）。在適用準據法律與程序規章許可之範圍內，本第 14.3 子節之規定較第 14.2 節（「管轄」）優先適用。

亞太地區

在中華人民共和國：

若雙方未能就爭議達成合意，雙方同意者，交由中國國際經貿仲裁委員會，依此委員會之當時有效規定予以仲裁。仲裁程序應在北京進行，並以中文為之。此裁定結果係最終裁決，並對雙方當事人均具有法定拘束力。於仲裁程序中，除當事人有所爭議並進行仲裁之部分外，本合約將持續執行。

亞太國家修訂

香港特別行政區、澳門特別行政區及台灣

就適用於在台灣及特別行政區取得之授權，本合約中含有「國家或地區」之字句（例如：「原始被授權人被賦予授權之國家或地區」及「被授權人取得本「程式」授權之國家或地區」）應以下列各字句取代：

- (1) 在香港特別行政區：「香港特別行政區」
- (2) 在澳門特別行政區：「澳門特別行政區」
- (3) 在台灣：「台灣」。

中華人民共和國

4. 計費

新增下列條款：

中華人民共和國所生銀行手續費用由被授權人負擔，中華人民共和國境外所生銀行手續費用由 IBM 負擔。



**新加坡**

**10.2 IBM 毋需負責賠償之項目**

刪除 10.2b 中之字詞「特殊」及「經濟」

**13. 一般條款**

下列條款取代第 13.i 項之條款：

依據第十節（賠償上限）所提供予 IBM 供應商及「程式」開發者之權利規定，非本合約當事人者，不得主張為契約之利益第三人而執行本合約任何條款。

**台灣**

**8.1 有限保證**

最後一段刪除。

**10.1 IBM 應負責賠償之項目**

刪除下列文句

本限制亦適用於 IBM 之轉包商及「程式」開發者。此項限制係 IBM 及 IBM 之「程式」開發者與轉包商之共同賠償上限。

# Mezinárodní licenční smlouva pro programy

## Část 1 – Obecná ustanovení

STAŽENÍM, INSTALACÍ, ZKOPÍROVÁNÍM, PŘÍSTUPEM K PROGRAMU NEBO KLEPNUTÍM NA TLAČÍTKO "SOUHLASÍM" NEBO JINÝM POUŽITÍM PROGRAMU VYJADŘUJETE SVŮJ SOUHLAS S TOUTO SMLOUVOU. JESTLIŽE S TĚMITO PODMÍNKAMI SOUHLASÍTE JMÉNEM DRŽITELE LICENCE, PROHLAŠUJETE A ZARUČUJETE, ŽE JSTE PLNĚ ZMOCNĚNI VÁZAT DRŽATEL LICENCE TĚMITO PODMÍNKAMI. JESTLIŽE S TĚMITO PODMÍNKAMI NESOUHLASÍTE:

- NESTAHUJTE, NEINSTALUJTE, NEKOPÍRUJTE PROGRAM, NEPŘÍSTUPUJTE K PROGRAMU, NEPOUŽÍVEJTE TLAČÍTKO "SOUHLASÍM", ANI NEPOUŽÍVEJTE PROGRAM; A
- BEZODKADNĚ VRAŤTE NEPOUŽITÉ NOSIČE, DOKUMENTACI A DOKUMENT O OPRÁVNĚNÍ SUBJEKTU, OD KTERÉHO JSTE JE ZÍSKALI, A BUDE VÁM VVRÁCENA ČÁSTKA, KTEROU JSTE ZA NĚ ZAPLATILI. V PŘÍPADĚ, ŽE DOŠLO KE STAŽENÍ PROGRAMU, ZNIČTE VŠECHNY KOPIE PROGRAMU.

### 1. Definice

**"Oprávněné užívání"** – stanovená úroveň oprávnění Držitele licence provádět nebo spouštět Program. Tuto úroveň lze měřit na základě počtu uživatelů, miliónů servisních jednotek ("jednotky MSU"), jednotek Processor Value Units ("jednotky PVU") nebo na základě jiné úrovně užívání, kterou stanoví IBM.

**"IBM"** je společnost International Business Machines Corporation nebo některá z jejích dceřiných společností.

**"Licenční informace" ("LI")** – dokument uvádějící informace a veškeré dodatečné podmínky specifické pro Program. Licenční informace k Programu jsou k dispozici na adrese [www.ibm.com/software/sla](http://www.ibm.com/software/sla). Dokument Licenční informace je k dispozici rovněž v adresáři Programu – prostřednictvím systémového příkazu – nebo ve formě příručky připojené k Programu.

**"Program"** – níže uvedené komponenty, včetně originálu a všech úplných nebo dílčích kopií: 1) strojově čitelné instrukce a data, 2) komponenty, soubory a moduly, 3) audiovizuální obsah (jako jsou obrazy, text, nahrávky nebo obrázky) a 4) související licenční materiály (jako jsou licenční klíče a dokumentace).

**"Dokument o oprávnění" ("PoE")** – důkaz o oprávněném užívání ze strany Držitele licence. Dokument o oprávnění je rovněž důkazem o nároku Držitele licence na záruku, na ceny za budoucí přechody na vyšší verzi (budou-li nějaká) a na potenciální zvláštní nebo propagační příležitosti. Neposkytne-li IBM Držiteli licence dokument o oprávnění (Proof of Entitlement), pak IBM může akceptovat původní stvrzenku o nákupu nebo jiný doklad o nákupu od subjektu (buď IBM, nebo její prodejce) od kterého Držitel licence získal Program, za předpokladu, že takový doklad uvádí název Programu a zakoupenou úroveň Oprávněného užívání.

**"Záruční lhůta"** – jeden rok, počínaje datem, kdy byla původnímu Držiteli licence udělena licence.

### 2. Struktura smlouvy

Tato Smlouva zahrnuje **Část 1 – Obecná ustanovení**, **Část 2 – Podmínky specifické pro zemi** (jsou-li nějaká), dokument Licenční informace a dokument o oprávnění (Proof of Entitlement) a představuje úplnou dohodu mezi Držitelem licence a IBM ohledně užívání Programu. Nahrazuje veškerá předchozí ústní nebo písemná ujednání mezi Držitelem licence a IBM ohledně užívání Programu Držitelem licence. Podmínky Části 2 mohou nahrazovat nebo upravovat podmínky Části 1. V míře, v níž se vyskytne rozpor podmínek, mají podmínky dokumentu Licenční informace přednost před podmínkami obou Částí.

### 3. Udělení licence

Program je vlastnictvím IBM nebo dodavatele IBM, je chráněn autorskými právy a je k němu poskytováno právo užívání, není prodáván.

IBM uděluje Držiteli licence nevýhradní licenci na 1) užívání Programu až do úrovně Oprávněného užívání uvedené v dokumentu o oprávnění (Proof of Entitlement), 2) vytvoření a instalaci kopií na podporu takového Oprávněného užívání, a 3) vytvoření záložní kopie, to vše za předpokladu, že:

- a. Držitel licence získal Program zákonným způsobem a dodržuje podmínky této Smlouvy;
- b. záložní kopie není spouštěna, ledaže nelze spustit zálohovaný Program;
- c. Držitel licence uvádí všechna upozornění o autorských právech a další výhrady vlastnických práv na každé kopii nebo dílčí kopii Programu;
- d. Držitel licence zajistí, aby každá osoba používající Program (přistupující lokálně nebo vzdáleně) 1) tak činila pouze jménem Držitele licence, a 2) dodržovala podmínky této Smlouvy;
- e. Držitel licence nesmí 1) používat, kopírovat, upravovat nebo distribuovat Program jinak, než je výslovně dovoleno touto Smlouvou; 2) zpětně sestavovat, zpětně kompilovat či jakkoliv překládat Program, není-li to výslovně dovoleno zákonem bez možnosti toto povolení smluvně vyloučit; 3) užívat kterékoli komponenty, soubory, moduly, audiovizuální obsah nebo související licenční materiály nezávisle na Programu; nebo 4) Program sublicencovat, pronajímat či poskytovat formou leasingu; a
- f. jestliže Držitel licence získá tento Program jako Podpůrný program, bude jej používat pouze na podporu Základního programu a v souladu s veškerými omezeními uvedenými v licenci na Základní program, nebo— jestliže Držitel licence získá tento program jako Základní program—bude používat všechny Podpůrné programy pouze na podporu tohoto Programu a v souladu s veškerými omezeními stanovenými v této Smlouvě. Pro účely tohoto bodu "f" znamená "Podpůrný program" program, který je součástí jiného programu IBM ("Základní program") a je v Licenčních informacích k Základnímu programu jako Podpůrný program uveden. (Chce-li Držitel licence získat samostatnou licenci na neomezené užívání Podpůrného programu, musí se obrátit na subjekt, od něhož Podpůrný program zakoupil.)

Tato licence se vztahuje na každou kopii Programu, kterou Držitel licence vytvoří.

### **3.1 Přechody typu Trade-up, aktualizace a opravy**

#### **3.1.1 Přechody typu Trade-up**

V případě nahrazení Programu programem typu Trade-up platnost licence nahrazeného Programu okamžitě končí.

#### **3.1.2 Aktualizace a opravy**

Pokud Držitel licence obdrží aktualizaci nebo opravu k Programu, akceptuje veškeré dodatečné nebo odlišné podmínky, které jsou uvedeny v Licenčních informacích pro tuto aktualizaci nebo opravu. Nejsou-li k aktualizaci či opravě dodatečné nebo odlišné podmínky připojeny, pak se taková aktualizace či oprava řídí výlučně podmínkami této Smlouvy. Držitel licence se zavazuje, že v případě nahrazení Programu aktualizací přestane původní Program okamžitě používat.

### **3.2 Licence na dobu určitou**

Licencuje-li IBM Program na dobu určitou, pak licenční oprávnění Držitele licence končí ke konci takové doby určité. Výjimkou je případ, kdy se Držitel licence a IBM dohodli na prodloužení licence.

### **3.3 Trvání a ukončení Smlouvy**

Tato Smlouva je účinná až do jejího ukončení.

IBM je oprávněna ukončit licenci Držitele licence, jestliže Držitel licence nedodrží podmínky této Smlouvy.

Ukončí-li kterákoli ze stran licenci z jakéhokoli důvodu, Držitel licence je povinen okamžitě přestat používat a zničit všechny kopie Programu, které má ve svém držení. Veškeré podmínky této Smlouvy, jež svou povahou přetrvávají ukončení této Smlouvy, zůstávají právně účinné až do jejich splnění a vztahují se rovněž na právní nástupce a postupníky smluvních stran.

### **4. Cena**

Poplatky jsou založeny na získané úrovni Oprávněného užívání, která je uvedena v dokumentu o oprávnění (Proof of Entitlement). IBM nevrací ani jinak nerefunduje již splatné nebo zaplacené částky, s výjimkou případů, které jsou specifikovány jinde v této smlouvě.

Přeje-li si Držitel licence úroveň Oprávněného užívání zvýšit, je povinen o této skutečnosti předem informovat IBM nebo oprávněného prodejce IBM a uhradit veškeré příslušné poplatky.

## 5. Daně

Bude-li na Program uvaleno orgánem k tomu oprávněným clo, daň či poplatek, vyjma těch, které jsou založeny na čistém příjmu IBM, pak se Držitel licence zavazuje, že uhradí částku uvedenou na faktuře nebo předloží potvrzení o osvobození od takové povinnosti. Od data obdržení Programu je Držitel licence odpovědný za úhradu veškerých případných majetkových daní. Jestliže některý úřad uvalí clo, daň či poplatek na dovoz, vývoz, přenos, přístup nebo užívání Programu mimo zemi, v níž byla původnímu Držiteli licence udělena licence, pak je Držitel licence povinen uhradit jakoukoli takto stanovenou částku.

## 6. Záruka vrácení peněz

Není-li Držitel licence z nějakého důvodu spokojen s Programem a je původním Držitelem (nabyvatelem) licence, je oprávněn licenci ukončit a může mu být částka, kterou za Program zaplatil, vrácena, avšak za předpokladu, že Program a dokument o oprávnění (Proof of Entitlement) subjektu, od kterého je získal, vrátí do 30 dní od data vystavení dokumentu o oprávnění (Proof of Entitlement) pro Držitele licence. Jedná-li se o licenci na dobu určitou, kterou lze prodloužit, má Držitel licence právo na refundaci pouze v případě, že Program a příslušný dokument o oprávnění (Proof of Entitlement) vrátí během prvních 30 dní původního období. Pokud Držitel licence Program stáhnul, měl by požádat subjekt, od kterého jej získal, o pokyny, jak dosáhnout vrácení peněz.

## 7. Převod programu

Držitel licence je oprávněn převést Program a veškerá licenční práva a povinnosti Držitele licence na jinou stranu pouze za předpokladu, že daná strana akceptuje podmínky této Smlouvy. V případě ukončení licence kteroukoli smluvní stranou bez ohledu na důvod nesmí Držitel licence Program na jinou smluvní stranu převést. Držitel licence není oprávněn převádět část 1) Programu; nebo 2) Oprávněné užívání programu. S převodem Programu musí Držitel licence předat rovněž tištěnou verzi této Smlouvy, včetně Licenčních informací a dokumentu o oprávnění (Proof of Entitlement). Licenční oprávnění Držitele licence Okamžitě po převodu končí.

## 8. Záruka a vyloučení záruky

### 8.1 Omezená záruka

IBM zaručuje, že Program, pro který je poskytována záruka, je-li používán v určeném operačním prostředí, bude odpovídat příslušným Specifikacím. Specifikace k Programu a informace o určeném provozním prostředí jsou k dispozici v dokumentaci připojené k Programu (jako je například soubor Readme) nebo ve formě jiných informací zveřejněných společností IBM (jako je například oznamovací leták). Držitel licence bere na vědomí, že tato dokumentace a další informace týkající se programu mohou být dodány pouze v anglickém jazyce, není-li to výslovně stanoveno příslušnými právními předpisy bez možnosti vzdání se nebo omezení práva smluvně.

Záruka se vztahuje pouze na nezměněnou část Programu. IBM nezaručuje nepřerušovaný či bezchybný provoz Programu, ani nezaručuje, že opraví veškeré chyby Programu. Za výsledky užívání Programu nese odpovědnost Držitel licence.

Během záruční doby poskytne IBM Držiteli licence bezplatný přístup k databázím IBM obsahujícím informace o známých chybách Programu, o opravách chyb, omezeních a způsobech, jak chyby obejít. Další informace najdete v příručce IBM Software Support Handbook na adrese [www.ibm.com/software/support](http://www.ibm.com/software/support).

Nevyžaduje-li Program během Záruční lhůty zaručenou funkčnost a problém nelze vyřešit prostřednictvím informací uvedených v databázích IBM, smí Držitel licence vrátit Program a dokument o oprávnění (Proof of Entitlement) subjektu (IBM nebo její prodejce), od kterého Program získal, a bude mu vrácena částka, kterou zaplatil. Po vrácení Programu licenční oprávnění Držitele licence končí. Pokud Držitel licence Program stáhnul, měl by požádat subjekt, od kterého jej získal, o pokyny, jak dosáhnout vrácení peněz.

### 8.2 Vyloučení záruky

**TYTO ZÁRUKY JSOU JEDINÝMI ZÁRUKAMI DRŽITELE LICENCE A NAHRAZUJÍ VEŠKERÉ OKOLNOSTI, VČETNĚ—A TO ZEJMÉNA—ZÁRUK ČI PODMÍNEK PRODEJNOSTI, USPOKOJIVÉ KVALITY, VHODNOSTI PRO URČITÝ ÚČEL, PRÁVNÍHO NÁROKU A JAKÉKOLI ZÁRUKY ČI PODMÍNKY NEPOROŠENÍ PRÁV TŘETÍCH STRAN. NĚKTERÉ STÁTY NEBO JURISDIKCE NEPŘIPOUŠTĚJÍ VYLOUČENÍ VÝSLOVNÝCH NEBO IMPLICITNÍCH ZÁRUK, A PROTO SE NA VÁS VÝŠE UVEDENÉ VÝJIMKY A OMEZENÍ NEMUSÍ VZTAHOVAT. V**

**TAKOVÉM PŘÍPADĚ JE PLATNOST ZÁRUKY ČASOVĚ OMEZENÁ POUZE NA UVEDENOU ZÁRUČNÍ DOBU. PO UKONČENÍ TĚTO DOBY IBM NEPOSKYTUJE ŽÁDNÉ DALŠÍ ZÁRUKY. NĚKTERÉ STÁTY NEBO JURISDIKCE NEPŘIPOUŠTĚJÍ OMEZENÍ DOBY TRVÁNÍ IMPLICITNÍ ZÁRUKY, A PROTO SE VÝŠE UVEDENÉ OMEZENÍ NA DRŽITELE LICENCE NEMUSÍ VZTAHOVAT.**

**TYTO ZÁRUKY POSKYTUJÍ DRŽITELI LICENCE SPECIFICKÁ ZÁKONNÁ PRÁVA. DRŽITEL LICENCE MŮŽE MÍT ROVNĚŽ DALŠÍ PRÁVA, KTERÁ SE LIŠÍ STÁT OD STÁTU NEBO JURISDIKCE OD JURISDIKCE.**

**ZÁRUKY V TOMTO ODDÍLU 8 (ZÁRUKA A VYLOUČENÍ ZÁRUKY) POSKYTUJE VÝHRADNĚ IBM. VYLOUČENÍ V TOMTO BODU 8.2 (VYLOUČENÍ ZÁRUKY) SE VŠAK VZTAHUJE ROVNĚŽ NA DODAVATELE IBM, KTEŘÍ POSKYTUJÍ KÓD TŘETÍCH STRAN. TAKOVÍ DODAVATELÉ POSKYTUJÍ DANÝ KÓD BEZ ZÁRUK ČI PODMÍNEK JAKÉHOKOLI DRUHU. TENTO Odstavec NERUŠÍ ZÁRUČNÍ POVINNOSTI IBM VYPLÝVAJÍCÍ Z TĚTO SMLOUVY.**

## **9. Data a databáze Držitele licence**

IBM může s cílem pomoci Držiteli licence s určením problému s Programem požadovat, aby Držitel licence 1) umožnil IBM vzdálený přístup k systému Držitele licence, nebo 2) aby zaslal IBM příslušné údaje nebo systémová data. IBM však není povinna poskytnout takovou asistenci, pokud IBM a Držitel licence neuzavřeli samostatnou písemnou dohodu, na jejímž základě se IBM zavazuje, že bude Držiteli licence poskytovat tento typ podpory, který přesahuje záruční povinnosti IBM vyplývající z této Smlouvy. IBM za všech okolností používá informace o chybách a problémech ke zdokonalování jejích produktů a služeb a poskytuje klientům asistenci prostřednictvím souvisejících nabídek podpory. K tomuto účelu může IBM využít služeb subjektů a dodavatelů IBM (včetně subjektů a dodavatelů z jedné nebo více jiných zemí, než je země, v níž má sídlo Držitel licence) a Držitel licence opravňuje IBM k takovému využití služeb subjektů a dodavatelů IBM.

Držitel licence zůstává odpovědný za 1) veškerá data a obsah jakékoli databáze, kterou pro IBM zpřístupní, 2) výběr a implementaci postupů a kontrol týkajících se přístupu, zabezpečení, šifrování, užívání a přenosu dat (včetně veškerých osobních údajů), a 3) zálohování a obnovu jakékoli databáze a veškerých uložených dat. Držitel licence nesmí odeslat IBM žádné osobní údaje nebo poskytnout IBM přístup k žádným osobním údajům, ať už ve formě dat nebo v nějaké jiné formě, a nese odpovědnost za veškeré přiměřené náklady nebo jiné výdaje, které mohou IBM vzniknout v souvislosti s neoprávněným poskytnutím takových informací IBM nebo v souvislosti se ztrátou či zpřístupněním informací ze strany IBM, včetně těch založených na nárocích třetích stran.

## **10. Omezení odpovědnosti**

Omezení odpovědnosti a vyloučení záruky v tomto oddíle 10 (Omezení odpovědnosti) se aplikuje v plném rozsahu, pokud není zakázáno ze zákona, bez možnosti smluvního zřeknutí se.

### **10.1 Položky, za které IBM nese odpovědnost**

Mohou nastat okolnosti, kdy má Držitel licence z důvodu neplnění závazku na straně IBM nebo jiné odpovědnosti nárok na náhradu škody od IBM. Bez ohledu na příčinu vzniku nároku Držitele licence na náhradu škody od IBM (včetně podstatného porušení, nedbalosti, přivedení v omyl nebo jiného porušení závazkového či mimozávazkového vztahu), odpovídá IBM pouze za nároky vzniklé na základě každého Programu nebo ve spojení s ním nebo za nároky jinak vzniklé na základě této Smlouvy, a tato odpovědnost nesmí přesáhnout částku jakýchkoli 1) škod na zdraví (včetně smrti) a škod na nemovitém a osobním hmotném majetku, a 2) jiných skutečných přímých škod až do výše poplatků, které Držitel licence zaplatil za Program, který je předmětem nároku (pokud je Program licencován na dobu určitou, pak do výše poplatků za dvanáct měsíců).

Tento limit se vztahuje rovněž na veškeré vývojáře a dodavatele Programů IBM. Jedná se o maximum, za které IBM a její vývojáři a dodavatelé Programů společně odpovídají.

### **10.2 Položky, za které IBM nenese odpovědnost**

**VYJMA PŘÍPADŮ, KDY JE TO VÝSLOVNĚ POŽADOVÁNO PRÁVNÍMI PŘEDPISY BEZ MOŽNOSTI VZDÁNÍ SE PRÁVA SMLUVNĚ, NEBUDOU IBM, JEJÍ SUBDODAVATELÉ ANI VÝVOJÁŘI PROGRAMŮ ZA ŽÁDNÝCH OKOLNOSTÍ ODPOVĚDNÍ ZA NÁSLEDUJÍCÍ, A TO V PŘÍPADĚ, ŽE BY IBM BYLA NA TAKOVOU MOŽNOST UPOZORNĚNA:**

#### **a. ZA ZTRÁTU DAT NEBO ŠKODU NA DATECH;**

- b. **ZA ZVLÁŠTNÍ, NAHODILÉ NEBO NEPŘÍMÉ ŠKODY ČI ZA NÁSLEDNÉ HOSPODÁŘSKÉ ŠKODY; NEBO**
- c. **ZA UŠLÝ ZISK, ZTRÁTU OBCHODNÍCH PŘÍLEŽITOSTÍ, UŠLÉ PŘÍJMY, ÚJMU ZPŮSOBENOU POŠKOZENÍM DOBRÉHO JMÉNA NEBO ZA NEDOSAŽENÉ PŘEDPOKLÁDANÉ ÚSPORY.**

## **11. Kontrola dodržování podmínek**

Pro účely tohoto oddílu 11 (Kontrola dodržování podmínek), znamenají "Podmínky IPLA" 1) tuto Smlouvu a příslušné dodatky a transakční dokumenty dodané ze strany IBM, a 2) softwarové strategie IBM, které jsou k dispozici na webových stránkách IBM Software Policy ([www.ibm.com/softwarepolicies](http://www.ibm.com/softwarepolicies)), včetně – a to zejména – strategií týkajících se zálohování, cen pro neúplný server a migrace.

Práva a povinnosti uvedená dále v tomto oddílu 11 zůstávají v platnosti po dobu trvání licence a dva roky poté.

### **11.1 Proces ověřování**

Držitel licence souhlasí, že vytvoří, bude uchovávat a poskytne IBM a jejím auditorům přesné písemné záznamy, výstupy systémových nástrojů a další systémové informace, které budou dostatečné k ověření, že Držitel licence užívá všechny Programy v souladu s podmínkami smlouvy IPLA včetně – a to zejména – všech příslušných podmínek IBM týkajících se licencování a cen. Držitel licence je odpovědný za to, že 1) zajistí, že nebude překročena jeho úroveň Oprávněného užívání, a 2) bude jednat v souladu s podmínkami smlouvy IPLA.

IBM je na základě oznámení zaslaného v přiměřeně dlouhé lhůtě předem oprávněna zkontrolovat, zda Držitel licence dodržuje podmínky smlouvy IPLA na všech pracovištích a pro všechna prostředí, v nichž Držitel licence používá Programy (k jakémukoli účelu) v souladu s podmínkami smlouvy IPLA. Takové ověření bude provedeno způsobem, jenž bude minimalizovat rušení obchodní činnosti Držitele licence a smí být provedeno v prostorách Držitele licence během řádné pracovní doby. IBM je oprávněna využít k takové kontrole služeb nezávislého auditora, a to za předpokladu, že IBM s tímto auditorem uzavře písemnou smlouvu o ochraně důvěrných informací.

### **11.2 Rozhodnutí**

IBM bude Držitele písemně informovat, jestliže bude v rámci kontroly dodržování podmínek zjištěno, že Držitel licence užívá Program v rozsahu přesahujícím úroveň jeho Oprávněného užívání nebo jinak nedodržuje podmínky smlouvy IPLA. Držitel licence se zavazuje, že neprodleně uhradí přímo IBM poplatky, které IBM uvede na faktuře za 1) jakékoli takové nadměrné užívání, 2) podporu pro takové nadměrné užívání za dobu trvání takového nadměrného užívání nebo za dva roky (podle toho, které období je kratší), a 3) jakékoli dodatečné poplatky nebo jiné částky, které budou stanoveny na základě výsledků takové kontroly.

## **12. Poznámky třetích stran**

Program může zahrnovat kód třetích stran, ke kterému Držiteli licence poskytuje licenci na základě této Smlouvy IBM, nikoli třetí strana. Poznámky (jsou-li nějaké) týkající se kódu třetích stran ("Poznámky třetích stran") jsou uvedeny pouze pro informaci Držitele licence. Tyto poznámky mohou být uvedeny v souboru (ech) NOTICES k Programu. Informace o způsobu získání zdrojového kódu pro určitý kód třetích stran najdete v Poznámkách třetích stran. Jestliže IBM v Poznámkách třetích stran označí kód třetích stran za "Kód třetích stran s možností modifikace", pak IBM opravňuje Držitele licence k 1) modifikaci Kódu třetích stran s možností modifikace a 2) ke zpětné kompilaci Programových modulů, které mají přímé rozhraní ke Kódu třetích stran s možností modifikace, za předpokladu, že tyto činnosti budou sloužit výhradně k ladění modifikací prováděných Držitelem licence u takového Kódu třetích stran. Závazek IBM týkající se servisu a podpory (je-li nějaký) se vztahuje pouze na nemodifikovaný Program.

## **13. Všeobecná ustanovení**

- a. Touto Smlouvou nejsou dotčena zákonná práva spotřebitelů, jichž se není možno smluvně zříci nebo jež nemohou být smluvně omezena.
- b. Není-li mezi Držitelem licence a IBM písemně dohodnuto jinak, splní IBM u Programů, které dodává Držiteli licence v hmotné podobě, svůj závazek odeslat a dodat předmětné Programy jejich předáním přepravci určenému IBM.
- c. V případě, že by některé ustanovení této Smlouvy bylo považováno za neplatné nebo nevymahatelné, zůstanou zbývající ustanovení této Smlouvy v plné platnosti a účinnosti.

- d. Každá ze smluvních stran bude postupovat v souladu s příslušnými vývozními a dovozními právními předpisy, včetně právních předpisů Spojených států amerických, které zakazují či omezují vývoz pro účely určitého použití či pro určité koncové uživatele. Držitel licence se zavazuje, že bude postupovat v souladu s příslušnými vývozními a dovozními právními předpisy, včetně právních předpisů Spojených států amerických, které zakazují či omezují vývoz pro účely určitého použití či pro určité koncové uživatele.
- e. Držitel licence opravňuje společnost International Business Machines Corporation a její příbuzné společnosti (a jejich právní nástupce, postupníky, dodavatele a obchodní partnery IBM) k uchování a užívání kontaktních informací Držitele licence všude, kde tito provádějí svou obchodní činnost ve spojení s produkty a službami IBM, nebo v rámci podpory obchodního vztahu IBM s držitelem Licence.
- f. Každá ze smluvních stran poskytne druhé straně přiměřeně možnost nápravy předtím, než vůči druhé straně vznese nároky související s neplněním jejich povinností z této Smlouvy. Smluvní strany se pokusí v dobré vůli vyřešit jakékoli spory, neshody či nároky vztahující se k této Smlouvě.
- g. Nevyžadují-li příslušné právní předpisy jinak, bez možnosti smluvního zřeknutí se nebo omezení: 1) žádná ze smluvních stran nezahájí právní úkon (bez ohledu na jeho formu) ohledně jakéhokoli nároku vzniklého na základě této Smlouvy nebo ve spojení s touto Smlouvou později než dva roky od data vzniku příčiny takového právního úkonu; a 2) veškeré takové nároky a všechna příslušná práva vztahující se k takovým nárokům se po vypršení takového časového limitu považují za promlčené.
- h. Žádná ze smluvních stran nenese odpovědnost za nesplnění jakýchkoli závazků, pokud k takovému neplnění došlo z důvodů vzniklých nezávisle na její vůli.
- i. Tato Smlouva nezakládá pro žádnou třetí stranu žádné právo nebo důvod k žalobě a IBM nenese odpovědnost za žádné nároky třetích stran vznesené vůči Držiteli licence, s výjimkou, jak uvádí odstavec 10.1 (Položky, za které IBM nenese odpovědnost) výše, škody na zdraví (včetně smrti) nebo škody na nemovitém nebo hmotném osobním majetku, za které je IBM vůči takové třetí straně právně odpovědná.
- j. Obě smluvní strany souhlasí, že se po uzavření této Smlouvy nebudou opírat o žádné prohlášení, které není uvedeno v této Smlouvě včetně – a to zejména – jakéhokoli prohlášení týkajícího se: 1) výkonu či fungování Programu jinak, než je výslovně zaručeno v oddílu 8 (Záruka a vyloučení záruky) výše; 2) zkušenosti nebo doporučení jiných stran; nebo 3) jakýchkoli výsledků či úspor, kterých může Držitel licence dosáhnout.
- k. IBM uzavřela smlouvy s určitými organizacemi (dále jen "Obchodní partneři IBM") za účelem nabízení, zprostředkování prodeje a podpory vybraných Programů. Obchodní partneři IBM zůstávají organizacemi nezávislými na IBM. IBM nenese odpovědnost za jednání nebo prohlášení Obchodních partnerů IBM, ani za jejich závazky vůči Držiteli licence.
- l. Licenční podmínky a podmínky týkající se náhrady škody v souvislosti s právem k duševnímu vlastnictví, které jsou zakotveny v jiných smlouvách, jež Držitel licence uzavřel s IBM (jako je například smlouva IBM Customer Agreement), se nevztahují na licence na Program udělené na základě této Smlouvy.

## 14. Geografický rozsah a rozhodné právo

### 14.1 Rozhodné právo

Obě strany souhlasí s tím, že se interpretace a vymáhání všech práv, povinností a závazků Držitele licence i IBM, vyplývajících z této Smlouvy nebo se k ní nějakým způsobem vztahujících, bez ohledu na konflikt právních principů, řídí právními předpisy země, v níž Držitel licence zakoupil licenci na Program.

Úmluva OSN o smlouvách o mezinárodní koupi zboží se neaplikuje.

### 14.2 Jurisdikce

Všechna práva, povinnosti a závazky budou podléhat rozhodnutím příslušných soudů země, v níž Držitel licence obdržel licenci na Program.

## Část 2 – Podmínky specifické pro zemi

Pro licence udělené v České republice platí, že níže uvedené podmínky nahrazují nebo mění podmínky uvedené v Části 1. Veškeré podmínky uvedené v Části 1, které nejsou tímto dodatkem dotčeny, zůstávají v plné platnosti v původním znění.

### DODATKY PRO ZEMĚ EVROPY, STŘEDNÍHO VÝCHODU A AFRIKY (EMEA)

#### ČLENSKÉ STÁTY EVROPSKÉ UNIE

##### 8. Záruka a vyloučení záruky

*Níže uvedený text se přidává k oddílu 8 (Záruka a vyloučení záruky):*

Spotřebitelé z Evropské unie ("EU") mají zákonná práva vyplývající z národní legislativy upravující prodej spotřebitelského zboží. Taková práva nejsou dotčena ustanoveními uvedenými v tomto oddílu 8 Záruka a Vyloučení záruky. Územní rozsah Omezené záruky je celosvětový.

##### 13. Všeobecná ustanovení

*Níže uvedený text nahrazuje bod 13.e:*

(1) **Definice**—Pro účely tohoto bodu 13.e se aplikují následující dodatečné definice:

- (a) **Informace o obchodních kontaktech**—kontaktní informace vztahující se k obchodním vztahům, které Držitel licence sdělí IBM, včetně jmen, funkcí, obchodních adres, telefonních čísel, e-mailových adres zaměstnanců a dodavatelů Držitele licence. Pro Rakousko, Itálii a Švýcarsko zahrnují Obchodní kontaktní informace rovněž údaje o Zákazníkovi a jeho dodavatelích jako právních subjektech (například údaje o příjmech Zákazníka a další transakční informace).
- (b) **Obchodní kontakty**—zaměstnanci a dodavatelé Držitele licence, jichž se týkají Informace o obchodních kontaktech.
- (c) **Úřad na ochranu osobních údajů**—úřad zřízený dle zákona o ochraně osobních údajů a zákona o elektronických komunikacích příslušné země nebo, u zemí, jež nejsou členy EU, úřad odpovědný za kontrolu ochrany osobních údajů v této zemi, nebo (pro kteroukoli z výše uvedených možností) řádně jmenovaný právní nástupce takového úřadu.
- (d) **Právní předpisy na ochranu osobních údajů a o elektronických komunikacích**—(i) příslušné místní právní předpisy a nařízení v platném znění, které implementují požadavky Směrnice Evropského parlamentu a Rady 95/46/ES (o ochraně fyzických osob v souvislosti se zpracováním osobních údajů a o volném pohybu těchto údajů) a Směrnice Evropského parlamentu a Rady 2002/58/ES (o zpracování osobních údajů a ochraně soukromí v odvětví elektronických komunikací); nebo (ii) u zemí, jež nejsou členy EU, právní předpisy a/nebo nařízení schválená v příslušné zemi a týkající se ochrany osobních údajů a regulace elektronických komunikací, včetně (pro kteroukoli z výše uvedených možností) jakékoli jejich zákonné náhrady nebo změny.
- (e) **Skupina IBM**—společnost International Business Machines Corporation, Armonk, New York, USA, její dceřinné společnosti a jejich příslušní Obchodní partneři a subdodavatelé.

(2) Držitel licence opravňuje IBM:

- (a) ke zpracování a používání Informací o obchodních kontaktech v rámci Skupiny IBM pro účely poskytování podpory Držiteli licence, včetně poskytování služeb, a pro účely podporování obchodních vztahů mezi Držitelem licence a Skupinou IBM včetně, nikoli výhradně, kontaktování Obchodních kontaktů (e-mailem nebo jinak) a marketingu produktů a služeb Skupiny IBM ("Uvedený účel"); a
- (b) k zpřístupnění Informací o obchodních kontaktech v rámci Skupiny IBM pouze v souvislosti s Uvedeným účelem.



- (3) IBM se zavazuje zpracovávat Informace o obchodních kontaktech v souladu s platnými právními předpisy na ochranu osobních údajů a o elektronických komunikacích a užívat pouze pro Uvedený účel.
- (4) Držitel licence prohlašuje, že získal (nebo získá), a to v rozsahu, v jakém to požadují právní předpisy na ochranu osobních údajů a o elektronických komunikacích, příslušné souhlasy od Obchodních kontaktů, které patřičně o této skutečnosti informoval (nebo informuje), aby bylo Skupině IBM umožněno zpracovávat a užívat Informace o obchodních kontaktech za účelem komunikace s těmito kontakty, včetně komunikace emailem, a to v souladu s Uvedeným účelem.
- (5) Držitel licence souhlasí s tím, že IBM může přenášet Informace o obchodních kontaktech mimo oblast Evropského hospodářského prostoru za předpokladu, že takový přenos bude probíhat na základě smluvních podmínek schválených Úřadem na ochranu osobních údajů zajišťujících odpovídající ochranu práv a svobod osob, kterých se tyto údaje týkají, nebo že takový přenos bude jinak povolen právními předpisy na ochranu osobních údajů a o elektronických komunikacích.

# Conditions Internationales d'Utilisation de Logiciel

## Chapitre 1 – Dispositions Générales

EN TÉLÉCHARGEANT, EN INSTALLANT OU EN COPIANT LE LOGICIEL, EN CLIQUANT SUR LE BOUTON "ACCEPTER" OU EN ACCÉDANT AU LOGICIEL, LE DÉTENTEUR DE LA LICENCE ACCEPTE LES DISPOSITIONS DU PRÉSENT CONTRAT. SI VOUS ACCEPTEZ LES PRÉSENTES DISPOSITIONS POUR LE COMPTE DU DÉTENTEUR DE LA LICENCE, VOUS CERTIFIEZ AVOIR QUALITÉ POUR ENGAGER LE DÉTENTEUR DE LA LICENCE À RESPECTER LESDITES DISPOSITIONS. SI VOUS N'ACCEPTEZ PAS CES DISPOSITIONS,

- NE TÉLÉCHARGEZ PAS, N'INSTALLEZ PAS, NE COPIEZ PAS, N'ACCÉDEZ PAS, NE CLIQUEZ PAS SUR LE BOUTON "ACCEPTER" ET N'UTILISEZ PAS LE LOGICIEL ; ET
- DEMANDEZ À ÊTRE REMBOURSÉ DE LA SOMME QUE VOUS AVEZ PAYÉE À LA PERSONNE AUPRÈS DE LAQUELLE VOUS AVEZ ACQUIS LE LOGICIEL, EN LUI RETOURNANT, SANS DÉLAI, LES SUPPORTS NON UTILISÉS, LA DOCUMENTATION, AINSI QUE L'AUTORISATION D'UTILISATION DU LOGICIEL. SI VOUS AVEZ DÉTRUITS LE LOGICIEL, DÉTRUISEZ-EN TOUS LES EXEMPLAIRES.

### 1. Définitions

"**Utilisation Autorisée**" désigne les limites d'autorisation concédées au Détenteur de la Licence pour exécuter le Logiciel. Ce niveau peut être calculé en fonction du nombre d'utilisateurs, du nombre de millions d'unités de service ("MSU"), du nombre d'Unités de Valeur par Cœur Processeur ("PVU") ou d'un autre niveau d'utilisation spécifié par IBM.

"**IBM**" désigne la compagnie "International Business Machines Corporation" ou l'une de ses filiales.

"**Informations sur la Licence**" ("**LI**") désigne un document qui contient des informations et des dispositions complémentaires spécifiques concernant un Logiciel donné. Les Informations sur la Licence sont disponibles à l'adresse suivante : [www.ibm.com/software/sla](http://www.ibm.com/software/sla). Elles peuvent aussi se trouver dans le répertoire du Logiciel accessible par une commande système ou dans une brochure livrée avec le Logiciel.

"**Logiciel**" désigne les éléments suivants, y compris l'original et toutes les copies partielles ou totales de chacun des éléments : 1) instructions et données lisibles par machine ; 2) composants, fichiers et modules ; 3) contenus audiovisuels (images, textes, enregistrements ou dessins, par exemple) ; et 4) éléments sous licence associés (clés et documentation, par exemple).

"**Autorisation d'Utilisation du Logiciel**" constitue la preuve que le Détenteur de la Licence est autorisé à utiliser le Logiciel. Il prouve également l'éligibilité du Détenteur de la Licence aux services prévus par la garantie, aux prix applicables pour les mises à jour ultérieures du Logiciel et à d'éventuelles offres spéciales ou promotionnelles. Si IBM ne fournit pas au Détenteur de la Licence une Autorisation d'Utilisation du Logiciel, IBM peut cependant accepter l'original de la facture dont le Détenteur de la Licence s'est acquitté ou toute autre preuve d'achat émanant de la personne (IBM ou l'un de ses revendeurs) auprès de laquelle le Détenteur de la Licence a acquis le Logiciel, sous réserve que ledit document indique le nom du Logiciel ainsi que l'Utilisation Autorisée acquise.

"**Période de garantie**" couvre une (1) année, à compter de la date à laquelle la licence a été concédée au Détenteur de la Licence initiale.

### 2. Structure du Contrat

Le présent Contrat est constitué du présent document qui comprend un premier chapitre intitulé **Chapitre 1 – Dispositions Générales** et éventuellement un second chapitre intitulé **Chapitre 2 – Dispositions Nationales Particulières**, du document intitulé Informations sur la Licence et de l'Autorisation d'Utilisation du Logiciel. Le présent Contrat exprime l'intégralité de l'accord intervenu entre le Détenteur de la Licence et IBM en ce qui concerne l'utilisation du Logiciel. Il prévaut sur tout autre accord ou communication antérieur, oral ou écrit, intervenu entre le Détenteur de la Licence et IBM concernant l'utilisation du Logiciel par le Détenteur de la Licence. Les

dispositions du second chapitre peuvent remplacer ou modifier celles du premier. En cas de contradiction entre les dispositions, le document Informations sur la Licence prévaut sur les deux chapitres en question.

### 3. Concession de licences

Le Logiciel est la propriété d'IBM ou d'un fournisseur d'IBM et est protégé par les droits d'auteur. Le Logiciel est concédé sous licence et non vendu.

IBM concède au Détenteur de la Licence une licence d'utilisation non exclusive l'autorisant à 1) utiliser le Logiciel dans les limites d'Utilisation Autorisée indiquées dans l'Autorisation d'Utilisation du Logiciel ; 2) effectuer et installer des copies du Logiciel pour permettre une telle utilisation ; et 3) effectuer une copie de sauvegarde, l'ensemble étant sous réserve que :

- a. le Détenteur de la Licence ait acquis le Logiciel légalement et respecte les dispositions du présent Contrat ;
- b. la copie de sauvegarde n'est pas exécutée sauf si le Logiciel à l'origine de cette copie de sauvegarde ne peut pas être exécuté ;
- c. le Détenteur de la Licence reproduise toutes les mentions relatives aux droits d'auteur et toute autre mention de propriété sur chaque copie totale ou partielle du Logiciel ;
- d. le Détenteur de la Licence s'engage à ce que toute personne utilisant le Logiciel (que ce soit par le biais de son réseau privé ou d'un réseau public) 1) ne le fasse que pour son usage dans la limite des droits concédés et 2) conformément aux dispositions du présent Contrat ;
- e. le Détenteur de la Licence ne doit pas 1) utiliser, copier, modifier ou distribuer le Logiciel sauf mention contraire dans le présent Contrat ; 2) désassembler, décompiler, traduire de quelque façon que ce soit ou faire de l'ingénierie inverse vis-à-vis du Logiciel, à moins d'y avoir été expressément autorisé par une disposition légale d'ordre public ; 3) utiliser certains composants, fichiers, modules, contenus audiovisuels ou éléments associés concédés sous une licence distincte du Logiciel ; ou 4) concéder des sous-licences ou donner le Logiciel en location sous quelque forme que ce soit ; et
- f. si le Détenteur de la Licence se procure le Logiciel au titre d'un Logiciel requis, le Détenteur de la Licence utilise ledit Logiciel uniquement dans le but de pouvoir utiliser le Logiciel Principal et conformément aux limites d'utilisation de la licence du Logiciel Principal, ou, si le Détenteur de la Licence se procure le Logiciel au titre d'un Logiciel Principal, le Détenteur de la Licence utilise l'ensemble des Logiciels requis uniquement dans le but de pouvoir utiliser ledit Logiciel et conformément aux limites d'utilisation éventuellement définies dans le présent Contrat. Dans le contexte de l'alinéa "f", le terme "Logiciel requis" désigne un Logiciel rattaché à un autre Logiciel IBM ("Logiciel Principal") et identifié comme étant un Logiciel requis dans le document Informations sur la Licence du Logiciel Principal. Pour se procurer une licence distincte au titre d'un Logiciel requis sans ces restrictions, le Détenteur de la Licence doit s'adresser à la personne auprès de qui il a acquis le Logiciel requis.

Le présent Contrat de licence s'applique à chaque exemplaire du Logiciel créé par le Détenteur de la Licence.

#### 3.1 Mises à jour logiciel, mises à jour et correctifs

##### 3.1.1 Mises à jour logiciel

Si le Logiciel est remplacé par un Logiciel bénéficiant d'une mise à jour logiciel, la licence d'utilisation du Logiciel remplacé est immédiatement résiliée.

##### 3.1.2 Mises à jour et correctifs

Lorsque le Détenteur de la Licence reçoit une mise à jour ou un correctif pour un Logiciel, il accepte toute disposition supplémentaire et différente applicable à ladite mise à jour ou audit correctif figurant dans le document Informations sur la Licence qui l'accompagne. Si aucune disposition supplémentaire ou différente n'accompagne la mise à jour ou le correctif, alors ceux-ci sont exclusivement soumis aux dispositions du présent Contrat. Si le Logiciel est remplacé par une mise à jour, le Détenteur de la Licence s'engage à cesser immédiatement d'utiliser le Logiciel remplacé.

### 3.2 Licences à durée limitée

Si IBM concède au Détenteur de la Licence, le Logiciel pour une durée limitée, la Licence est résiliée à l'issue de la durée limitée à moins que le Détenteur de la Licence et IBM acceptent mutuellement de la renouveler.

### 3.3 Durée et résiliation du Contrat

Le présent Contrat reste en vigueur jusqu'à la date de résiliation.

IBM peut résilier la licence qui a été concédée au Détenteur de la Licence si ce dernier ne respecte pas les dispositions du présent Contrat.

Si la licence est résiliée par l'une des parties pour une quelconque raison, le Détenteur de la Licence s'engage à cesser d'utiliser et à détruire immédiatement tous les exemplaires du Logiciel créés par le Détenteur de la Licence. Toute disposition du présent Contrat qui, de par sa nature, s'exerce au-delà de la date de résiliation est prorogée jusqu'à sa complète exécution, et s'applique aux ayants droit et cessionnaires respectifs des deux parties.

### 4. Prix et redevances

Les redevances sont fonction du niveau d'Utilisation Autorisée acquis, tel que précisé dans l'Autorisation d'Utilisation du Logiciel. Sauf indication contraire dans le présent Contrat, IBM n'accordera aucun crédit ou remboursement concernant les redevances déjà exigibles ou payées.

Si le Détenteur de la Licence souhaite étendre son niveau d'Utilisation Autorisée, il devra en informer IBM ou l'un de ses revendeurs agréés à l'avance et s'acquitter des redevances applicables.

### 5. Taxes

Le Détenteur de la Licence s'engage à payer toutes taxes, contributions ou droits imposés par toute autorité vis-à-vis du Logiciel, à l'exception de ceux qui seraient basés sur le revenu net d'IBM, et à régler le montant spécifié dans la facture ou à nous fournir le document d'exonération. Toute taxe relative au bien mobilier pour le Logiciel incombe au Détenteur de la Licence à partir de la date à laquelle il l'a acquis. Le Détenteur de la Licence s'engage à payer toutes taxes, contributions ou droits imposés par toute autorité vis-à-vis de l'importation ou de l'exportation, de la cession, de l'accès ou de l'utilisation du Logiciel en dehors du pays dans lequel le Détenteur de la Licence initial a acquis la licence d'utilisation du Logiciel.

### 6. Garantie "satisfait ou remboursé"

Si pour une raison quelconque, le Détenteur de la Licence n'était pas satisfait du Logiciel et qu'il est le détenteur initial de la licence, il peut résilier le Contrat et obtenir le remboursement du montant qu'il a payé pour le Logiciel, si, dans les 30 jours suivant la date à laquelle il a reçu l'Autorisation d'Utilisation du Logiciel, le Détenteur de la Licence retourne le Logiciel ainsi que son Autorisation d'Utilisation du Logiciel à la personne auprès de laquelle il a acquis le Logiciel. Dans le cas d'une licence à durée limitée renouvelable, le Détenteur de la Licence peut obtenir le remboursement du montant payé s'il retourne le Logiciel ainsi que son Autorisation d'Utilisation du Logiciel dans les 30 premiers jours de la période initiale. Si le Détenteur de la Licence a téléchargé le Logiciel, il doit prendre contact avec la personne auprès de laquelle il l'a acquis pour savoir comment en obtenir le remboursement.

### 7. Cession du Logiciel

Le Détenteur de la Licence peut céder le Logiciel ainsi que ses droits et obligations au titre de la licence à un tiers, uniquement si ce dernier accepte de respecter les dispositions du présent Contrat. Si la licence est résiliée par l'une des parties pour une quelconque raison, le Détenteur de la Licence n'a pas le droit de céder le Logiciel à une autre partie. Le Détenteur de la Licence n'a pas le droit de céder une partie du 1) Logiciel ou du 2) niveau d'Utilisation Autorisée dudit Logiciel. Si le Détenteur de la Licence cède le Logiciel à une autre partie, il doit également lui remettre un exemplaire papier du présent Contrat, y compris le document Informations sur la Licence ainsi que l'Autorisation d'Utilisation du Logiciel. La licence est résiliée immédiatement après la cession du Logiciel.

## 8. Garanties et exclusions

### 8.1 Limitation de garantie

Le Logiciel est garanti par IBM comme conforme à ses spécifications à condition d'être utilisé dans l'environnement opérationnel spécifié. Les spécifications du Logiciel et les informations relatives à l'Environnement Opérationnel Spécifié se trouvent dans la documentation fournie avec le Logiciel (fichier "README", par exemple) ou dans tout autre document d'information publié par IBM (lettre d'annonce, par exemple). Sauf disposition légale ou réglementaire contraire à laquelle il ne peut être dérogé contractuellement, le Détenteur de la Licence reconnaît que ladite documentation et que le contenu d'autres Logiciels puissent n'être rédigés qu'en anglais.

La garantie s'applique uniquement à la partie non modifiée du Logiciel. IBM ne garantit pas que l'utilisation du Logiciel sera ininterrompue ou exempte d'erreurs, ni que tous les défauts seront corrigés par IBM. Le Détenteur de la Licence est responsable des résultats obtenus dans le cadre de l'utilisation du Logiciel.

Au cours de la période de garantie, IBM accorde au Détenteur de la Licence un accès gratuit aux bases de données IBM contenant des informations sur les défauts identifiés du Logiciel, les procédés de correction, de neutralisation ou de contournement de ceux-ci. Pour plus d'informations, veuillez consulter le Guide du Support Logiciel IBM (IBM Software Support Handbook) à l'adresse [www.ibm.com/software/support](http://www.ibm.com/software/support).

Si le Logiciel ne fonctionne pas comme garanti pendant la Période de Garantie et que l'incident ne peut être résolu à partir des informations disponibles dans les bases de données IBM, le Détenteur de la Licence peut rendre le Logiciel ainsi que son Autorisation d'Utilisation du Logiciel à la personne (IBM ou son revendeur) auprès de laquelle il a acquis le Logiciel afin d'obtenir le remboursement du montant qu'il a payé. La licence est résiliée immédiatement après le retour du Logiciel. Si le Détenteur de la Licence a téléchargé le Logiciel, il doit prendre contact avec la personne auprès de laquelle il l'a acquis pour savoir comment en obtenir le remboursement.

### 8.2 Exclusions

**CES GARANTIES SONT LES SEULES GARANTIES AUXQUELLES LE DÉTENTEUR DE LA LICENCE PEUT PRÉTENDRE. ELLES REMPLACENT TOUTES AUTRES GARANTIES OU CONDITIONS, EXPLICITES OU IMPLICITES, Y COMPRIS, ET DE FAÇON NON LIMITATIVE, TOUTE GARANTIE OU CONDITION IMPLICITE DE QUALITÉ SATISFAISANTE, D'APTITUDE À L'EXÉCUTION D'UN TRAVAIL DONNÉ ET TOUTE GARANTIE OU CONDITION EN NONCONTREFAÇON. CERTAINS ÉTATS OU LÉGISLATIONS N'AUTORISENT PAS L'EXCLUSION DES GARANTIES EXPLICITES OU IMPLICITES, AUQUEL CAS L'EXCLUSION CI-DESSUS PEUT NE PAS ÊTRE APPLICABLE AU DÉTENTEUR DE LA LICENCE. ET LA DURÉE DE CES GARANTIES SERA ALORS LIMITÉE À LA PÉRIODE DE GARANTIE. PASSÉE CETTE PÉRIODE, AUCUNE GARANTIE NE S'APPLIQUERA. CERTAINS ÉTATS OU LÉGISLATIONS N'AUTORISENT PAS LES LIMITATIONS DE DURÉE DES GARANTIES IMPLICITES, AUQUEL CAS LA LIMITATION CI-DESSUS PEUT NE PAS ÊTRE APPLICABLE AU DÉTENTEUR DE LA LICENCE.**

**CES GARANTIES CONFÈRENT AU DÉTENTEUR DE LA LICENCE DES DROITS SPÉCIFIQUES. IL EST POSSIBLE QUE LE DÉTENTEUR DE LA LICENCE DÉTIENNE D'AUTRES DROITS DONT LA NATURE VARIE SELON LA LÉGISLATION APPLICABLE.**

**LES GARANTIES ÉNONCÉES DANS LE PRÉSENT ARTICLE 8 (GARANTIES ET EXCLUSIONS) SONT FOURNIES PAR IBM EXCLUSIVEMENT. NÉANMOINS, LES EXCLUSIONS ÉNONCÉES DANS CETTE SOUS-SECTION 8.2 (EXCLUSIONS) S'APPLIQUENT ÉGALEMENT AUX FOURNISSEURS DE CODE TIERS D'IBM. LES FOURNISSEURS FOURNISSENT LEDIT CODE SANS GARANTIE NI CONDITION D'AUCUNE SORTE. CE PARAGRAPHE N'ANNULE EN AUCUN CAS LES OBLIGATIONS DE GARANTIE QUI INCOMBENT À IBM AU TITRE DU PRÉSENT CONTRAT.**

## **9. Données et bases de données appartenant au Détenteur de la Licence**

Pour aider le Détenteur de la Licence à identifier la cause d'un problème lié au Logiciel, IBM peut demander à ce que le Détenteur de la Licence 1) autorise IBM à accéder à distance au système du Détenteur de la Licence ; ou 2) envoie les données système ou les informations du Détenteur de la Licence à IBM. Toutefois, IBM n'est pas tenue de fournir une telle assistance à moins qu'IBM et le Détenteur de la Licence en aient convenu autrement dans le cadre d'un accord distinct où IBM s'engage à fournir au Détenteur de la Licence une assistance de ce type, qui dépasse les obligations de garantie d'IBM au titre du présent Contrat. Dans tous les cas, IBM utilisera les informations concernant les erreurs et les problèmes dans le but d'améliorer ses produits et services, et de fournir des offres de support associées. Dans ce contexte, le Détenteur de la Licence autorise IBM à faire appel à des sous-traitants et des entités IBM (y compris dans un ou plusieurs pays autres que celui où réside le Détenteur de la Licence).

Le Détenteur de la Licence sera responsable 1) des données et du contenu des bases de données que le Détenteur de la Licence mettra à la disposition d'IBM, 2) du choix et de la mise en œuvre des procédures et des contrôles régissant l'accès, la sécurité, le chiffrement, l'utilisation ainsi que la transmission des données (notamment les données d'identification personnelle) ; et 3) de la sauvegarde et de la reprise des bases de données et des données éventuellement stockées. Le Détenteur de la Licence ne transmettra et ne fournira à IBM aucun accès à des informations d'identification personnelle, qu'elles soient sous la forme de données ou autre. En outre, il sera redevable des coûts raisonnables ainsi que des sommes qu'IBM pourrait subir au titre des informations fournies à IBM par erreur ou encore de la perte ou de la divulgation desdites informations par IBM, y compris celles découlant de réclamations émanant de tiers.

## **10. Limitation de responsabilité**

Les limitations et exclusions énoncées dans cette Section 10 (Limitation de responsabilité) s'appliquent sous réserve qu'elles ne soient pas interdites par une loi locale à laquelle il ne peut être dérogé contractuellement.

### **10.1 Cas pour lesquels IBM peut être responsable**

Dans certaines circonstances, le Détenteur de la Licence peut être en droit, en raison d'un manquement de la part d'IBM ou d'une autre forme de responsabilité, de réclamer des dommages-intérêts à IBM. Quel que soit le fondement de l'action que le Détenteur de la Licence engage contre IBM (notamment pour violation d'une condition essentielle de ce Contrat, négligence, tromperie ou autre faute contractuelle), la responsabilité d'IBM vis-à-vis de l'ensemble des réclamations découlant de ou liés à chaque Logiciel ou découlant de quelque autre manière du présent Contrat sera limitée au montant 1) des dommages corporels (y compris le décès) et des dommages aux biens matériels, mobiliers et immobiliers ; et 2) tout autre dommage direct et réel plafonné au montant des redevances (jusqu'à 12 mois de redevances si le Logiciel est concédé sous une licence à durée limitée), payées par le Détenteur de la Licence pour le Logiciel à l'origine de la réclamation.

Cette limite s'applique également aux développeurs et fournisseurs d'un Logiciel IBM. C'est le maximum pour lequel IBM, ses développeurs de logiciels et ses sous-traitants sont collectivement responsables.

### **10.2 Cas pour lesquels IBM n'est pas responsable**

**IBM, SES DÉVELOPPEURS OU FOURNISSEURS NE PEUVENT EN AUCUN CAS ÊTRE TENUS RESPONSABLES DES DOMMAGES SUIVANTS, ET CE, MÊME S'ILS ONT ÉTÉ INFORMÉS DE LEUR POSSIBLE SURVENANCE :**

- a. PERTE OU DÉTÉRIORATION DE VOS DONNÉES ;
- b. PRÉJUDICES MORAUX, ACCESSOIRES OU INDIRECTS ; OU
- c. PERTE DE BÉNÉFICE, D'ACTIVITÉ COMMERCIALE, DE REVENU, DE CLIENTÈLE OU D'ÉCONOMIES ESCOMPTÉES.

## 11. Vérification de Conformité

Dans le contexte de cette section 11 (Vérification de Conformité), le terme "Dispositions IPLA du Logiciel" désigne 1) le présent Contrat ainsi que les avenants et les documents de transaction applicables fournis par IBM ; et 2) les politiques d'IBM en matière de logiciels pouvant figurer sur le site Internet IBM Software Policy ([www.ibm.com/software/policies](http://www.ibm.com/software/policies)), y compris, mais sans que cela soit limitatif, les règles en matière de sauvegarde, de tarification et de migration.

Les droits et obligations décrits dans cette section 11 demeurent en vigueur pendant toute la durée où le Logiciel a été concédé au Détenteur de la Licence, ainsi que pendant les deux (2) années qui suivent cette période.

### 11.1 Processus de vérification

Le Détenteur de la Licence s'engage à créer, conserver et fournir à IBM et ses auditeurs tous les enregistrements, les sorties d'outils système et toute autre information système exacts que ce soit sur papier ou sous forme électronique, afin de démontrer à IBM que l'utilisation que le Détenteur de la Licence fait de tous les Logiciels est conforme aux Dispositions IPLA du Logiciel, y compris, sans que cela soit limitatif, les dispositions d'IBM applicables tant à la licence qu'aux conditions d'éligibilité à certaines tarifications. Le Détenteur de la Licence sera chargé de 1) s'assurer qu'il ne dépasse pas le niveau d'Utilisation Autorisée qui lui a été accordé ; et de 2) rester en conformité avec les Dispositions IPLA du Logiciel.

Moyennant un préavis de 30 jours, IBM se réserve le droit de vérifier que le Détenteur de la Licence se conforme aux Dispositions IPLA du Logiciel dans chacun des sites et pour tous les environnements où le Détenteur de la Licence utilise (à n'importe quelle fin) les Logiciels couverts par les Dispositions IPLA du Logiciel. Ces vérifications seront effectuées de façon à gêner le moins possible les activités du Détenteur de la Licence. En outre, elles pourront être réalisées dans les locaux du Détenteur de la Licence durant les heures normales de travail. Pour ce faire, IBM pourra utiliser un auditeur extérieur, sous réserve qu'un accord de confidentialité ait été signé entre IBM et cet auditeur.

### 11.2 Résolution

À l'issue desdites vérifications, IBM indiquera par écrit au Détenteur de la Licence s'il a utilisé le Logiciel au-delà du niveau d'Utilisation Autorisée qui lui a été accordé ou s'il est au contraire en conformité avec les Dispositions IPLA du Logiciel. Le Détenteur de la Licence s'engage à régler dans les plus brefs délais à IBM les frais qui pourraient lui être imputés par IBM dans une facture pour 1) toute utilisation du Logiciel au-delà du niveau d'Utilisation Autorisée qui lui a été accordé ; 2) prendre en charge une telle utilisation excessive pour la durée la plus courte d'une telle utilisation ou pour deux (2) années ; et 3) tous les frais supplémentaires et obligations de paiement qu'il pourrait être tenu de respecter à l'égard de ce contrôle.

## 12. Mentions relatives au code tiers

Le Logiciel peut inclure du code tiers qu'IBM, et non pas la partie tierce, concède sous licence au Détenteur de la Licence dans le cadre du présent Contrat. Si le code tiers est accompagné de mentions spécifiques ("Mentions relatives au code tiers"), elles sont uniquement indiquées à titre de référence pour le Détenteur de la Licence. Ces mentions peuvent résider dans le ou les fichiers NOTICES du Logiciel. Les Mentions relatives au code tiers contiennent des instructions expliquant comment obtenir le code source de certains codes tiers. Si IBM qualifie le code tiers comme étant un "Code tiers modifiable" dans les Mentions relatives au code tiers, elle autorise le Détenteur de la Licence à 1) modifier le Code tiers modifiable ; et à 2) faire de l'ingénierie inverse sur les modules du Logiciel qui sont directement liés au Code tiers modifiable mais dans le seul but de déboguer les modifications que le Détenteur de la Licence a apportées audit code tiers. Si des obligations de service et de support incombent à IBM, elles ne s'appliquent qu'au Logiciel non modifié.

## 13. Dispositions générales

- a. Le présent Contrat ne porte atteinte à aucune des dispositions légales d'ordre public relatives aux droits des consommateurs.

- b. En ce qui concerne les Logiciels qu'IBM fournit au Détenteur de la Licence sous une forme tangible, IBM honore ses obligations d'expédition et de livraison au moment où IBM remet lesdits Logiciels au transporteur désigné par IBM, sauf autorisation écrite contraire unissant le Détenteur de la Licence et IBM.
- c. Si l'une des dispositions du présent Contrat est considérée comme nulle ou inapplicable, elle n'entraînera pas la nullité des autres dispositions.
- d. Le Détenteur de la Licence s'engage à respecter toutes les lois et réglementations applicables en matière d'exportation et d'importation, y compris celles soumises à l'embargo des États-Unis concernant l'exportation de produits destinés à certains usages ou à certains utilisateurs.
- e. Le Détenteur de la Licence autorise IBM et ses filiales (ainsi que ses ayants droit et cessionnaires, sous-traitants et Partenaires commerciaux IBM) à stocker et à utiliser les coordonnées des contacts professionnels du Détenteur de la Licence à l'endroit où ils font des affaires, en relation avec les produits et services IBM, ou le bon fonctionnement des relations d'affaires entre IBM et le Détenteur de la Licence.
- f. Avant de formuler une réclamation, chacune des parties accordera à l'autre un délai raisonnable pour remplir ses obligations au titre du présent Contrat. Les deux parties mettront en œuvre tous les efforts raisonnables afin de résoudre les litiges, désaccords ou réclamations pouvant les opposer au titre du présent Contrat.
- g. Sauf disposition légale ou réglementaire contraire à laquelle il ne peut être dérogé contractuellement : 1) aucune des parties n'intentera d'action en justice, sous quelque forme que ce soit, à l'égard d'une réclamation découlant du ou liée au présent Contrat plus de deux ans après l'apparition de son fait générateur ; et 2) à l'expiration de ladite période, toute réclamation et tout droit applicable lié à ladite revendication seront déclarés caducs.
- h. Ni le Détenteur de la Licence, ni IBM ne sera responsable d'un manquement à ses obligations si un tel manquement résulte d'un cas de force majeure.
- i. Le présent Contrat ne crée aucun droit et ne contient aucune stipulation pour autrui au profit d'un tiers. En outre, IBM ne sera pas tenue responsable des réclamations émanant de tiers à l'encontre du Détenteur de la Licence, sauf disposition contraire dans la sous-section 10.1 (Cas pour lesquels IBM peut être responsable), allant au-delà des dommages corporels (y compris le décès) ou des dommages aux biens matériels, mobiliers et immobiliers, pour lesquels IBM est légalement responsable envers ledit tiers.
- j. En concluant le présent Contrat, les parties renoncent à tout engagement non expressément prévu dans le présent Contrat, y compris, mais sans que cela soit limitatif, toute déclaration concernant 1) les performances ou le fonctionnement du Logiciel, autre que les garanties énoncées dans l'Article 8 (Garanties et exclusions) ci-dessus ; 2) les expériences et recommandations de parties tierces ; ou 3) les résultats ou économies que le Détenteur de la Licence pourrait obtenir.
- k. IBM a signé des contrats avec certaines entités commerciales ("Partenaires Commerciaux IBM") pour promouvoir, commercialiser et fournir certains Logiciels. Les Partenaires commerciaux IBM restent indépendants et distincts d'IBM. IBM n'est pas responsable des actions ou déclarations faites par les Partenaires commerciaux IBM, ni des obligations qu'ils ont vis-à-vis du Détenteur de la Licence.
- l. Les dispositions d'indemnisation au titre des licences et de la propriété intellectuelle figurant dans les accords éventuellement conclus entre IBM et le Détenteur de la Licence (comme le Livret contractuel IBM, par exemple) ne s'appliquent pas aux licences de Logiciel qui sont concédées dans le présent Contrat.

## **14. Étendue géographique et droit applicable**

### **14.1 Droit applicable**

Les parties sont d'accord pour que soient appliquées les lois du pays où le Détenteur de la Licence a acquis la licence de Logiciel pour régir, interpréter et faire respecter les droits, devoirs et obligations d'IBM et du Détenteur de la Licence découlant, directement ou indirectement, de l'objet du présent Contrat, sans donner effet aux principes de conflit de lois.

La Convention des Nations Unies sur les contrats régissant le Commerce International de Biens ne s'applique pas.

### **14.2 Juridiction compétente**

Tous les droits, devoirs et obligations des parties sont soumis aux tribunaux du pays dans lequel le Détenteur de la Licence a acquis la licence du Logiciel.



## Chapitre 2 – Dispositions nationales particulières

Pour les licences concédées dans les pays mentionnés ci-dessous, les dispositions suivantes remplacent ou modifient celles stipulées dans le Chapitre 1. Toutes les dispositions du Chapitre 1 qui n'ont pas été modifiées par les dispositions ci-après sont inchangées et conservent leurs pleins et entiers effets. Le présent Chapitre 2 est structuré comme suit :

- Amendements applicables à plusieurs pays et relatifs au Chapitre 1, Section 14 (Droit applicable et juridiction compétente) ;
- Amendements applicables aux pays d'Amérique et relatifs à d'autres dispositions du Contrat ; et
- Amendements applicables aux pays d'Europe, du Moyen-Orient et d'Afrique et relatifs à d'autres dispositions du Contrat

### **Amendements applicables à plusieurs pays et relatifs au Chapitre 1, Section 14 (Droit applicable et juridiction compétente)**

#### **14.1 Droit applicable**

*La mention "les lois du pays où le Détenteur de la Licence a acquis la licence de Logiciel" dans le premier paragraphe de la section 14.1 Droit applicable est remplacée par les phrases suivantes dans les pays suivants :*

##### **AMÉRIQUE**

- (1) au **Canada** : les lois en vigueur dans la Province de l'Ontario ;
- (2) à **Saint-Martin** : les lois en vigueur dans l'État de New York aux États-Unis ;

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- (3) au **Bénin**, au **Burkina Faso**, au **Cameroun**, en **République centrafricaine**, au **Tchad**, aux **Comores**, au **Congo**, à **Djibouti**, en **République démocratique du Congo**, en **Guinée équatoriale**, en **Guyane française**, en **Polynésie française**, au **Gabon**, en **Guinée**, en **Côte d'Ivoire**, à **Madagascar**, au **Mali**, à **Mayotte**, en **Nouvelle Calédonie**, au **Niger**, à la **Réunion**, au **Sénégal**, au **Togo**, en **Tunisie** et à **Wallis et Futuna** : les lois en vigueur en France.

#### **14.2 Juridiction compétente**

*Le paragraphe suivant s'applique à la juridiction des pays identifiés ci-dessous et remplace la Sous-section 14.2 (Juridiction) :*

Tous les droits, devoirs et obligations des parties sont soumis aux tribunaux du pays dans lequel le Détenteur de la Licence a acquis la licence du Logiciel, à l'exception des pays identifiés ci-dessous où tout conflit résultant du ou relatif au présent Contrat, y compris en référé, sera de la compétence exclusive des tribunaux suivants :

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au **Bénin**, au **Burkina Faso**, au **Cameroun**, en **République centrafricaine**, au **Tchad**, aux **Comores**, au **Congo**, à **Djibouti**, en **République démocratique du Congo**, en **Guinée équatoriale**, en **France**, en **Guyane française**, en **Polynésie française**, au **Gabon**, en **Guinée**, en **Côte d'Ivoire**, à **Madagascar**, au **Mali**, à **Mayotte**, à **Monaco**, au **Maroc**, en **Nouvelle Calédonie**, au **Niger**, à la **Réunion**, au **Sénégal**, au **Togo**, en **Tunisie** et à **Wallis et Futuna** : Tribunal de Commerce de Paris.

## AMENDEMENTS APPLICABLES AUX PAYS D'AMÉRIQUE

### CANADA

#### 10.1 Cas pour lesquels IBM peut être responsable

*Le paragraphe suivant remplace l'alinéa 1 dans le premier paragraphe la présente Sous-section 10.1 (Cas pour lesquels IBM peut être responsable) :*

1) des dommages corporels (y compris le décès) et des dégâts matériels aux biens matériels, mobiliers et immobiliers causés par une négligence d'IBM, et

#### 13. Dispositions générales

*Le paragraphe suivant remplace l'alinéa 13.d :*

- d. Le Détenteur de la Licence s'engage à respecter toutes les lois et réglementations applicables en matière d'exportation et d'importation, y compris celles portant sur les produits provenant des États-Unis et qui interdisent ou restreignent l'exportation de produits destinés à certains usages ou à certains utilisateurs.

*Le paragraphe suivant remplace l'alinéa 13.i :*

- i. Le présent Contrat ne crée aucun droit et ne contient aucune stipulation pour autrui au profit d'un tiers. En outre, IBM ne sera pas tenue responsable des réclamations émanant de tiers à l'encontre du Détenteur de la Licence sauf, tel qu'il est prévu dans l'article "Limitation de responsabilité" ci-dessus, au titre de dommages corporels (incluant le décès) et dégâts matériels aux biens matériels, mobiliers et immobiliers, causés par une négligence d'IBM pour laquelle IBM est légalement responsable envers ledit tiers.

*Le paragraphe suivant est ajouté en tant qu'alinéa 13.m :*

- m. Dans le contexte de l'alinéa 13.m, le terme "Données personnelles" désigne les informations relatives à une personne identifiée ou identifiable qui ont été communiquées par l'une des parties, son personnel ou quelqu'un d'autre à l'autre partie dans le cadre du présent Contrat. Les dispositions suivantes s'appliquent si l'une des parties communique les Données personnelles à l'autre partie :

##### (1) Dispositions générales

- (a) Chacune des parties est tenue de se conformer aux obligations ayant trait aux Données personnelles au titre de la réglementation canadienne applicable en matière de confidentialité des données (la "Réglementation").
- (b) Aucune des parties ne demandera davantage de Données personnelles qu'elle n'en a besoin au titre du ou des motifs pour lequel ou pour lesquels ladite partie les a demandées. Bien entendu, le ou les motifs de la demande pour lequel ou pour lesquels ladite partie demande les Données personnelles devra ou devront être raisonnables. Chacune des parties accepte par avance le type de Données personnelles qui doivent être mises à disposition des parties.

##### (2) Dispositifs de sécurité

- (a) Chacune des parties reconnaît être la seule responsable de la détermination et de la communication à l'autre partie des dispositifs de sécurité technologiques, physiques et organisationnels adéquats nécessaires au vu de la protection des Données personnelles.
- (b) Chacune des parties devra s'assurer que les Données personnelles sont protégées conformément aux dispositifs de sécurité communiqués et acceptés par l'autre partie.

- (c) Chacune des parties devra s'assurer que tout tiers à qui les Données personnelles sont transférées se conforme aux dispositions applicables stipulées dans la présente section.
  - (d) Si des services supplémentaires ou différents sont nécessaires pour rester en conformité avec la réglementation, lesdits services seront considérés comme une demande de nouveaux services.
- (3) Utilisation
- Chacune des parties reconnaît que les Données personnelles seront exclusivement utilisées, consultées, gérées, transférées, communiqués à des tiers ou traitées d'une quelconque façon au titre du ou des motifs pour lequel ou pour lesquels elles ont été mises à disposition.
- (4) Demandes d'accès
- (a) Chacune des parties s'engage à coopérer de manière raisonnable avec l'autre partie dans le cadre des demandes d'accès ou de modification des Données personnelles.
  - (b) Chacune des parties s'engage à rembourser à l'autre partie les redevances raisonnables encourues au titre de l'assistance fournie à l'égard de l'une ou l'autre des parties.
  - (c) Chacune des parties s'engage à modifier les Données personnelles uniquement à la réception des instructions où l'autre partie ou son personnel l'invite à le faire.
- (5) Conservation
- Sauf instruction contraire par l'autre partie ou son personnel ou sous couvert de la réglementation, chacune des parties détruira ou renverra rapidement à l'autre partie l'ensemble des Données personnelles qui ne sont plus nécessaires au titre du ou des motifs pour lequel ou pour lesquels elles ont été mises à disposition.
- (6) Organismes publics soumis à la réglementation en matière de confidentialité du secteur public
- Pour les Détenteurs de licence ayant la qualité d'organismes publics soumis à la réglementation en matière de confidentialité du secteur public, le présent alinéa 13.m ne s'applique qu'aux Données personnelles mises à la disposition du Détenteur de la Licence dans le cadre du présent Contrat. En outre, les obligations stipulées dans la présente section ne s'appliquent qu'au Détenteur de la Licence, à l'exception des sections suivantes : 1) la section (2)(a) ne concerne qu'IBM ; 2) les sections (1)(a) et (4)(a) concernent les deux parties ; puis 3) la section (4)(b) et la dernière phrase de la section (1)(b) ne s'appliquent pas.

## **AMENDEMENTS APPLICABLES AUX PAYS D'EUROPE, DU MOYEN-ORIENT ET D'AFRIQUE (EMEA)**

### **ÉTATS MEMBRES DE L'UNION EUROPÉENNE**

#### **8. Garanties et exclusions**

*Le paragraphe suivant est ajouté à la Section 8. (Garanties et exclusions) :*

Dans l'Union européenne ("UE"), les consommateurs disposent de droits selon la loi nationale en vigueur régissant la vente de biens de consommation. Ces droits ne sont pas affectés par les dispositions stipulées dans la présente Section 8 intitulée "Garanties et exclusions". La limitation de garantie a une portée mondiale.

## ÉTATS MEMBRES DE L'UNION EUROPÉENNE ET PAYS IDENTIFIÉS CI-DESSOUS

Suisse et tout autre pays européen ayant mis en œuvre une réglementation locale en matière de confidentialité ou de protection des données de manière similaire au modèle de l'Union européenne

### 13. Dispositions générales

*Le paragraphe suivant remplace l'alinéa 13.e :*

- (1) **Définitions** – Les autres définitions suivantes s'appliquent dans le cadre du présent alinéa 13.e :
  - (a) **Coordonnées des Contacts Professionnels** désigne les coordonnées des contacts professionnels communiquées à IBM par le Détenteur de la Licence, notamment le nom, l'intitulé du poste, l'adresse et le numéro de téléphone de bureau, mais aussi l'adresse électronique des employés et des sous-traitants du Détenteur de la Licence. Pour l'Autriche, l'Italie et la Suisse, les Coordonnées des Contacts Professionnels recouvrent également les informations relatives au Détenteur de la Licence et à ses prestataires en tant que personnes morales (notamment les données de chiffre d'affaires ainsi que diverses informations de transaction du Détenteur de la Licence).
  - (b) **Personnel du Contact Professionnel** désigne les employés et les prestataires du Détenteur de la Licence auxquels se rapportent les Coordonnées des Contacts Professionnels.
  - (c) **Autorité de Protection des Données** désigne l'autorité établie par la Réglementation relative à la Protection des Données et aux Communications Électroniques dans le pays concerné ou, dans le cas des pays non membres de l'Union Européenne, l'autorité chargée de superviser la protection des données personnelles dans ledit pays, ou (pour l'une des dispositions susmentionnées) tout ayant droit dûment désigné à cet égard.
  - (d) **Réglementation relative à la Protection des Données et aux Communications Électroniques** désigne (i) la réglementation locale applicable en vigueur mettant en œuvre les exigences de la Directive Européenne 95/46/CE (concernant la protection des personnes vis-à-vis du traitement des données personnelles et de la libre circulation desdites données) ainsi que de la Directive Européenne 2002/58/CE (concernant le traitement des données personnelles et la protection de la confidentialité dans le secteur des communications électroniques) ; ou (ii) dans le cas des pays non membres de l'Union européenne, la réglementation et/ou les lois passées dans le pays concerné vis-à-vis de la protection des données personnelles ainsi que la réglementation sur les communications électroniques impliquant des Données personnelles, notamment (pour l'une des dispositions susmentionnées) tout remplacement ou toute modification légale desdites informations.
  - (e) **Groupe IBM** désigne la société International Business Machines Corporation basée à Armonk dans l'État de New York aux États-Unis, ses filiales, ainsi que ses Partenaires commerciaux et sous-traitants associés.
- (2) Le Détenteur de la Licence autorise IBM à :
  - (a) traiter et utiliser les Coordonnées des Contacts Professionnels au sein du Groupe IBM aux fins de support du Détenteur de la Licence, notamment pour la fourniture de services de support, ainsi que dans le but de renforcer les relations commerciales unissant le Détenteur de la Licence et le Groupe IBM, y compris sans que cela soit limitatif, dans le but de contacter le Personnel du Contact Professionnel (par e-mail ou un autre moyen) et de commercialiser les produits et services du Groupe IBM ("Objet Spécifié") ; et à
  - (b) communiquer les Coordonnées des Contacts Professionnels à d'autres membres du Groupe IBM uniquement dans le cadre de l'Objet Spécifié.

- (3) IBM s'engage à traiter toutes les Coordonnées des Contacts Professionnels conformément à la Réglementation relative à la Protection des Données et aux Communications Électroniques et à les utiliser uniquement dans le cadre de l'Objet Spécifié.
- (4) Dans les limites requises par la Réglementation relative à la Protection des Données et aux Communications Électroniques, le Détenteur de la Licence déclare qu'il (a) a obtenu (ou va obtenir) l'accord des (et a transmis (ou va transmettre) les avis aux) Contacts Professionnels – ledit accord étant nécessaire pour permettre au Groupe IBM de traiter et d'utiliser les Coordonnées des Contacts Professionnels dans le cadre de l'Objet Spécifié.
- (5) Le Détenteur de la Licence autorise IBM à communiquer les Coordonnées des Contacts Professionnels en dehors de l'Espace Économique Européen, sous réserve qu'elles soient transférées conformément aux dispositions contractuelles approuvées par l'Autorité de Protection des Données ou que leur transfert soit autorisé d'une quelconque façon par la Réglementation relative à la Protection des Données et aux Communications Électroniques.

## **BELGIQUE, FRANCE ET LUXEMBOURG**

### **10. Limitation de responsabilité**

*Le paragraphe suivant remplace intégralement les dispositions de cet Article 10 (Limitation de responsabilité) :*

Sauf disposition légale impérative contraire :

#### **10.1 Cas pour lesquels IBM peut être responsable**

L'entière responsabilité d'IBM relative à l'ensemble agrégé des réclamations et à tout dommage et perte pouvant survenir dans le cadre de l'exercice de ses obligations liées directement ou indirectement au présent Contrat ou résultant d'autres causes liées à ce Contrat, est limitée au dédommagement des seuls dommages et pertes prouvés et résultant immédiatement et directement du manquement à ces obligations (en cas de faute d'IBM) ou d'une telle cause, pour un montant maximum égal à la redevance (jusqu'à 12 mois de redevances si le Logiciel est concédé sous une licence à durée limitée) que le Détenteur de la Licence a payée pour le Logiciel à l'origine desdits dommages.

La limitation sus-mentionnée ne s'applique pas aux dommages corporels (incluant le décès) et dommages aux biens matériels, mobiliers et immobiliers, pour lesquels IBM est légalement responsable.

#### **10.2 Cas pour lesquels IBM n'est pas responsable**

**IBM ET SES DÉVELOPPEURS NE PEUVENT EN AUCUN CAS ÊTRE TENUS RESPONSABLES DES DOMMAGES SUIVANTS, ET CE, MÊME S'ILS ONT ÉTÉ INFORMÉS DE LEUR POSSIBLE SURVENANCE : 1) PERTE OU DÉTÉRIORATION DE DONNÉES ; 2) DOMMAGES DIRECTS, INDIRECTS, DOMMAGES INTÉRÊTS OU PRÉJUDICES FINANCIERS INDIRECTS ; ET/OU 3) PERTE DE PROFITS, PRÉJUDICE COMMERCIAL, PERTE DE CHIFFRE D'AFFAIRES, PERTE DE CLIENTÈLE, OU PERTE D'ÉCONOMIES ESCOMPTÉES MÊME SI CEUX-CI SONT LA CONSÉQUENCE IMMÉDIATE DE L'ÉVÉNEMENT À L'ORIGINE DES DOMMAGES.**

#### **10.3 Fournisseurs et Développeurs de Logiciel**

Les limitations et exclusions convenues ci-dessus s'appliquent non seulement aux activités d'IBM mais également à celles de ses fournisseurs et ses développeurs, et définissent le montant maximum pour lequel IBM, ses fournisseurs et ses développeurs sont collectivement responsables.

# Internationale Nutzungsbedingungen für Programmpakete

## Teil 1 – Allgemeine Bedingungen

Durch Herunterladen, Installieren oder Kopieren des Programms, die Zustimmung zur Vereinbarung per Mausklick, den Zugriff auf das Programm oder eine anderweitige Nutzung des Programms erklärt sich der Lizenznehmer mit den Bedingungen dieser Vereinbarung einverstanden. Wenn Sie diese Bedingungen im Namen des Lizenznehmers akzeptieren, gewährleisten und bestätigen Sie damit, dass Sie berechtigt sind, den Lizenznehmer zur Einhaltung dieser Bedingungen zu verpflichten. Wenn Sie mit diesen Bedingungen nicht einverstanden sind,

- dürfen Sie das Programm nicht herunterladen, installieren, kopieren, die Vereinbarung per Mausklick akzeptieren, auf das Programm zugreifen oder das Programm nutzen und
- müssen Sie die unbenutzten Datenträger, die Dokumentation und den Berechtigungsnachweis unverzüglich bei der Stelle, von der Sie das Programm bezogen haben, gegen Rückerstattung des gezahlten Betrags zurückgeben. Wurde das Programm heruntergeladen, müssen alle Kopien des Programms vernichtet werden.

### 1. Begriffsbestimmungen

**"Berechtigte Nutzung"** – die Nutzungsstufe, die festlegt, in welchem Umfang der Lizenznehmer zur Ausführung des Programms berechtigt ist. Die Nutzungsstufe kann anhand der Anzahl der Benutzer, der Millionen Serviceeinheiten pro Stunde (Millions of Service Units = "MSUs"), der Prozessor-Value-Units ("PVUs") oder einer anderen von IBM angegebenen Nutzungsstufe ermittelt werden.

**"IBM"** – International Business Machines Corporation oder deren verbundene Unternehmen.

**"Lizenzinformation"** ("LI") – ein Dokument, das Informationen und zusätzliche programmspezifische Bedingungen enthält. Die Lizenzinformation eines Programms kann unter [www.ibm.com/software/sla](http://www.ibm.com/software/sla) abgerufen werden. Darüber hinaus kann sie im Verzeichnis des Programms zur Verfügung gestellt oder über einen entsprechenden Systembefehl abgerufen werden oder ist dem Programm als Broschüre beigelegt.

**"Programm"** – umfasst das Originalprogramm sowie vollständige oder Teilkopien hiervon und kann aus 1) maschinenlesbaren Instruktionen und Daten, 2) Komponenten, Dateien und Modulen, 3) audiovisuellen Inhalten (z. B. Abbildungen, Texte, Aufzeichnungen oder Bilder) und 4) zugehörigem Lizenzmaterial (z. B. Schlüssel und Dokumentation) bestehen.

**"Berechtigungsnachweis"** (Proof of Entitlement = PoE) – Beleg für die berechtigte Nutzung des Lizenznehmers. Der Berechtigungsnachweis gibt darüber hinaus Aufschluss über den Anspruch des Lizenznehmers auf Gewährleistung, auf Preise für zukünftige Updates (sofern vorhanden) sowie auf mögliche Sonder- und Werbeaktionen. Wenn dem Lizenznehmer von IBM kein Berechtigungsnachweis zur Verfügung gestellt wird, akzeptiert IBM ggf. den Originalverkaufsbeleg oder einen gleichwertigen Verkaufsbeleg der Verkaufsstelle (entweder IBM oder ein IBM Reseller) für das Programm, vorausgesetzt, auf diesem ist der Name des Programms und die erworbene berechtigte Nutzung dokumentiert.

**"Gewährleistungszeitraum"** – ein Jahr ab dem Datum der Lizenzerteilung an den ursprünglichen Lizenznehmer.

### 2. Struktur dieser Vereinbarung

Diese Vereinbarung besteht aus **Teil 1 – Allgemeine Bedingungen**, **Teil 2 – Länderspezifische Bedingungen** (sofern vorhanden), den Lizenzinformationen und dem Berechtigungsnachweis und stellt die vollständige Vereinbarung zwischen dem Lizenznehmer und IBM zur Nutzung des Programms dar. Sie ersetzt alle zuvor getroffenen mündlichen oder schriftlichen Absprachen zwischen dem Lizenznehmer und IBM in Bezug auf die Nutzung des Programms durch den

Lizenznehmer. Die Bedingungen von Teil 2 können diejenigen in Teil 1 ersetzen oder ergänzen. Im Falle eines Widerspruchs haben die Lizenzinformationen Vorrang vor Teil 1 und Teil 2 dieser Vereinbarung.

### 3. Lizenz

Das Programm ist Eigentum von IBM oder eines IBM Lieferanten und wird urheberrechtlich geschützt und lizenziert, jedoch nicht verkauft.

IBM erteilt dem Lizenznehmer eine nicht ausschließliche Lizenz, 1) das Programm bis zu der im Berechtigungsnachweis angegebenen berechtigten Nutzung zu verwenden, 2) Kopien des Programms zur Unterstützung der berechtigten Nutzung zu erstellen und zu installieren und 3) eine Sicherungskopie zu erstellen, sofern

- a. der Lizenznehmer das Programm rechtmäßig bezogen hat und die Bedingungen dieser Vereinbarung einhält;
- b. die Sicherungskopie erst ausgeführt wird, wenn das gesicherte Programm nicht mehr ausführbar ist;
- c. der Lizenznehmer auf jeder Kopie oder Teilkopie des Programms alle Copyrightvermerke und sonstigen Eigentumshinweise anbringt;
- d. der Lizenznehmer sicherstellt, dass jeder Benutzer (unabhängig davon, ob der Zugriff lokal oder von einem fernen System aus erfolgt) das Programm 1) nur für Geschäftszwecke des Lizenznehmers nutzt und 2) die Bedingungen dieser Vereinbarung einhält;
- e. der Lizenznehmer sich verpflichtet, 1) das Programm nicht abweichend von den Bedingungen dieser Vereinbarung zu nutzen, zu kopieren, zu ändern oder weiterzugeben; 2) das Programm nicht rückumzuwandeln (reverse assemble, reverse compile) oder in anderer Weise zu übersetzen, soweit nicht durch gesetzliche Regelung etwas anderes zwingend vorgeschrieben ist; 3) die Komponenten, Dateien, Module, audiovisuellen Inhalte und das zugehörige Lizenzmaterial des Programms nicht ohne das Programm zu nutzen; oder 4) das Programm nicht in Unterlizenz zu vergeben, zu vermieten oder zu verleasen; und,
- f. wenn der Lizenznehmer dieses Programm als Unterstützungsprogramm erhält, dieses Programm nur zur Unterstützung des Hauptprogramms und unter Einhaltung sämtlicher Einschränkungen in der Lizenz für das Hauptprogramm zu nutzen, oder wenn der Lizenznehmer dieses Programm als Hauptprogramm erhält, alle Unterstützungsprogramme nur zur Unterstützung dieses Programms und unter Einhaltung sämtlicher Einschränkungen in dieser Vereinbarung zu nutzen. In diesem Abschnitt bezeichnet ein "Unterstützungsprogramm" ein Programm, das Teil eines anderen IBM Programms ("Hauptprogramm") ist und in der Lizenzinformation des Hauptprogramms als Unterstützungsprogramm aufgeführt wird. (Um eine separate Lizenz für das Unterstützungsprogramm ohne diese Einschränkungen zu erwerben, sollte sich der Lizenznehmer an die Stelle wenden, von der er das Unterstützungsprogramm bezogen hat.)

Diese Lizenz gilt für jede Kopie des Programms, die der Lizenznehmer erstellt.

#### 3.1 Trade-ups, Updates, Fixes und Patches

##### 3.1.1 Trade-ups

Wird das Programm durch ein Trade-up-Programm ersetzt, dann erlischt die Lizenz des ersetzten Programms unverzüglich.

##### 3.1.2 Updates, Fixes und Patches

Wenn der Lizenznehmer Updates, Fixes oder Patches für ein Programm erhält, dann akzeptiert er alle zusätzlichen oder abweichenden Bedingungen, die in der Lizenzinformation für die Updates, Fixes oder Patches aufgeführt sind. Werden keine zusätzlichen oder abweichenden Bedingungen bereitgestellt, unterliegen die Updates, Fixes oder Patches ausschließlich dieser Vereinbarung. Wird das Programm durch ein Update ersetzt, erklärt sich der Lizenznehmer damit einverstanden, die Nutzung des ersetzten Programms unverzüglich einzustellen.

## **3.2 Lizenzen mit fester Laufzeit**

Wenn IBM das Programm für eine feste Laufzeit lizenziert, dann erlischt die Lizenz des Lizenznehmers mit dem Ablauf der festen Laufzeit, sofern der Lizenznehmer und IBM die Lizenz nicht in beidseitigem Einverständnis verlängern.

## **3.3 Laufzeit und Kündigung**

Diese Vereinbarung bleibt bis zur Kündigung wirksam.

IBM kann die Lizenz des Lizenznehmers kündigen, wenn der Lizenznehmer die Bedingungen dieser Vereinbarung nicht erfüllt.

Wird die Lizenz von einer der Vertragsparteien aus irgendeinem Grund gekündigt, erklärt sich der Lizenznehmer damit einverstanden, die Nutzung des Programms unverzüglich einzustellen und alle Programmkopien zu vernichten. Bedingungen, die sich ihrer Natur nach auf die Zeit nach einer Beendigung dieser Vereinbarung erstrecken, bleiben bis zu ihrer Erfüllung in Kraft und gelten auch für eventuelle Rechtsnachfolger und Zessionare.

## **4. Gebühren**

Die Gebühren basieren auf der erworbenen berechtigten Nutzung, die im Berechtigungsnachweis dokumentiert ist. IBM gewährt keine Gutschriften oder Rückerstattungen für bereits fällige oder gezahlte Gebühren, mit Ausnahme anderslautender Bestimmungen in dieser Vereinbarung.

Wenn der Lizenznehmer die berechtigte Nutzung erhöhen will, wird er IBM oder einen autorisierten IBM Reseller vorab benachrichtigen und die anfallenden Gebühren bezahlen.

## **5. Steuern**

Der Lizenznehmer trägt die mit dem Programm verbundenen und von IBM angegebenen Steuern, Abgaben und Gebühren (mit Ausnahme solcher auf den Ertrag von IBM) oder weist eine entsprechende Befreiung nach. Ab dem Datum, an dem der Lizenznehmer das Programm erhält, ist er für alle das Programm betreffenden Vermögenssteuern verantwortlich. Wenn durch den Import oder den Export des Programms, die Übertragung, den Zugriff auf das Programm oder die Nutzung des Programms außerhalb des Landes, in dem der ursprüngliche Lizenznehmer die Lizenz erhalten hat, Zölle, Steuern, Abgaben oder Gebühren auf das Programm erhoben werden, trägt der Lizenznehmer alle entsprechenden Steuern, Abgaben oder Gebühren und wird den in Rechnung gestellten Betrag bezahlen.

## **6. Geld-zurück-Garantie**

Falls der Lizenznehmer aus irgendeinem Grund mit dem Programm nicht zufrieden ist und wenn er der ursprüngliche Lizenznehmer des Programms ist, kann er die Lizenz kündigen und sich den für das Programm gezahlten Betrag zurückerstatten lassen, sofern er das Programm und den Berechtigungsnachweis innerhalb von 30 Tagen nach dem Ausstellungsdatum des Berechtigungsnachweises an die Stelle zurückgibt, von der er das Programm bezogen hat. Wenn es sich um eine Lizenz mit fester Laufzeit handelt, die verlängert werden kann, kann der Lizenznehmer nur dann eine Rückerstattung anfordern, wenn er das Programm und den zugehörigen Berechtigungsnachweis in den ersten 30 Tagen der Erstlaufzeit zurückgibt. Wenn der Lizenznehmer das Programm heruntergeladen hat, erhält er von der Stelle, von der er das Programm bezogen hat, weitere Anweisungen zur Erstattung des gezahlten Betrags.

## **7. Programmübertragung**

Der Lizenznehmer darf das Programm und alle Lizenzrechte und -pflichten nur an Dritte übertragen, wenn diese sich mit den Bedingungen dieser Vereinbarung einverstanden erklären. Wird die Lizenz von einer der Vertragsparteien aus irgendeinem Grund gekündigt, ist es dem Lizenznehmer untersagt, das Programm an Dritte weiterzugeben. Es ist dem Lizenznehmer nicht gestattet, einen Teil 1) des Programms oder 2) der berechtigten Nutzung des Programms zu übertragen. Wird das Programm übertragen, muss der Lizenznehmer auch eine Hardcopy dieser Vereinbarung einschließlich der Lizenzinformation und des Berechtigungsnachweises beifügen. Die Lizenz des Lizenznehmers erlischt mit der Übertragung.



## 8. Gewährleistung und Ausschlüsse

### 8.1 Begrenzte Gewährleistung

IBM gewährleistet, dass das Programm bei Nutzung in der angegebenen Betriebsumgebung den Spezifikationen entspricht. Die Programmspezifikationen und die Angaben zur Betriebsumgebung befinden sich in der mit dem Programm gelieferten Dokumentation (z. B. in einer Readme-Datei) oder in anderen, von IBM veröffentlichten Informationen (z. B. in einem Ankündigungsschreiben). Der Lizenznehmer ist damit einverstanden, dass solche Dokumentationen und andere Programminhalte eventuell nur in englischer Sprache zur Verfügung gestellt werden, soweit nicht durch gesetzliche Regelung etwas anderes zwingend vorgeschrieben ist.

Die Gewährleistung gilt nur für den unveränderten Teil des Programms. IBM gewährleistet keinen ununterbrochenen oder fehlerfreien Betrieb des Programms oder die Korrektur aller Programmfehler. Für die Ergebnisse der Nutzung des Programms ist der Lizenznehmer selbst verantwortlich.

Während des Gewährleistungszeitraums stellt IBM dem Lizenznehmer kostenlosen Zugriff auf IBM Datenbanken mit Informationen zu bekannten Programmfehlern, Fehlerbehebungsmaßnahmen, Einschränkungen und Maßnahmen zur Fehlervermeidung zur Verfügung. Weitere Informationen hierzu enthält das IBM Software Support Handbook unter [www.ibm.com/software/support](http://www.ibm.com/software/support).

Wenn das Programm innerhalb des Gewährleistungszeitraums nicht wie zugesichert funktioniert und das Problem nicht mithilfe der in den IBM Datenbanken bereitgestellten Informationen behoben werden kann, ist der Lizenznehmer berechtigt, das Programm und den zugehörigen Berechtigungsnachweis bei der Stelle (IBM oder ein IBM Reseller) zurückzugeben, von der er das Programm bezogen hat, und sich den gezahlten Betrag zurückerstatten zu lassen. Nach der Rückgabe des Programms erlischt die Lizenz des Lizenznehmers. Wenn der Lizenznehmer das Programm heruntergeladen hat, erhält er von der Stelle, von der er das Programm bezogen hat, weitere Anweisungen zur Erstattung des gezahlten Betrags.

### 8.2 Ausschlüsse

Diese Gewährleistungsbedingungen sind abschließend und ersetzen sämtliche sonstigen eventuell bestehenden Gewährleistungsansprüche des Lizenznehmers, einschließlich, aber nicht begrenzt auf zufriedenstellende Qualität, Handelsüblichkeit, Verwendungsfähigkeit für einen bestimmten Zweck, Eigentumsrecht und die Freiheit von Rechten Dritter. Nach der Rechtsordnung bzw. Gerichtsbarkeit einiger Länder ist der Ausschluss oder die Begrenzung von ausdrücklichen und/oder stillschweigenden Zusicherungen/Gewährleistungen nicht erlaubt, sodass obige Einschränkungen und Ausschlüsse für den Lizenznehmer möglicherweise nicht anwendbar sind. In diesem Fall sind derartige Gewährleistungen auf die Dauer des Gewährleistungszeitraums begrenzt. Nach Ablauf des Gewährleistungszeitraums wird keinerlei Gewährleistung mehr erbracht. Darüber hinaus ist nach der Rechtsordnung bzw. Gerichtsbarkeit einiger Länder die Verkürzung der gesetzlichen Gewährleistungsfrist nicht erlaubt, sodass obige Einschränkungen für den Lizenznehmer möglicherweise nicht anwendbar sind.

Diese Gewährleistungen ermöglichen dem Lizenznehmer die Geltendmachung spezifischer juristischer Rechte, die abhängig vom jeweiligen Land und der jeweiligen Rechtsordnung bzw. Gerichtsbarkeit unterschiedlich sein können.

Die Gewährleistungen in Abschnitt 8 werden nur von IBM angeboten. Die Haftungsausschlüsse in Unterabschnitt 8.2 gelten jedoch auch für die IBM Lieferanten von Drittherstellercode. Diese Lieferanten stellen den betreffenden Code ohne jegliche Gewährleistung zur Verfügung. Mit diesem Absatz werden die Gewährleistungsverpflichtungen von IBM im Rahmen dieser Vereinbarung nicht aufgehoben.

## 9. Daten und Datenbanken des Lizenznehmers

Um den Lizenznehmer bei der Eingrenzung eines Problems mit dem Programm zu unterstützen, kann IBM den Lizenznehmer auffordern, 1) IBM Fernzugriff auf sein System zu gestatten oder 2) Informationen oder Systemdaten an IBM zu senden. IBM ist jedoch nicht zur Erbringung solcher

Unterstützungsleistungen verpflichtet, es sei denn, IBM und der Lizenznehmer treffen eine separate schriftliche Vereinbarung, in der IBM sich bereit erklärt, Unterstützung für den Lizenznehmer in einem Umfang zu leisten, der die Gewährleistungsverpflichtungen von IBM unter dieser Vereinbarung überschreitet. In jedem Fall wird IBM die Informationen über Fehler und Probleme zur Verbesserung der IBM Produkte und Services nutzen und Unterstützung durch die Bereitstellung entsprechender Unterstützungsangebote leisten. Zu diesem Zweck kann IBM andere IBM Organisationen und Subunternehmer (auch in Ländern außerhalb des Landes, in welchem der Lizenznehmer seinen Sitz hat) beauftragen, und der Lizenznehmer wird IBM dies gestatten.

Der Lizenznehmer bleibt verantwortlich für 1) alle Daten und den Inhalt der Datenbanken, die er IBM zur Verfügung stellt, 2) die Auswahl und Implementierung von Prozeduren und Kontrollmechanismen im Hinblick auf Datenzugriff, -sicherheit, -verschlüsselung, -nutzung und -übertragung (einschließlich aller personenbezogenen Daten) und 3) die Sicherung und Wiederherstellung der Datenbanken und der gespeicherten Daten. Der Lizenznehmer wird IBM keine personenbezogenen Informationen, weder als Daten noch in anderer Form, senden oder Zugriff darauf erteilen und muss für alle angemessenen Kosten und sonstigen Ausgaben aufkommen, die IBM im Zusammenhang mit solchen Informationen entstehen, die versehentlich an IBM weitergegeben wurden oder deren Verlust oder Offenlegung durch IBM verursacht wurde, einschließlich der Aufwendungen, die sich aus den Ansprüchen Dritter ergeben.

## **10. Haftungsbegrenzung**

Die Beschränkungen und Ausschlüsse in Abschnitt 10 gelten, soweit nicht durch gesetzliche Regelung etwas anderes zwingend vorgesehen ist.

### **10.1 Fälle, in denen IBM haftbar gemacht werden kann**

Soweit IBM dem Lizenznehmer gegenüber schadenersatzpflichtig ist, hat er Anspruch auf Entschädigung durch IBM. Unabhängig vom Rechtsgrund, auf dem der an IBM gerichtete Schadensersatzanspruch des Lizenznehmers beruht (einschließlich Vertragsverletzung, Fahrlässigkeit, unrichtiger Angaben oder anderer Ansprüche aus dem Vertrag oder aufgrund unerlaubter Handlungen), ist die Gesamthaftung von IBM für sämtliche Ansprüche in Bezug auf ein einzelnes Programm oder andere Ansprüche, die aus dieser Vereinbarung entstehen, begrenzt auf 1) Personenschäden (einschließlich Tod) und Schäden an Immobilien und beweglichen Sachen und 2) bei anderen direkten Schäden auf maximal die Gebühren (maximal zwölf Monatsgebühren, wenn die Gebühren für das Programm nach einer festen Laufzeit berechnet werden), die der Lizenznehmer für das Programm entrichtet hat, das die Grundlage des Rechtsanspruches ist.

Diese Haftungsbegrenzung gilt auch für alle Programmentwickler und Lieferanten von IBM. Dies ist der maximale Betrag, für den IBM und diese gemeinsam haftbar gemacht werden können.

### **10.2 Fälle, in denen IBM nicht haftbar ist**

**Auf keinen Fall sind IBM oder die Programmentwickler und Lieferanten von IBM in folgenden Fällen haftbar, auch wenn sie auf die Möglichkeit solcher Schäden hingewiesen wurden:**

- a. Verlust oder Beschädigung von Daten;
- b. unmittelbare oder mittelbare Schäden oder sonstige wirtschaftliche Folgeschäden; oder
- c. entgangene Gewinne, Geschäftsabschlüsse, Umsätze, Schädigung des guten Namens oder Verlust erwarteter Einsparungen.

## **11. Einsichts- und Prüfungsrecht**

In diesem Abschnitt 11 bezeichnet "Nutzungsbedingungen" 1) diese Vereinbarung sowie alle anwendbaren Anlagen und Auftragsdokumente, die von IBM bereitgestellt werden, und 2) IBM Softwarerichtlinien, die auf der IBM Software Policy Website ([www.ibm.com/softwarepolicies](http://www.ibm.com/softwarepolicies)) zu finden sind, einschließlich der Richtlinien, die sich auf Sicherungen, das Sub-Capacity-Preismodell und die Migration beziehen.

Die Rechte und Verpflichtungen im Rahmen dieses Abschnitts 11 bleiben während der Lizenzlaufzeit und danach für weitere zwei Jahre in Kraft.

## 11.1 Prüfungsprozess

Der Lizenznehmer verpflichtet sich, korrekte schriftliche Aufzeichnungen, Ausgaben von Systemtools und sonstige Systemdaten zu erstellen, aufzubewahren und IBM sowie den beauftragten Prüfern bereitzustellen, um gegenüber IBM prüffähige Nachweise dafür zu erbringen, dass die Nutzung der Programme in Übereinstimmung mit den Nutzungsbedingungen erfolgt, einschließlich der angewandten IBM Lizenz- und Preisbedingungen. Der Lizenznehmer ist dafür verantwortlich, 1) sicherzustellen, dass die berechtigte Nutzung nicht überschritten wird und 2) die Nutzungsbedingungen eingehalten werden.

Nach angemessener Vorankündigung ist IBM dazu berechtigt, die Einhaltung der Nutzungsbedingungen an allen Standorten des Lizenznehmers und für alle Umgebungen, an denen der Lizenznehmer die den Nutzungsbedingungen unterliegenden Programme (zu irgendeinem Zweck) nutzt, zu überprüfen. Die Prüfung findet während der üblichen Geschäftszeiten in den Räumlichkeiten des Lizenznehmers statt. IBM wird sich bemühen, den Geschäftsbetrieb des Lizenznehmers dabei so wenig wie möglich zu beeinträchtigen. IBM ist berechtigt, die Prüfung durch einen unabhängigen Prüfer durchführen zu lassen, soweit dieser durch eine schriftliche Vertraulichkeitsvereinbarung zur Geheimhaltung verpflichtet ist.

## 11.2 Prüfergebnis

IBM wird den Lizenznehmer schriftlich benachrichtigen, sofern eine solche Überprüfung ergibt, dass der Lizenznehmer die berechtigte Nutzung eines Programms überschritten hat oder der Lizenznehmer die ihm aus dieser Vereinbarung obliegenden Verpflichtungen nicht einhält. Der Lizenznehmer erklärt sich dazu bereit, die in einer Rechnung von IBM aufgeführten Gebühren für 1) die Nutzungsüberschreitung, 2) die Unterstützung während der Nutzungsüberschreitung entweder für die Dauer der Nutzungsüberschreitung oder für zwei Jahre, je nachdem, welcher Zeitraum kürzer ist, und 3) alle anfallenden zusätzlichen Gebühren und anderen Verbindlichkeiten, die sich aufgrund der Prüfung ergeben, unverzüglich direkt an IBM zu entrichten.

## 12. Hinweise von Drittherstellern

Das Programm kann Drittherstellercode enthalten, für den IBM und nicht der Dritthersteller dem Lizenznehmer eine Lizenz unter dieser Vereinbarung erteilt. Falls Hinweise auf den Drittherstellercode ("Third Party Notices") mitgeliefert werden, geschieht dies nur zu Informationszwecken. Diese Hinweise können in den NOTICES-Dateien des Programms enthalten sein. Informationen über den Erhalt des Quellcodes für einen bestimmten Drittherstellercode befinden sich in den Third Party Notices. Kennzeichnet IBM Drittherstellercode in den Third Party Notices als "Modifiable Third Party Code" (Drittherstellercode, der geändert werden kann), so erteilt IBM dem Lizenznehmer damit die Berechtigung, 1) den Modifiable Third Party Code zu verändern und 2) die Programmmodule rückzuentwickeln, die eine direkte Schnittstelle zu dem Modifiable Third Party Code darstellen, sofern dies ausschließlich zu dem Zweck erfolgt, die Änderungen des Lizenznehmers am Drittherstellercode per Debugging zu testen. Die Service- und Unterstützungsverpflichtungen von IBM (sofern verfügbar) beziehen sich nur auf das unveränderte Programm.

## 13. Allgemeines

- a. Gesetzlich unabdingbare Verbraucherschutzrechte haben Vorrang vor den Bedingungen dieser Vereinbarung.
- b. Werden die Programme auf Datenträgern an den Lizenznehmer geliefert, geht – sofern nicht zwischen den Parteien etwas Abweichendes schriftlich vereinbart wurde – die Gefahr auf den Lizenznehmer über, sobald IBM den Datenträger an den von IBM bestimmten Spediteur / Frachtführer oder die sonst zur Ausführung der Auslieferung bestimmte Person oder Anstalt ausgeliefert hat.
- c. Falls eine der Bedingungen dieser Vereinbarung im Rahmen des geltenden Rechts ungültig oder undurchführbar ist, sind die übrigen Bedingungen dieser Vereinbarung davon nicht betroffen und gelten weiterhin in vollem Umfang.
- d. Der Lizenznehmer verpflichtet sich zur Einhaltung aller anwendbaren Export- und Importgesetze und -bestimmungen, einschließlich der US-Embargo- und Sanktionsbestimmungen sowie des Exportverbots für bestimmte Verwendungszwecke oder an bestimmte Personen.

- e. Der Lizenznehmer ist damit einverstanden, dass International Business Machines Corporation und deren verbundene Unternehmen (sowie deren Rechtsnachfolger und Zessionare, Vertragspartner und IBM Business Partner) die Kontaktinformationen des Lizenznehmers in allen Ländern, in denen sie geschäftlich tätig sind, in Verbindung mit IBM Produkten und Services oder zur Förderung der Geschäftsbeziehung zwischen IBM und dem Lizenznehmer speichern und nutzen dürfen.
- f. Jede Vertragspartei wird der anderen Partei ausreichend Gelegenheit geben, ihren vertraglichen Verpflichtungen nachzukommen, bevor sie rechtliche Schritte wegen Nichterfüllung von Vertragsbedingungen unternimmt. Die Vertragsparteien werden versuchen, alle Streitfälle, Meinungsverschiedenheiten oder Ansprüche zwischen den Parteien in Bezug auf diese Vereinbarung einvernehmlich beizulegen.
- g. Soweit nicht durch gesetzliche Regelung etwas anderes zwingend vorgesehen ist, stimmen beide Vertragsparteien überein, 1) im Rahmen dieser Vereinbarung keine Klage später als zwei Jahre nach Auftreten des Klagegegenstands einzureichen, und 2) dass nach Ablauf dieser Frist alle Ansprüche und alle damit in Zusammenhang stehenden Rechte verjähren.
- h. Weder der Lizenznehmer noch IBM sind für die Nichterfüllung von vertraglichen Verpflichtungen aus Gründen haftbar, die von den Vertragsparteien nicht beeinflusst werden können.
- i. Aus dieser Vereinbarung ergibt sich kein Recht auf Klage oder Klagegegenstand für Dritte, und IBM ist nicht haftbar für Ansprüche Dritter gegen den Lizenznehmer, die nicht oben in Unterabschnitt 10.1 (Fälle, in denen IBM haftbar gemacht werden kann) für Personenschäden (einschließlich Tod) und Schäden an Immobilien und beweglichen Sachen aufgeführt sind, für die IBM nach den gesetzlichen Bestimmungen haftbar ist.
- j. Durch Anerkennung dieser Vereinbarung stimmen beide Vertragsparteien darin überein, sich nicht auf irgendwelche Darstellungen zu verlassen, die nicht auf dieser Vereinbarung beruhen, einschließlich 1) der Angaben zu Leistung oder Funktion des Programms, die von den ausdrücklichen Gewährleistungen in Abschnitt 8 (Gewährleistung und Ausschlüsse) oben abweichen; und 2) der Erfahrungen oder Empfehlungen Dritter; oder 3) der Ergebnisse oder Einsparungen, die der Lizenznehmer eventuell erzielen kann.
- k. IBM hat mit bestimmten Partnern ("IBM Business Partner" genannt) Vereinbarungen zur Vermarktung und Unterstützung bestimmter Programme geschlossen. IBM Business Partner sind eigenständig und von IBM unabhängig. IBM ist weder für die Geschäftstätigkeit der IBM Business Partner noch für deren Aussagen oder Verpflichtungen gegenüber dem Lizenznehmer verantwortlich.
- l. Die Lizenzbedingungen und Freistellungsregelungen in anderen (Rahmen-)Vereinbarungen zwischen dem Lizenznehmer und IBM (z. B. den Allgemeinen Geschäftsbedingungen von IBM) gelten nicht für Programmlizenzen, die unter dieser Vereinbarung erteilt werden.

## 14. Geltungsbereich und geltendes Recht

### 14.1 Geltendes Recht

Beide Vertragsparteien sind damit einverstanden, dass die Gesetze des Landes zur Anwendung kommen, in dem der Lizenznehmer die Programmlizenz erworben hat, um die Rechte, Pflichten und Verpflichtungen des Lizenznehmers und von IBM, die sich aus dem Inhalt dieser Vereinbarung ergeben oder in irgendeiner Weise damit in Zusammenhang stehen, zu regeln, zu interpretieren und durchzuführen, ungeachtet unterschiedlicher Rechtsgrundlagen.

Die Vertragskonvention der Vereinten Nationen für den internationalen Warenverkauf kommt nicht zur Anwendung.

### 14.2 Rechtsprechung

Alle Rechte, Pflichten und Verpflichtungen unterliegen der Rechtsprechung des Landes, in dem der Lizenznehmer die Programmlizenz erworben hat.

## Teil 2 – Länderspezifische Bedingungen

Für Lizenzen, die in den unten aufgeführten Ländern erteilt werden, ersetzen oder ergänzen die nachfolgenden länderspezifischen Regelungen die betreffenden Bedingungen für die jeweiligen Länder in Teil 1. Alle Bedingungen in Teil 1, die von diesen Änderungen oder Ergänzungen nicht betroffen sind, bleiben unverändert und behalten ihre Gültigkeit. Teil 2 ist wie folgt aufgebaut:

- Ergänzungen zu Teil 1, Abschnitt 14 (Geltendes Recht und Rechtsprechung), die für mehrere Länder gelten, und
- Ergänzungen zu anderen Bedingungen dieser Vereinbarung, die für die EMEA-Länder (Europa, Naher / Mittlerer Osten und Afrika) gelten

### **Ergänzungen zu Teil 1, Abschnitt 14 (Geltendes Recht und Rechtsprechung), die für mehrere Länder gelten**

#### **14.2 Rechtsprechung**

*Der folgende Absatz bezieht sich auf die Rechtsprechung und ersetzt Unterabschnitt 14.2 (Rechtsprechung) für diejenigen Länder, die unten angegeben sind:*

Alle Rechte, Pflichten und Verpflichtungen unterliegen der Rechtsprechung des Landes, in dem der Lizenznehmer die Programmlicenz erworben hat, mit Ausnahme der unten aufgeführten Länder, in denen sämtliche Rechtsstreitigkeiten, die sich aus dieser Vereinbarung ergeben oder damit in Zusammenhang stehen, einschließlich etwaiger Schnellverfahren, ausschließlich in die Zuständigkeit der folgenden Gerichte fallen:

#### **EUROPA, NAHER/MITTLERER OSTEN UND AFRIKA**

in **Österreich**: das zuständige Gericht in Wien, Österreich (Innenstadt);

#### **ERGÄNZUNGEN FÜR DIE EMEA-LÄNDER**

#### **MITGLIEDSSTAATEN DER EUROPÄISCHEN UNION**

#### **8. Gewährleistung und Ausschlüsse**

*Der folgende Text wird Abschnitt 8 (Gewährleistung und Ausschlüsse) hinzugefügt:*

In der Europäischen Union ("EU") sind für Verbraucher unter den geltenden nationalen rechtlichen Bestimmungen Rechte für den Verkauf von Verbrauchsgütern definiert. Diese Rechte sind von den Bestimmungen in Abschnitt 8 (Gewährleistung und Ausschlüsse) nicht betroffen. Der räumliche Geltungsbereich der begrenzten Gewährleistung ist weltweit.

#### **EU-MITGLIEDSSTAATEN UND DIE UNTEN AUFGEFÜHRTEN LÄNDER**

**Liechtenstein, die Schweiz und alle anderen europäischen Länder, die nationale Datenschutzbestimmungen nach dem EU-Modell per Gesetz eingeführt haben.**

#### **13. Allgemeines**

*Der folgende Text ersetzt Abschnitt 13.e:*

- (1) **Begriffsbestimmungen** – Für die Zwecke von Abschnitt 13.e kommen die folgenden zusätzlichen Begriffsbestimmungen zur Anwendung:
  - (a) **Kontaktinformationen** – geschäftsbezogene Kontaktinformationen, die IBM vom Lizenznehmer zugänglich gemacht werden, dazu gehören u. a. Namen, Berufsbezeichnungen, Geschäftsadressen, Telefonnummern und E-Mail-Adressen von Mitarbeitern und Vertragspartnern des Lizenznehmers. In Österreich, Italien und der Schweiz umfassen die Kontaktinformationen ferner Angaben über den Lizenznehmer und seine Vertragspartner als juristische Personen (z. B. Umsatzdaten des Lizenznehmers und andere transaktionsorientierte Informationen).

- (b) **Kontaktperson** – Mitarbeiter und Vertragspartner des Lizenznehmers, auf die sich die Kontaktinformationen beziehen.
  - (c) **Datenschutzbehörde** – die Behörde, die vom jeweiligen Land gemäß der Vorschriften zum Datenschutz und zur elektronischen Kommunikation eingerichtet wurde, oder bei Nicht-EU-Ländern die Behörde, die für die Überwachung des Datenschutzes bei personenbezogenen Daten im jeweiligen Land verantwortlich ist, oder eine zuständige Nachfolgebehörde (in Bezug auf eine der genannten Behörden).
  - (d) **Vorschriften zum Datenschutz und zur elektronischen Kommunikation** – (i) die geltenden nationalen Gesetze und Verordnungen, die die Anforderungen der EU-Richtlinie 95/46/EC (zum Schutz natürlicher Personen bei der Verarbeitung personenbezogener Daten und zum freien Datenverkehr) und der EU-Richtlinie 2002/58/EC (über die Verarbeitung personenbezogener Daten und den Schutz der Privatsphäre in der elektronischen Kommunikation) umsetzen; oder (ii) in Nicht-EU-Ländern, die Gesetze und/oder Verordnungen, die in den betreffenden Ländern zum Schutz personenbezogener Daten und zur Regulierung der elektronischen Kommunikation unter Einbeziehung personenbezogener Daten erlassen wurden, einschließlich aller Ersatzgesetze oder Gesetzesänderungen (in Bezug auf die zuvor erwähnten Gesetze und Verordnungen).
  - (e) **IBM Unternehmen** – International Business Machines Corporation mit Sitz in Armonk, New York (USA), deren verbundene Unternehmen und IBM Business Partner sowie deren Subunternehmer.
- (2) Der Lizenznehmer willigt ein, dass IBM
- (a) Kontaktinformationen zum Zwecke der Durchführung und Förderung der Geschäftsbeziehung, einschließlich der Bereitstellung von Unterstützungsleistungen, und zur Vermarktung der Produkte und Services der IBM Unternehmen (der "Verwendungszweck") zwischen Lizenznehmer und den IBM Unternehmen verarbeitet und nutzt; und
  - (b) Kontaktinformationen im Rahmen des Verwendungszwecks den IBM Unternehmen zugänglich macht und die Kontaktinformationen durch diese verarbeitet und genutzt werden können.
- (3) IBM wird in diesem Zusammenhang sämtliche Kontaktinformationen im Rahmen der anwendbaren Vorschriften zum Datenschutz und zur elektronischen Kommunikation und nur im Rahmen des Verwendungszwecks verarbeiten und nutzen.
- (4) Sofern aufgrund der Vorschriften zum Datenschutz und zur elektronischen Kommunikation erforderlich, sichert der Lizenznehmer zu, die vorherige Zustimmung der Kontaktperson eingeholt zu haben bzw. einzuholen und diese entsprechend informiert zu haben bzw. zu informieren. Damit stellt der Lizenznehmer sicher, dass die IBM Unternehmen die Kontaktinformationen im Rahmen des Verwendungszwecks verarbeiten und nutzen und mit den Kontaktpersonen, z. B. auch per E-Mail, Kontakt aufnehmen können.
- (5) Der Lizenznehmer stimmt der Übermittlung von Kontaktinformationen in Länder außerhalb des Europäischen Wirtschaftsraums (EWR) unter der Maßgabe zu, dass eine solche Übermittlung nur im Rahmen einer von der zuständigen Datenschutzbehörde freigegebenen vertraglichen Vereinbarung erfolgt.

## ÖSTERREICH

### 8.2 Ausschlüsse

*Der folgende Text wird im ersten Absatz gelöscht:*

**zufriedenstellende Qualität, Handelsüblichkeit**

## 10. Haftungsbegrenzung

*Der folgende Text wird hinzugefügt:*

Die folgenden Beschränkungen und Ausschlüsse in Bezug auf die Haftung von IBM entfallen bei Schäden, die durch grobe Fahrlässigkeit oder Vorsatz verursacht werden.

### 10.1 Fälle, in denen IBM haftbar gemacht werden kann

*Der folgende Text ersetzt den ersten Satz im ersten Absatz:*

Soweit IBM gegenüber dem Lizenznehmer aufgrund der Verpflichtungen aus dieser Vereinbarung schadenersatzpflichtig ist, hat er Anspruch auf Entschädigung durch IBM.

*Im zweiten Satz des ersten Absatzes wird der in Klammern stehende Ausdruck vollständig gelöscht:*

"(einschließlich Vertragsverletzung, Fahrlässigkeit, unrichtiger Angaben oder anderer Ansprüche aus dem Vertrag oder aufgrund unerlaubter Handlungen)"

### 10.2 Fälle, in denen IBM nicht haftbar ist

*Der folgende Text ersetzt Abschnitt 10.2b:*

- b. mittelbare Schäden oder Folgeschäden; oder

## DEUTSCHLAND

### 8.1 Begrenzte Gewährleistung

*Der folgende Text wird am Anfang von Abschnitt 8.1 eingefügt:*

Der Gewährleistungszeitraum beträgt 12 Monate ab dem Datum der Lieferung des Programms an den ursprünglichen Lizenznehmer.

### 8.2 Ausschlüsse

*Abschnitt 8.2 wird vollständig gelöscht und durch den folgenden Text ersetzt:*

Vorbehaltlich anderslautender gesetzlicher Bestimmungen sind in Abschnitt 8.1 sämtliche Gewährleistungsverpflichtungen von IBM gegenüber dem Lizenznehmer definiert.

## 10. Haftungsbegrenzung

*Die Bedingungen in Abschnitt 10 (Haftungsbegrenzung) werden durch den folgenden Text vollständig ersetzt:*

- a. IBM haftet für 1) Schäden, die durch Verletzung einer mit dem Abschluss des Vertrags übernommenen Garantie entstanden sind; 2) für Schäden bei Verletzungen von Leben, Körper oder Gesundheit; sowie 3) für Schäden, die IBM vorsätzlich oder grob fahrlässig verursacht hat, unbeschränkt.
- b. Bei leicht fahrlässiger Schadensverursachung haftet IBM, gleich aus welchem Rechtsgrund (einschließlich Ansprüchen aus Vertragsverletzung sowie unerlaubter Handlung), pro Schadensfall bis zu einem Höchstbetrag von EUR 500.000 (fünfhunderttausend Euro) oder bis zur Höhe des Preises (maximal zwölf Monatsgebühren, wenn die Gebühren für das Programm nach einer festen Laufzeit berechnet werden) für das schadensverursachende Programm. Dies umfasst auch den Ersatz vergeblicher Aufwendungen. Mehrere Pflichtverletzungen, die zusammen im Wesentlichen denselben Schaden verursachen oder zu ihm beitragen, werden als eine Pflichtverletzung behandelt.

- c. IBM haftet bei leicht fahrlässigem Verhalten nicht für mittelbare Schäden oder Folgeschäden, selbst wenn IBM über die Möglichkeit solcher Schäden informiert wurde. Dies umfasst auch den Ersatz vergeblicher Aufwendungen, sofern es sich hierbei um mittelbare oder Folgeschäden handelt.
- d. Im Falle des Verzugs erstattet IBM dem Lizenznehmer den durch den Verzug nachweislich entstandenen Schaden im Rahmen der Abschnitte 10.a und 10.b.

### **13. Allgemeines**

*Der folgende Text ersetzt die Bedingungen in Abschnitt 13.g:*

Alle Ansprüche aus dieser Vereinbarung unterliegen einer dreijährigen Verjährungsfrist, soweit in Abschnitt 8.1 (Begrenzte Gewährleistung) dieser Vereinbarung nicht abweichend geregelt.

*Der folgende Text ersetzt die Bedingungen in Abschnitt 13.i:*

Aus dieser Vereinbarung ergibt sich kein Recht auf Klage oder Klagegegenstand für Dritte, und IBM ist nicht haftbar für Ansprüche Dritter gegen den Lizenznehmer, die nicht in Abschnitt 10 (Haftungsbegrenzung) für i) Personenschäden (einschließlich Tod) oder ii) Schäden an Immobilien und beweglichen Sachen aufgeführt sind, für die IBM (in beiden Fällen) nach den gesetzlichen Bestimmungen haftbar ist.



# Διεθνής Σύμβαση Άδειας Χρήσης Προγράμματος

## Μέρος 1 – Γενικοί Όροι

Ο ΔΙΚΑΙΟΥΧΟΣ ΑΔΕΙΑΣ ΧΡΗΣΗΣ ΑΠΟΔΕΧΕΤΑΙ ΤΟΥΣ ΟΡΟΥΣ ΤΗΣ ΠΑΡΟΥΣΑΣ ΣΥΜΒΑΣΗΣ ΑΥΤΟΜΑΤΩΣ ΤΗ ΣΤΙΓΜΗ ΠΟΥ ΠΡΟΒΑΙΝΕΙ ΣΕ ΜΕΤΑΦΟΡΤΩΣΗ (DOWNLOAD), ΕΓΚΑΤΑΣΤΑΣΗ, ΑΝΤΙΓΡΑΦΗ, ΠΡΟΣΠΕΛΑΣΗ, ΠΑΤΗΜΑ ΣΕ ΚΟΥΜΠΙ "ΑΠΟΔΟΧΗ" Ή "ΑΠΟΔΕΧΟΜΑΙ" (ACCEPT), Ή ΚΑΤΑ ΑΛΛΟΝ ΤΡΟΠΟ ΧΡΗΣΗ ΤΟΥ ΠΡΟΓΡΑΜΜΑΤΟΣ. ΕΑΝ ΑΠΟΔΕΧΕΣΤΕ ΑΥΤΟΥΣ ΤΟΥΣ ΟΡΟΥΣ ΕΞ ΟΝΟΜΑΤΟΣ ΤΟΥ ΔΙΚΑΙΟΥΧΟΥ ΑΔΕΙΑΣ ΧΡΗΣΗΣ, ΔΗΛΩΝΕΤΕ ΚΑΙ ΕΓΓΥΑΣΤΕ ΟΤΙ ΔΙΑΘΕΤΕΤΕ ΠΛΗΡΗ ΕΞΟΥΣΙΟΔΟΤΗΣΗ ΓΙΑ ΤΗ ΔΕΣΜΕΥΣΗ ΤΟΥ ΔΙΚΑΙΟΥΧΟΥ ΑΔΕΙΑΣ ΧΡΗΣΗΣ ΣΕ Ο,ΤΙ ΑΦΟΡΑ ΑΥΤΟΥΣ ΤΟΥΣ ΟΡΟΥΣ. ΕΑΝ ΔΕΝ ΣΥΜΦΩΝΕΙΤΕ ΜΕ ΑΥΤΟΥΣ ΤΟΥΣ ΟΡΟΥΣ:

- ΜΗ ΜΕΤΑΦΟΡΤΩΣΕΤΕ, ΕΓΚΑΤΑΣΤΗΣΕΤΕ, ΑΝΤΙΓΡΑΨΕΤΕ, ΠΡΟΣΠΕΛΑΣΕΤΕ, ΠΑΤΗΣΕΤΕ ΣΕ ΚΟΥΜΠΙ "ΑΠΟΔΟΧΗ" Ή "ΑΠΟΔΕΧΟΜΑΙ" (ACCEPT), Ή ΧΡΗΣΙΜΟΠΟΙΗΣΕΤΕ ΤΟ ΠΡΟΓΡΑΜΜΑ, ΚΑΙ
- ΕΠΙΣΤΡΕΨΤΕ ΑΜΕΣΑ ΤΑ ΑΧΡΗΣΙΜΟΠΟΙΗΤΑ ΜΕΣΑ ΑΠΟΘΗΚΕΥΣΗΣ, ΤΗΝ ΤΕΚΜΗΡΙΩΣΗ ΚΑΙ ΤΗΝ ΑΠΟΔΕΙΞΗ ΔΙΚΑΙΩΜΑΤΟΣ (PROOF OF ENTITLEMENT) ΣΤΗ ΝΟΜΙΚΗ ΟΝΤΟΤΗΤΑ ΑΠΟ ΤΗΝ ΟΠΟΙΑ ΤΑ ΑΠΟΚΤΗΣΑΤΕ, ΠΡΟΚΕΙΜΕΝΟΥ ΝΑ ΣΑΣ ΕΠΙΣΤΡΑΦΕΙ ΤΟ ΠΟΣΟ ΠΟΥ ΚΑΤΑΒΑΛΑΤΕ. ΕΑΝ ΜΕΤΑΦΟΡΤΩΣΑΤΕ (DOWNLOAD) ΤΟ ΠΡΟΓΡΑΜΜΑ ΑΠΟ ΤΟ ΔΙΑΔΙΚΤΥΟ, ΚΑΤΑΣΤΡΕΨΤΕ ΟΛΑ ΤΑ ΑΝΤΙΓΡΑΦΑ ΤΟΥ ΠΡΟΓΡΑΜΜΑΤΟΣ.

### 1. Ορισμοί

**"Εξουσιοδοτημένη Χρήση"** (Authorized Use)—το καθορισμένο επίπεδο στο οποίο ο Δικαιούχος Άδειας Χρήσης είναι εξουσιοδοτημένος να εκτελεί ή να λειτουργεί το Πρόγραμμα. Το εν λόγω επίπεδο μπορεί να μετράται βάσει του αριθμού χρηστών, σε εκατομμύρια μονάδες υπηρεσίας (Millions of Service Units—"MSU"), σε μονάδες αξίας επεξεργαστή (Processor Value Units—"PVU") ή μπορεί να είναι οποιοδήποτε άλλο επίπεδο χρήσης που καθορίζεται από την IBM.

**"IBM"**—International Business Machines Corporation ή μία από τις θυγατρικές της.

**"Πληροφορίες για την Άδεια Χρήσης"** (License Information—"LI")—ένα έγγραφο που παρέχει πληροφορίες και τυχόν πρόσθετους όρους που αφορούν σε ένα συγκεκριμένο Πρόγραμμα. Οι Πληροφορίες για την Άδεια Χρήσης του Προγράμματος είναι διαθέσιμες στη διεύθυνση [www.ibm.com/software/sla](http://www.ibm.com/software/sla). Μπορείτε επίσης να βρείτε τις Πληροφορίες για την Άδεια Χρήσης στον κατάλογο του Προγράμματος, με τη χρήση μιας εντολής του συστήματος ή ως φυλλάδιο που συνοδεύει το Πρόγραμμα.

**"Πρόγραμμα"** (Program)—τα ακόλουθα, συμπεριλαμβανομένου του πρωτοτύπου και όλων των αντιγράφων ή μερικών αντιγράφων: 1) εντολές και δεδομένα αναγνώσιμα από μηχανή, 2) λειτουργικά τμήματα (components), αρχεία και ενότητες (modules), 3) οπτικοακουστικό περιεχόμενο (π.χ. εικόνες, κείμενο, ηχογραφήσεις ή φωτογραφίες) και 4) σχετικά υλικά κατοχυρωμένα με άδεια χρήσης (π.χ. κλειδιά και τεκμηρίωση).

**"Απόδειξη Δικαιώματος"** (Proof of Entitlement—"PoE")—τεκμήριο της Εξουσιοδοτημένης Χρήσης εκ μέρους του Δικαιούχου Άδειας Χρήσης. Η Απόδειξη Δικαιώματος αποτελεί επίσης τεκμήριο των δικαιωμάτων του Δικαιούχου Άδειας Χρήσης σε ό,τι αφορά την εγγύηση, τις τιμές μελλοντικών αναβαθμίσεων, εάν υπάρξουν, και δυνητικές ειδικές ή προωθητικές προσφορές. Εάν η IBM δεν παράσχει Απόδειξη Δικαιώματος στο Δικαιούχο Άδειας Χρήσης, τότε η IBM μπορεί να αποδεχθεί ως Απόδειξη Δικαιώματος την αρχική απόδειξη πώλησης ή άλλο αποδεικτικό έγγραφο της πώλησης από το μέρος (είτε την IBM είτε το μεταπωλητή της) από το οποίο ο Δικαιούχος Άδειας Χρήσης απέκτησε το Πρόγραμμα, υπό την προϋπόθεση ότι στο εν λόγω έγγραφο αναγράφεται η ονομασία του Προγράμματος και το αποκτηθέν επίπεδο Εξουσιοδοτημένης Χρήσης.

**"Περίοδος Εγγύησης"** (Warranty Period)—ένα έτος, αρχίζοντας από την ημερομηνία κατά την οποία χορηγείται η άδεια χρήσης στον αρχικό Δικαιούχο Άδειας Χρήσης.

## 2. Δομή της Σύμβασης

Η παρούσα Σύμβαση περιλαμβάνει το **Μέρος 1—Γενικοί Όροι**, το **Μέρος 2—Όροι που Εμπίπτουν στο Δίκαιο κάθε Χώρας** (εάν υπάρχουν), τις Πληροφορίες για την Άδεια Χρήσης και την Απόδειξη Δικαιώματος και αποτελεί την πλήρη συμφωνία μεταξύ του Δικαιούχου Άδειας Χρήσης και της IBM αναφορικά με τη χρήση του Προγράμματος. Η παρούσα Σύμβαση αντικαθιστά οποιαδήποτε προηγούμενη προφορική ή έγγραφη επικοινωνία μεταξύ του Δικαιούχου Άδειας Χρήσης και της IBM αναφορικά με τη χρήση του Προγράμματος εκ μέρους του Δικαιούχου Άδειας Χρήσης. Οι όροι του Μέρους 2 ενδέχεται να αντικαθιστούν ή να τροποποιούν τους όρους του Μέρους 1. Στο βαθμό που υπάρχει οποιαδήποτε αντίθεση μεταξύ τους, οι όροι των Πληροφοριών για την Άδεια Χρήση κατ'ισχύουν των όρων των δύο Μερών (1 και 2).

## 3. Χορήγηση Άδειας Χρήσης

Το Πρόγραμμα ανήκει στην IBM ή σε προμηθευτή της IBM και τα πνευματικά δικαιώματα επί του Προγράμματος είναι κατοχυρωμένα. Το Πρόγραμμα παραχωρείται με άδεια χρήσης, δεν πωλείται.

Η IBM χορηγεί στο Δικαιούχο Άδειας Χρήσης μη αποκλειστική άδεια για 1) τη χρήση του Προγράμματος έως το επίπεδο Εξουσιοδοτημένης Χρήσης που καθορίζεται στην Απόδειξη Δικαιώματος, 2) τη δημιουργία και εγκατάσταση αντιγράφων για την υποστήριξη της εν λόγω Εξουσιοδοτημένης Χρήσης και 3) τη δημιουργία εφεδρικού ("backup") αντιγράφου, όλα τα ανωτέρω υπό την προϋπόθεση ότι:

- α. ο Δικαιούχος Άδειας Χρήσης απέκτησε το Πρόγραμμα με νόμιμο τρόπο και συμμορφώνεται με τους όρους της παρούσας Σύμβασης
- β. το εφεδρικό αντίγραφο δεν χρησιμοποιείται παρά μόνο στις περιπτώσεις όπου δεν είναι δυνατή η εκτέλεση του Προγράμματος για το οποίο δημιουργήθηκε εφεδρικό αντίγραφο
- γ. ο Δικαιούχος Άδειας Χρήσης αναπαράγει κάθε σημείωση περί πνευματικών δικαιωμάτων, καθώς και κάθε άλλη ένδειξη σχετικά με την ιδιοκτησία, σε κάθε αντίγραφο ή μερικό αντίγραφο του Προγράμματος
- δ. ο Δικαιούχος Άδειας Χρήσης εξασφαλίζει ότι οποιοσδήποτε χρησιμοποιεί το Πρόγραμμα (είτε τοπικά είτε εξ αποστάσεως) 1) το πράττει μόνο εξ ονόματος του Δικαιούχου Άδειας Χρήσης και 2) συμμορφώνεται με τους όρους της παρούσας Σύμβασης
- ε. ο Δικαιούχος Άδειας Χρήσης δεν προβαίνει 1) στη χρήση, αντιγραφή, τροποποίηση ή διανομή του Προγράμματος, παρά μόνο στο βαθμό που ρητώς επιτρέπεται στην παρούσα Σύμβαση, 2) στην αντιστροφή συμβολομετάφραση (reverse assembling), αντιστροφή μεταγλώττιση (reverse compilation) ή κατά άλλο τρόπο μετάφραση ή αποσυμπίληση (reverse engineering) του Προγράμματος, παρά μόνο στο βαθμό που ρητώς επιτρέπεται από το νόμο χωρίς να υπάρχει η δυνατότητα συμβατικής παραιτήσης από αυτό το δικαίωμα, 3) στη χρήση των λειτουργικών τμημάτων, αρχείων, ενοτήτων, οπτικοακουστικού περιεχομένου ή σχετικών κατοχυρωμένων με άδεια χρήσης υλικών του Προγράμματος χωρίς από το εν λόγω Πρόγραμμα ή 4) στην ενοικίαση ή εκμίσθωση του Προγράμματος ή στην παραχώρηση πειραιτέρω αδειών χρήσης (sublicense) του Προγράμματος σε τρίτους, και
- στ. εάν ο Δικαιούχος Άδειας Χρήσης αποκτήσει αυτό το Πρόγραμμα ως Υποστηρικτικό Πρόγραμμα, ο Δικαιούχος Άδειας Χρήσης θα χρησιμοποιεί αυτό το Πρόγραμμα μόνο για την υποστήριξη του Κύριου Προγράμματος και η εκ μέρους του χρήση του Προγράμματος θα υπόκειται σε οποιουσδήποτε περιορισμούς τίθενται στην άδεια χρήσης του Κύριου Προγράμματος ή, εάν ο Δικαιούχος Άδειας Χρήσης αποκτήσει αυτό το πρόγραμμα ως Κύριο Πρόγραμμα, ο Δικαιούχος Άδειας Χρήσης θα χρησιμοποιεί όλα τα Υποστηρικτικά Προγράμματα μόνο για την υποστήριξη αυτού του Προγράμματος και η εκ μέρους του χρήση των εν λόγω Προγραμμάτων θα υπόκειται σε οποιουσδήποτε περιορισμούς τίθενται στην παρούσα Σύμβαση. Για του σκοπούς του παρόντος εδαφίου "στ", "Υποστηρικτικό Πρόγραμμα" (Supporting Program) είναι ένα Πρόγραμμα που αποτελεί μέρος άλλου Προγράμματος της IBM ("Κύριο Πρόγραμμα") και έχει προσδιορίζεται ως Υποστηρικτικό Πρόγραμμα στις Πληροφορίες για την Άδεια Χρήσης του Κύριου Προγράμματος. (Για την απόκτηση μιας χωριστής άδειας χρήσης για ένα Υποστηρικτικό Πρόγραμμα χωρίς να ισχύουν αυτοί οι περιορισμοί, ο Δικαιούχος Άδειας Χρήσης θα πρέπει να απευθυνθεί στο μέρος από το οποίο απέκτησε το Υποστηρικτικό Πρόγραμμα.)

Η παρούσα άδεια χρήσης ισχύει για κάθε αντίγραφο του Προγράμματος που δημιουργείται από το Δικαιούχο Άδειας Χρήσης.

### **3.1 Προγράμματα Αντικατάστασης, Αναβαθμίσεις, Διορθώσεις και Επιδιορθώσεις**

#### **3.1.1 Προγράμματα Αντικατάστασης (Trade-ups)**

Εάν το Πρόγραμμα αντικατασταθεί από ένα Πρόγραμμα Αντικατάστασης (Trade-up Program), η άδεια χρήσης του αντικατασταθέντος Προγράμματος τερματίζεται άμεσα.

#### **3.1.2 Αναβαθμίσεις, Διορθώσεις και Επιδιορθώσεις**

Όταν ο Δικαιούχος Άδειας Χρήσης λάβει μια αναβάθμιση (update), διόρθωση (fix) ή επιδιόρθωση (patch) ενός Προγράμματος, ο Δικαιούχος Άδειας Χρήσης αποδέχεται οποιουδήποτε πρόσθετους ή διαφορετικούς όρους που ισχύουν για την εν λόγω αναβάθμιση, διόρθωση ή επιδιόρθωση και καθορίζονται στις αντίστοιχες Πληροφορίες για την Άδεια Χρήση. Εάν δεν παρέχονται πρόσθετοι ή διαφορετικοί όροι, τότε η αναβάθμιση, διόρθωση ή επιδιόρθωση υπόκειται αποκλειστικά στους όρους της παρούσας Σύμβασης. Εάν το Πρόγραμμα αντικατασταθεί από μια αναβάθμιση, ο Δικαιούχος Άδειας Χρήσης συμφωνεί να τερματίσει άμεσα τη χρήση του αντικατασταθέντος Προγράμματος.

#### **3.2 Άδειες Χρήσης Καθορισμένης Περιόδου**

Εάν η IBM χορηγήσει άδεια χρήσης του Προγράμματος για καθορισμένη περίοδο, η άδεια χρήσης του Δικαιούχου Άδειας Χρήσης τερματίζεται κατά τη λήξη της καθορισμένης περιόδου, εκτός εάν ο Δικαιούχος Άδειας Χρήσης και η IBM συμφωνήσουν στην ανανέωσή της.

#### **3.3 Συμβατική Περίοδος και Τερματισμός**

Η παρούσα Σύμβαση παραμένει σε ισχύ έως ότου τερματιστεί.

Η IBM μπορεί να τερματίσει την άδεια χρήσης του Δικαιούχου Άδειας Χρήσης σε περίπτωση μη συμμόρφωσης του τελευταίου με τους όρους της παρούσας Σύμβασης.

Εάν η άδεια χρήσης τερματιστεί για οποιονδήποτε λόγο από οποιοδήποτε από τα δύο μέρη, ο Δικαιούχος Άδειας Χρήσης συμφωνεί να διακόψει άμεσα τη χρήση του Προγράμματος και να καταστρέψει όλα τα αντίγραφα του Προγράμματος που έχει στην κατοχή του. Οποιοδήποτε όροι της παρούσας Σύμβασης των οποίων η ισχύς παρατείνεται από τη φύση τους πέραν του τερματισμού της Σύμβασης, παραμένουν σε ισχύ έως ότου εκπληρωθούν και ισχύουν και για τους αντίστοιχους διαδόχους και εκδοχές κάθε ενός από τα δύο συμβαλλόμενα μέρη.

#### **4. Χρεώσεις**

Οι χρεώσεις βασίζονται στο επίπεδο Εξουσιοδοτημένης Χρήσης που αποκτήθηκε, το οποίο καθορίζεται στην Απόδειξη Δικαιώματος. Η IBM δεν εκδίδει πιστωτικά τιμολόγια ούτε επιστρέφει χρήματα για ποσά που έχουν ήδη καταστεί απαιτητά ή έχουν καταβληθεί, εκτός εάν καθορίζεται διαφορετικά σε άλλο σημείο της παρούσας Σύμβασης.

Εάν ο Δικαιούχος Άδειας Χρήσης επιθυμεί να αυξήσει το επίπεδο Εξουσιοδοτημένης Χρήσης του, θα πρέπει να ενημερώσει την IBM ή κάποιον εξουσιοδοτημένο μεταπωλητή της IBM εκ των προτέρων και να καταβάλει οποιουδήποτε σχετικές χρεώσεις.

#### **5. Φόροι**

Εάν οποιαδήποτε αρχή επιβάλει δασμό, φόρο, επιβάρυνση ή χρέωση επί του Προγράμματος, εκτός εκείνων που υπολογίζονται με βάση το καθαρό εισόδημα της IBM, τότε ο Δικαιούχος Άδειας Χρήσης συμφωνεί να καταβάλει το αντίστοιχο ποσό, όπως προσδιορίζεται σε σχετικό τιμολόγιο, ή να υποκομίσει έγγραφα απαλλαγής. Ο Δικαιούχος Άδειας Χρήσης είναι υπεύθυνος για την καταβολή οποιωνδήποτε φόρων προσωπικής περιουσίας για το Πρόγραμμα από την ημερομηνία της εκμέρους του απόκτησης του Προγράμματος. Εάν οποιαδήποτε αρχή επιβάλει τελωνειακό δασμό, φόρο, επιβάρυνση ή χρέωση για την εισαγωγή του Προγράμματος στη χώρα ή την εξαγωγή, μεταβίβαση, προσπέλαση ή χρήση του Προγράμματος εκτός της χώρας στην οποία χορηγήθηκε η άδεια χρήσης στο Δικαιούχο Άδειας Χρήσης, τότε ο Δικαιούχος Άδειας Χρήσης συμφωνεί ότι είναι υπεύθυνος για την καταβολή, και θα καταβάλει, οποιουδήποτε ποσό που του επιβάλλεται.

## 6. Εγγύηση Επιστροφής Χρημάτων

Εάν ο Δικαιούχος Άδειας Χρήσης για οποιονδήποτε λόγο δεν είναι ικανοποιημένος με το Πρόγραμμα και είναι ο αρχικός Δικαιούχος Άδειας Χρήσης, τότε δικαιούται να τερματίσει την άδεια χρήσης και να λάβει επιστροφή του ποσού που κατέβαλε για το Πρόγραμμα, υπό την προϋπόθεση ότι ο Δικαιούχος Άδειας Χρήσης θα επιστρέψει το Πρόγραμμα και την Απόδειξη Δικαιώματος στο μέρος από το οποίο τα απέκτησε εντός 30 ημερών από την ημερομηνία έκδοσης της Απόδειξης Δικαιώματος στο Δικαιούχο Άδειας Χρήσης. Αν η άδεια χρήσης είναι καθορισμένης περιόδου και υπόκειται σε ανανέωση, τότε ο Δικαιούχος Άδειας Χρήσης δικαιούται επιστροφή χρημάτων μόνο όταν το Πρόγραμμα και η Απόδειξη Δικαιώματος επιστραφούν εντός των πρώτων 30 ημερών της αρχικής περιόδου. Εάν ο Δικαιούχος Άδειας Χρήσης είχε μεταφορτώσει το Πρόγραμμα από το Διαδίκτυο, τότε ο Δικαιούχος Άδειας Χρήσης πρέπει να επικοινωνήσει με το μέρος από το οποίο απέκτησε το Πρόγραμμα για οδηγίες σχετικά με το πώς θα του επιστραφούν τα χρήματα που κατέβαλε.

## 7. Μεταβίβαση Προγράμματος

Ο Δικαιούχος Άδειας Χρήσης μπορεί να μεταβιβάσει το Πρόγραμμα και όλα τα δικαιώματα και τις υποχρεώσεις του που προβλέπονται στην άδεια χρήσης του Προγράμματος, σε άλλο μέρος εφόσον το άλλο μέρος αποδεχθεί τους όρους της παρούσας Σύμβασης. Εάν η άδεια χρήσης τερματιστεί για οποιονδήποτε λόγο από οποιοδήποτε από τα δύο μέρη, ο Δικαιούχος Άδειας Χρήσης δεν δικαιούται να μεταβιβάσει το Πρόγραμμα σε άλλο μέρος. Ο Δικαιούχος Άδειας Χρήσης δεν δικαιούται να μεταβιβάσει μέρος 1) του Προγράμματος ή 2) της Εξουσιοδοτημένης Χρήσης του Προγράμματος. Όταν ο Δικαιούχος Άδειας Χρήσης μεταβιβάσει το Πρόγραμμα, θα πρέπει επίσης να μεταβιβάσει έντυπο αντίγραφο της παρούσας Σύμβασης, συμπεριλαμβανομένων και των Πληροφοριών για την Άδεια Χρήση και της Απόδειξης Δικαιώματος. Αμέσως μετά την ολοκλήρωση της μεταβίβασης, η άδεια χρήσης του Δικαιούχου Άδειας Χρήσης τερματίζεται.

## 8. Εγγύηση και Εξαιρέσεις

### 8.1 Περιορισμένη Εγγύηση

Η IBM εγγυάται ότι το Πρόγραμμα, όταν χρησιμοποιείται στο καθορισμένο του περιβάλλον λειτουργίας, θα ανταποκρίνεται στις προδιαγραφές του. Οι προδιαγραφές του Προγράμματος και οι πληροφορίες για το καθορισμένο περιβάλλον λειτουργίας παρέχονται στην τεκμηρίωση που συνοδεύει το Πρόγραμμα (όπως π.χ. σε αρχείο "read-me") ή σε άλλες δημοσιευμένες πληροφορίες της IBM (όπως π.χ. σε επιστολή ανακοίνωσης). Ο Δικαιούχος Άδειας Χρήσης συμφωνεί ότι η εν λόγω τεκμηρίωση και άλλο περιεχόμενο ανατομικά με το Πρόγραμμα μπορεί να παρασχεθεί μόνο στην αγγλική γλώσσα, εκτός εάν προβλέπονται διαφορετικές απαιτήσεις από το εφαρμοστέο δίκαιο και δεν υπάρχει δυνατότητα συμβατικής παραίτησης ή περιορισμού αυτού του δικαιώματος.

Η εγγύηση ισχύει μόνο για το μέρος του Προγράμματος που δεν έχει υποστεί τροποποιήσεις. Η IBM δεν εγγυάται την αδιάλειπτη ή χωρίς σφάλματα λειτουργία του Προγράμματος, ούτε ότι η IBM θα διορθώσει όλα τα ελαττώματα του Προγράμματος. Ο Δικαιούχος Άδειας Χρήσης είναι υπεύθυνος για τα αποτελέσματα που προκύπτουν από τη χρήση του Προγράμματος.

Κατά τη διάρκεια της Περιόδου Εγγύησης, η IBM παρέχει στο Δικαιούχο Άδεια Χρήσης πρόσβαση σε βάσεις δεδομένων της IBM που περιέχουν πληροφορίες σχετικά με γνωστά ελαττώματα Προγραμμάτων, καθώς και διορθώσεις, περιορισμούς και τρόπους παράκαμψης των ελαττωμάτων, χωρίς πρόσθετη επιβάρυνση. Για περισσότερες πληροφορίες, συμβουλευτείτε το Εγχειρίδιο Υποστήριξης Λογισμικού (IBM Software Support Handbook) στη διεύθυνση [www.ibm.com/software/support](http://www.ibm.com/software/support).

Εάν κατά τη διάρκεια της Περιόδου Εγγύησης το Πρόγραμμα δεν λειτουργεί όπως προβλέπει η εγγύηση και το πρόβλημα δεν μπορεί να επιλυθεί με βάση τις πληροφορίες που είναι διαθέσιμες στις βάσεις δεδομένων της IBM, ο Δικαιούχος Άδειας Χρήσης μπορεί να επιστρέψει το Πρόγραμμα και την αντίστοιχη Απόδειξη Δικαιώματος στο μέρος από το οποίο το είχε αποκτήσει (την IBM ή το μεταπωλητή της) και να λάβει επιστροφή των χρημάτων που είχε καταβάλει. Μετά την επιστροφή του Προγράμματος, η άδεια χρήσης του Δικαιούχου Άδειας Χρήσης τερματίζεται. Εάν ο Δικαιούχος Άδειας Χρήσης είχε μεταφορτώσει το Πρόγραμμα από το Διαδίκτυο, τότε ο Δικαιούχος Άδειας Χρήσης πρέπει να επικοινωνήσει με το μέρος από το οποίο απέκτησε το Πρόγραμμα για οδηγίες σχετικά με το πώς θα του επιστραφούν τα χρήματα που κατέβαλε.

ΟΙ ΠΑΡΟΥΣΕΣ ΕΓΓΥΗΣΕΙΣ ΕΙΝΑΙ ΟΙ ΑΠΟΚΛΕΙΣΤΙΚΕΣ ΕΓΓΥΗΣΕΙΣ ΠΟΥ ΠΑΡΕΧΟΝΤΑΙ ΣΤΟ ΔΙΚΑΙΟΥΧΟ ΑΔΕΙΑΣ ΧΡΗΣΗΣ ΚΑΙ ΑΝΤΙΚΑΘΙΣΤΟΥΝ ΟΛΕΣ ΤΙΣ ΑΛΛΕΣ ΕΓΓΥΗΣΕΙΣ Ή ΥΠΟΣΧΕΣΕΙΣ, ΡΗΤΕΣ Ή ΣΙΩΠΗΡΕΣ, ΣΥΜΠΕΡΙΛΑΜΒΑΝΟΜΕΝΩΝ, ΕΝΔΕΙΚΤΙΚΑ ΚΑΙ ΟΧΙ ΠΕΡΙΟΡΙΣΤΙΚΑ, ΟΠΟΙΩΝΔΗΠΟΤΕ ΣΙΩΠΗΡΩΝ ΕΓΓΥΗΣΕΩΝ Ή ΥΠΟΣΧΕΣΕΩΝ ΕΜΠΟΡΕΥΣΙΜΟΤΗΤΑΣ, ΙΚΑΝΟΠΟΙΗΤΙΚΗΣ ΠΟΙΟΤΗΤΑΣ, ΚΑΤΑΛΛΗΛΟΤΗΤΑΣ ΓΙΑ ΣΥΓΚΕΚΡΙΜΕΝΟΥΣ ΣΚΟΠΟΥΣ ΚΑΙ ΤΙΤΛΟΥ ΚΥΡΙΟΤΗΤΑΣ, ΚΑΘΩΣ ΚΑΙ ΟΠΟΙΑΣΔΗΠΟΤΕ ΕΓΓΥΗΣΗΣ Ή ΥΠΟΣΧΕΣΗΣ ΜΗ ΠΑΡΑΒΙΑΣΗΣ ΔΙΚΑΙΩΜΑΤΩΝ ΤΡΙΤΩΝ. ΣΕ ΟΡΙΣΜΕΝΕΣ ΧΩΡΕΣ Ή ΔΙΚΑΙΟΔΟΣΙΕΣ ΔΕΝ ΕΠΙΤΡΕΠΕΤΑΙ Ο ΑΠΟΚΛΕΙΣΜΟΣ ΡΗΤΩΝ Ή ΣΙΩΠΗΡΩΝ ΕΓΓΥΗΣΕΩΝ ΚΑΙ, ΕΠΟΜΕΝΩΣ, Ο ΑΝΩΤΕΡΩ ΑΠΟΚΛΕΙΣΜΟΣ ΕΝΔΕΧΕΤΑΙ ΝΑ ΜΗΝ ΙΣΧΥΕΙ ΓΙΑ ΤΟ ΔΙΚΑΙΟΥΧΟ ΑΔΕΙΑΣ ΧΡΗΣΗΣ, ΣΤΗΝ ΠΕΡΙΠΤΩΣΗ ΑΥΤΗ, Η ΙΣΧΥΣ ΤΩΝ ΔΙΑΤΑΞΕΩΝ ΤΩΝ ΕΝ ΛΟΓΩ ΕΓΓΥΗΣΕΩΝ ΠΕΡΙΟΡΙΖΕΤΑΙ ΣΤΗ ΔΙΑΡΚΕΙΑ ΤΗΣ ΠΕΡΙΟΔΟΥ ΕΓΓΥΗΣΗΣ. ΜΕΤΑ ΤΗ ΛΗΞΗ ΑΥΤΗΣ ΤΗΣ ΠΕΡΙΟΔΟΥ ΔΕΝ ΙΣΧΥΕΙ ΚΑΜΙΑ ΕΓΓΥΗΣΗ. ΣΕ ΟΡΙΣΜΕΝΕΣ ΧΩΡΕΣ Ή ΔΙΚΑΙΟΔΟΣΙΕΣ ΔΕΝ ΕΠΙΤΡΕΠΟΝΤΑΙ ΠΕΡΙΟΡΙΣΜΟΙ ΣΤΗ ΔΙΑΡΚΕΙΑ ΙΣΧΥΟΣ ΣΙΩΠΗΡΩΝ ΕΓΓΥΗΣΕΩΝ ΚΑΙ, ΕΠΟΜΕΝΩΣ, Ο ΑΝΩΤΕΡΩ ΠΕΡΙΟΡΙΣΜΟΣ ΕΝΔΕΧΕΤΑΙ ΝΑ ΜΗΝ ΙΣΧΥΕΙ ΓΙΑ ΤΟ ΔΙΚΑΙΟΥΧΟ ΑΔΕΙΑΣ ΧΡΗΣΗΣ.

ΟΙ ΠΑΡΟΥΣΕΣ ΕΓΓΥΗΣΕΙΣ ΠΑΡΕΧΟΥΝ ΣΤΟ ΔΙΚΑΙΟΥΧΟ ΑΔΕΙΑΣ ΧΡΗΣΗΣ ΣΥΓΚΕΚΡΙΜΕΝΑ ΝΟΜΙΚΑ ΔΙΚΑΙΩΜΑΤΑ. Ο ΔΙΚΑΙΟΥΧΟΣ ΑΔΕΙΑΣ ΧΡΗΣΗΣ ΕΝΔΕΧΕΤΑΙ ΝΑ ΔΙΑΘΕΤΕΙ ΠΕΡΑΙΤΕΡΩ ΔΙΚΑΙΩΜΑΤΑ ΠΟΥ ΔΙΑΦΕΡΟΥΝ ΑΝΑΛΟΓΑ ΜΕ ΤΗ ΧΩΡΑ Ή ΤΗΝ ΙΣΧΥΟΥΣΑ ΔΙΚΑΙΟΔΟΣΙΑ.

ΟΙ ΕΓΓΥΗΣΕΙΣ ΠΟΥ ΑΝΑΦΕΡΟΝΤΑΙ ΣΤΟ ΠΑΡΟΝ ΑΡΘΡΟ 8 (ΕΓΓΥΗΣΗ ΚΑΙ ΕΞΑΙΡΕΣΕΙΣ) ΠΑΡΕΧΟΝΤΑΙ ΑΠΟΚΛΕΙΣΤΙΚΑ ΑΠΟ ΤΗΝ IBM. ΟΜΩΣ, ΟΙ ΔΗΛΩΣΕΙΣ ΑΠΟΠΟΙΗΣΗΣ ΤΗΣ ΠΑΡΟΥΣΑΣ ΕΝΟΤΗΤΑΣ 8.2 (ΕΞΑΙΡΕΣΕΙΣ) ΙΣΧΥΟΥΝ ΕΠΙΣΗΣ ΓΙΑ ΤΟΥΣ ΠΡΟΜΗΘΕΥΤΕΣ ΚΩΔΙΚΑ ΤΡΙΤΩΝ (THIRD PARTY CODE) ΤΗΣ IBM. ΟΙ ΠΡΟΜΗΘΕΥΤΕΣ ΚΩΔΙΚΑ ΤΡΙΤΩΝ ΠΑΡΕΧΟΥΝ ΤΟΝ ΕΝ ΛΟΓΩ ΚΩΔΙΚΑ ΧΩΡΙΣ ΕΓΓΥΗΣΕΙΣ Ή ΥΠΟΣΧΕΣΕΙΣ ΚΑΝΕΝΟΣ ΕΙΔΟΥΣ. ΟΙ ΔΙΑΤΑΞΕΙΣ ΤΗΣ ΠΑΡΟΥΣΑΣ ΠΑΡΑΓΡΑΦΟΥ ΔΕΝ ΑΚΥΡΩΝΟΥΝ ΤΙΣ ΥΠΟΧΡΕΩΣΕΙΣ ΕΓΓΥΗΣΗΣ ΤΗΣ IBM ΒΑΣΕΙΣ ΣΥΜΒΑΣΗΣ.

### 9. Δεδομένα και Βάσεις Δεδομένων του Δικαιούχου Άδειας Χρήσης

Για να είναι σε θέση να βοηθήσει το Δικαιούχο Άδειας Χρήσης στην απομόνωση της αιτίας ενός προβλήματος με το Πρόγραμμα, η IBM μπορεί να ζητήσει από το Δικαιούχο Άδειας Χρήσης 1) να επιτρέψει στην IBM την εξ αποστάσεως πρόσβαση στο σύστημα του Δικαιούχου Άδειας Χρήσης ή 2) να στείλει πληροφορίες ή δεδομένα συστήματος του Δικαιούχου Άδειας Χρήσης στην IBM. Όμως, η IBM δεν είναι υποχρεωμένη να παρέχει τέτοια βοήθεια, εκτός εάν η IBM και ο Δικαιούχος Άδειας Χρήσης προβούν στη σύναψη χωριστής έγγραφης σύμβασης βάσει της οποίας η IBM να συμφωνεί να παρέχει στο Δικαιούχο Άδειας Χρήσης τέτοιου είδους υποστήριξη, η οποία είναι εκτός των υποχρεώσεων εγγύησης της IBM βάσει της παρούσας Σύμβασης. Σε κάθε περίπτωση, η IBM χρησιμοποιεί τις πληροφορίες για σφάλματα και προβλήματα μόνο για τη βελτίωση των προϊόντων και των υπηρεσιών της και για την καλύτερη παροχή των σχετικών της προσφορών υποστήριξης. Για την εξυπηρέτηση αυτών των σκοπών, η IBM μπορεί να κάνει χρήση οργανισμών και υπεργολάβων της IBM (συμπεριλαμβανομένων και οργανισμών και υπεργολάβων σε μία ή περισσότερες χώρες εκτός της χώρας στην οποία ο Δικαιούχος Άδειας Χρήσης έχει την έδρα του) και ο Δικαιούχος Άδειας Χρήσης εξουσιοδοτεί την IBM να το πράξει.

Ο Δικαιούχος Άδειας Χρήσης παραμένει υπεύθυνος για 1) οποιαδήποτε δεδομένα και το περιεχόμενο οποιασδήποτε βάσης δεδομένων που ο Δικαιούχος Άδειας Χρήσης καθιστά διαθέσιμη στην IBM, 2) την επιλογή και εφαρμογή διαδικασιών και ελέγχων αναφορικά με την προσπέλαση, ασφάλεια, κρυπτογράφηση, χρήση και μετάδοση δεδομένων (συμπεριλαμβανομένων και πληροφοριών στις οποίες δηλώνεται ή από τις οποίες μπορεί να προκύψει η ταυτότητα συγκεκριμένων προσώπων) και 3) την εφεδρική αποθήκευση (backup) και αποκατάσταση οποιασδήποτε βάσης δεδομένων και οποιωνδήποτε αποθηκευμένων δεδομένων. Ο Δικαιούχος Άδειας Χρήσης δεν θα αποστέλλει και δεν θα παρέχει στην IBM πρόσβαση σε πληροφορίες στις οποίες δηλώνεται ή από τις οποίες μπορεί να προκύψει η ταυτότητα συγκεκριμένων προσώπων, είτε σε μορφή δεδομένων είτε σε οποιαδήποτε άλλη μορφή, και θα φέρει την ευθύνη για εύλογες δαπάνες και άλλα ποσά με τα οποία μπορεί να επιβαρυνθεί η IBM σε συνάρτηση με την εσφαλμένη παροχή τέτοιων πληροφοριών στην IBM ή την απώλεια ή αποκάλυψη τέτοιων πληροφοριών από την IBM, συμπεριλαμβανομένων των δαπανών που απορρέουν από αξιώσεις τρίτων.

## 10. Περιορισμός Ευθύνης

Οι περιορισμοί και οι εξαιρέσεις που ορίζονται στο παρόν Άρθρο 10 (Περιορισμός Ευθύνης) έχουν πλήρη ισχύ στο βαθμό που δεν απαγορεύονται από το εφαρμοστέο δίκαιο χωρίς να υπάρχει δυνατότητα συμβατικής παραίτησης από τα αντίστοιχα δικαιώματα.

### 10.1 Στοιχεία για τα οποία ενδέχεται να φέρει ευθύνη η IBM

Ενδέχεται να προκύψουν περιστάσεις κατά τις οποίες, λόγω αθέτησης συμβατικής υποχρέωσης εκ μέρους της IBM ή λόγω άλλης ευθύνης, ο Δικαιούχος Άδειας Χρήσης δικαιούται να λάβει αποζημίωση από την IBM. Ανεξάρτητα από τη βάση επί της οποίας ο Δικαιούχος Άδειας Χρήσης δικαιούται να εγείρει αξίωση αποζημίωσης κατά της IBM (συμπεριλαμβανομένης της αθέτησης ουσιωδών συμβατικών όρων, αμέλειας, ψευδούς δήλωσης ή άλλης αξίωσης που απορρέει από σύμβαση ή αδικοπραξία), η συνολική ευθύνη της IBM για όλες τις αξιώσεις, σωρευτικά, που απορρέουν από ή σχετίζονται με κάθε Πρόγραμμα ή κατά άλλο τρόπο προκύπτουν από την παρούσα Σύμβαση, δεν θα υπερβαίνει το ποσό 1) της αποζημίωσης για σωματική βλάβη (συμπεριλαμβανομένου θανάτου) και της αποζημίωσης κινητής και ακίνητης ατομικής περιουσίας και 2) οποιασδήποτε άλλης θετικής άμεσης ζημίας έως το ποσό των χρεώσεων (εάν το Πρόγραμμα υπόκειται σε χρεώσεις καθορισμένης περιόδου, έως το ποσό των χρεώσεων 12 μηνών) που ο Δικαιούχος Άδειας Χρήσης κατέβαλε για το Πρόγραμμα που αποτελεί αντικείμενο της αξίωσης.

Το όριο αυτό ισχύει επίσης για οποιεσδήποτε εταιρείες ανάπτυξης Προγραμμάτων και προμηθευτές της IBM. Είναι η μέγιστη ευθύνη που φέρουν συλλογικά η IBM, οι εταιρείες ανάπτυξης Προγραμμάτων της και οι προμηθευτές της.

### 10.2 Στοιχεία για τα οποία δεν φέρει ευθύνη η IBM

**ΣΕ ΚΑΜΙΑ ΠΕΡΙΠΤΩΣΗ ΔΕΝ ΦΕΡΟΥΝ ΕΥΘΥΝΗ Η IBM, ΟΙ ΠΡΟΜΗΘΕΥΤΕΣ ΤΗΣ Ή ΟΙ ΕΤΑΙΡΕΙΕΣ ΑΝΑΠΤΥΞΗΣ ΠΡΟΓΡΑΜΜΑΤΩΝ ΜΕ ΤΙΣ ΟΠΟΙΕΣ ΣΥΝΕΡΓΑΖΕΤΑΙ ΓΙΑ ΟΠΟΙΟΔΗΠΟΤΕ ΑΠΟ ΤΑ ΑΚΟΛΟΥΘΑ, ΑΚΟΜΑ ΚΑΙ ΑΝ ΕΧΟΥΝ ΕΝΗΜΕΡΩΘΕΙ ΓΙΑ ΤΗΝ ΠΙΘΑΝΟΤΗΤΑ ΝΑ ΠΡΟΚΥΨΟΥΝ:**

- α. ΑΠΩΛΕΙΑ Ή ΦΘΟΡΑ ΔΕΔΟΜΕΝΩΝ
- β. ΕΙΔΙΚΕΣ, ΠΑΡΕΠΟΜΕΝΕΣ Ή ΕΜΜΕΣΕΣ ΖΗΜΙΕΣ, ΑΠΟΖΗΜΙΩΣΗ ΓΙΑ ΗΘΙΚΗ ΒΛΑΒΗ Ή ΟΠΟΙΕΣΔΗΠΟΤΕ ΟΙΚΟΝΟΜΙΚΕΣ ΑΠΟΘΕΤΙΚΕΣ ΖΗΜΙΕΣ, Ή
- γ. ΔΙΑΦΥΓΟΝΤΑ ΚΕΡΑΗ, ΑΠΩΛΕΙΑ ΕΠΙΧΕΙΡΗΜΑΤΙΚΩΝ ΔΡΑΣΤΗΡΙΟΤΗΤΩΝ, ΕΣΟΔΩΝ, ΑΥΛΗΣ ΕΜΠΟΡΙΚΗΣ ΑΞΙΑΣ Ή ΠΡΟΣΔΟΚΩΜΕΝΩΝ ΚΕΡΔΩΝ.

## 11. Επαλήθευση Συμμόρφωσης

Για τους σκοπούς του παρόντος Αρθρου 11 (Επαλήθευση Συμμόρφωσης), με τον όρο "Όροι Προγραμμάτων IPLA" νοούνται 1) η παρούσα Σύμβαση και οι αντίστοιχες τροποποιήσεις και έγγραφα συναλλαγών που παρέχονται από την IBM και 2) οι πολιτικές λογισμικού (software policies) της IBM, οι οποίες περιγράφονται στο δικτυακό τόπο IBM Software Policy ([www.ibm.com/software/policies](http://www.ibm.com/software/policies)), συμπεριλαμβανομένων, ενδεικτικά και όχι περιοριστικά, των πολιτικών περί εφεδρικής υποστήριξης (backup), τιμολόγησης μειωμένης δυναμικότητας (sub-capacity pricing) και μετάπτωσης (migration).

Τα δικαιώματα και οι υποχρεώσεις που καθορίζονται στο παρόν Άρθρο 11 παραμένουν σε ισχύ κατά τη διάρκεια της χρονικής περιόδου για την οποία έχει χορηγηθεί άδεια χρήσης του Προγράμματος στο Δικαιούχο Άδειας Χρήσης, συν δύο επιπλέον έτη μετά τη λήξη της εν λόγω περιόδου.

### 11.1 Διαδικασία Επαλήθευσης

Ο Δικαιούχος Άδειας Χρήσης συμφωνεί να δημιουργεί, να τηρεί και να παρέχει στην IBM και τους ελεγκτές της ακριβή έγγραφα στοιχεία, αποτελέσματα εργαλείων του συστήματος και άλλα δεδομένα του συστήματος τα οποία επαρκούν προκειμένου να παράσχουν τη δυνατότητα επαλήθευσης, η οποία θα υπόκειται σε έλεγχο, ότι η χρήση όλων των Προγραμμάτων εκ μέρους του Δικαιούχου Άδειας Χρήσης συμμορφώνεται με τους Όρους Προγραμμάτων IPLA, συμπεριλαμβανομένων, ενδεικτικά και όχι περιοριστικά, όλων των σχετικών όρων της IBM περί προϋποθέσεων τιμολόγησης και χορήγησης αδειών χρήσης. Ο Δικαιούχος Άδειας Χρήσης είναι υπεύθυνος 1) να εξασφαλίζει ότι δεν υπερβαίνει το επίπεδο Εξουσιοδοτημένης Χρήσης του και 2) να εξακολουθεί να συμμορφώνεται με τους Όρους Προγραμμάτων IPLA.



Μετά από εύλογη ειδοποίηση, η IBM μπορεί να ελέγξει τη συμμόρφωση του Δικαιούχου Άδειας Χρήσης με τους Όρους Προγραμμάτων IPLA σε όλες τις τοποθεσίες και για όλα τα περιβάλλοντα στα οποία ο Δικαιούχος Άδειας Χρήσης χρησιμοποιεί (για οποιονδήποτε σκοπό) Προγράμματα που υπόκεινται στους Όρους Προγραμμάτων IPLA. Η εν λόγω επαλήθευση θα διεξάγεται με τρόπο που να ελαχιστοποιεί το ενδεχόμενο πρόκλησης αναστάτωσης στην επιχείρηση του Δικαιούχου Άδειας Χρήσης και μπορεί να διεξάγεται στις εγκαταστάσεις του Δικαιούχου Άδειας Χρήσης, κατά το κανονικό εργάσιμο ωράριο. Η IBM μπορεί να χρησιμοποιήσει ανεξάρτητο ελεγκτή για την παροχή βοήθειας κατά τον εν λόγω επαλήθευση, υπό την προϋπόθεση ότι η IBM έχει συνάψει έγγραφη σύμβαση εμπιστευτικότητας με τον εν λόγω ελεγκτή.

## 11.2 Επίλυση

Η IBM θα ειδοποιεί το Δικαιούχο Άδειας Χρήσης εγγράφως εάν κατά την πραγματοποίηση τέτοιας επαλήθευσης διαπιστωθεί ότι ο Δικαιούχος Άδειας Χρήσης έχει χρησιμοποιήσει οποιοδήποτε Πρόγραμμα πέραν του επιπέδου Εξουσιοδοτημένης Χρήσης του ή κατά άλλον τρόπο δεν συμμορφώνεται με τους Όρους Προγραμμάτων IPLA. Ο Δικαιούχος Άδειας Χρήσης συμφωνεί να καταβάλλει χωρίς καθυστέρηση απευθείας στην IBM τις χρεώσεις που καθορίζονται από την IBM σε ένα τιμολόγιο για 1) οποιαδήποτε τέτοια πρόσθετη χρήση, 2) υποστήριξη για την εν λόγω πρόσθετη χρήση για τη διάρκεια της πρόσθετης χρήσης ή για περίοδο δύο ετών, όποια από τις δύο περιόδους αυτές είναι μικρότερη και 3) οποιεσδήποτε χρεώσεις και άλλες οφειλές που τυχόν καθοριστούν ως αποτέλεσμα της εν λόγω επαλήθευσης.

## 12. Ειδοποιήσεις για Κώδικα Τρίτων

Το Πρόγραμμα μπορεί να περιέχει κώδικα τρίτων προμηθευτών (third party code) για τον οποίο η IBM, και όχι ο τρίτος προμηθευτής, χορηγεί άδεια χρήσης στο Δικαιούχο Άδειας Χρήσης βάσει των όρων της παρούσας Σύμβασης. Οποιοσδήποτε ειδοποιήσεις σχετικά με τον κώδικα τρίτων προμηθευτών ("Ειδοποιήσεις για Κώδικα Τρίτων") συμπεριλαμβάνονται μόνο για την πληροφόρηση του Δικαιούχου Άδειας Χρήσης. Αυτές οι ειδοποιήσεις διατίθενται στο (στα) αρχείο(-α) NOTICES του Προγράμματος. Στις Σημειώσεις για Κώδικα Τρίτων παρέχονται πληροφορίες σχετικά με τον τρόπο απόκτησης πηγαίου κώδικα για τον κώδικα κάποιων τρίτων προμηθευτών. Εάν στις Ειδοποιήσεις για Κώδικα Τρίτων κάποιος κώδικας τρίτων προμηθευτών προσδιορίζεται από την IBM ως "Τροποποιήσιμος Κώδικας Τρίτων" ("Modifiable Third Party Code"), η IBM εξουσιοδοτεί το Δικαιούχο Άδειας Χρήσης 1) να τροποποιήσει τον Τροποποιήσιμο Κώδικα Τρίτων και 2) να προβεί στην αποσυμπίληση (reverse engineering) των ενωτήτων του Προγράμματος που συνδέονται άμεσα με τον Τροποποιήσιμο Κώδικα Τρίτων, υπό την προϋπόθεση ότι η εν λόγω αποσυμπίληση πραγματοποιείται μόνο για το σκοπό της αποσφαλμάτωσης (debugging) των τροποποιήσεων που πραγματοποιήσει ο Δικαιούχος Άδειας Χρήσης στον εν λόγω κώδικα τρίτων. Οποιοσδήποτε υποχρεώσεις παροχής υπηρεσιών και υποστήριξης της IBM ισχύουν μόνο για τη μη τροποποιημένη έκδοσή του Προγράμματος.

## 13. Γενικά

- α. Κανένας όρος της παρούσας Σύμβασης δεν επηρεάζει οποιαδήποτε δικαιώματα καταναλωτή που απορρέουν από το νόμο και για τα οποία δεν υπάρχει δυνατότητα συμβατικής παραίτησης ή περιορισμού.
- β. Για Προγράμματα που παρέχει η IBM στο Δικαιούχο Άδειας Χρήσης σε απτή μορφή, η IBM εκπληρώνει τις υποχρεώσεις αποστολής και παράδοσής της με την παράδοση των εν λόγω Προγραμμάτων στην καθορισμένη από την IBM μεταφορική εταιρεία, εκτός εάν συμφωνηθεί διαφορετικά γραπτός από το Δικαιούχο Άδειας Χρήσης και την IBM.
- γ. Εάν οποιαδήποτε διάταξη της Σύμβασης κριθεί άκυρη ή μη εφαρμόσιμη, οι υπόλοιπες διατάξεις της Σύμβασης παραμένουν σε πλήρη ισχύ και εφαρμογή.
- δ. Ο Δικαιούχος Άδειας Χρήσης συμφωνεί να συμμορφώνεται με όλους τους ισχύοντες νόμους και κανονισμούς περί εξαγωγών και εισαγωγών, συμπεριλαμβανομένων των κανονισμών περί οικονομικών αποκλεισμών και κυρώσεων και των απαγορεύσεων εξαγωγής των Ηνωμένων Πολιτειών για ορισμένες τελικές χρήσεις ή σε ορισμένους τελικούς χρήστες.
- ε. Ο Δικαιούχος Άδειας Χρήσης εξουσιοδοτεί την International Business Machines Corporation και τις θυγατρικές της (και τους διαδόχους και εκδοχείς, εργολάβους και τους Επιχειρησιακούς Συνεργάτες της IBM) να αποθηκεύουν και να χρησιμοποιούν τα στοιχεία επικοινωνίας του Δικαιούχου Άδειας Χρήσης όπου διεξάγουν τις επιχειρησιακές τους δραστηριότητες, σε σχέση με τα προϊόντα και τις υπηρεσίες της IBM ή για την προώθηση της επιχειρηματικής σχέσης της IBM με το Δικαιούχο Άδειας Χρήσης.

- στ. Κάθε ένα από τα δύο μέρη θα παράσχει στο άλλο εύλογη ευχέρεια να συμμορφωθεί προς τις υποχρεώσεις του προτού ισχυριστεί ότι το άλλο μέρος δεν ανταποκρίθηκε στις υποχρεώσεις του βάσει της παρούσας Σύμβασης. Τα δύο μέρη θα επιχειρούν να επιλύουν καλόπιστα οποιεσδήποτε διαφορές, διαφωνίες ή αξιώσεις μεταξύ των δύο μερών αναφορικά με την παρούσα Σύμβαση.
- ζ. Εκτός εάν άλλως απαιτείται από το εφαρμοστέο δίκαιο χωρίς να υπάρχει δυνατότητα συμβατικής παραίτησης ή περιορισμού αυτού του δικαιώματος: 1) κανένα από τα δύο μέρη δεν θα εγείρει αγωγή οποιασδήποτε μορφής για οποιαδήποτε αξίωση η οποία απορρέει από ή σχετίζεται με την παρούσα Σύμβαση μετά την πάροδο διετίας από την ημερομηνία κατά την οποία προέκυψε η αιτία έγερσης της αγωγής και 2) μετά τη λήξη της εν λόγω χρονικής προθεσμίας, οποιαδήποτε τέτοια αξίωση και όλα τα δικαιώματα που σχετίζονται με την εν λόγω αξίωση θα παραγραφούν.
- η. Ούτε ο Δικαιούχος Άδειας Χρήσης ούτε η IBM δεν είναι υπεύθυνοι για τη μη εκπλήρωση οποιωνδήποτε υποχρεώσεων τους για λόγους πέραν του ελέγχου τους.
- θ. Δεν δημιουργείται οποιοδήποτε δικαίωμα ή βάση αξίωσης για οποιοδήποτε τρίτο μέρος από την παρούσα Σύμβαση, και η IBM δεν είναι υπεύθυνη για οποιεσδήποτε αξιώσεις τρίτων εναντίον του Δικαιούχου Άδειας Χρήσης, παρά μόνο όπως επιτρέπεται στην ανωτέρω ενότητα 10.1 (Στοιχεία για τα οποία ενδέχεται να φέρει ευθύνη η IBM) σχετικά με αποζημίωση για σωματική βλάβη (συμπεριλαμβανομένου του θανάτου) ή για αποζημίωση κινητής και ακίνητης ατομικής περιουσίας για την οποία η IBM φέρει ευθύνη κατά το νόμο έναντι του εν λόγω τρίτου μέρους.
- ι. Προβαίνοντας στη σύναψη της παρούσας Σύμβασης, κανένα από τα δύο μέρη δεν βασίζεται σε οποιεσδήποτε δηλώσεις που δεν καθορίζονται στην παρούσα Σύμβαση, συμπεριλαμβανομένων, ενδεικτικά και όχι περιοριστικά, οποιωνδήποτε δηλώσεων σχετικά με: 1) την απόδοση ή λειτουργία του Προγράμματος πέραν αυτής που προβλέπεται ρητώς στο ανωτέρω Άρθρο 8 (Εγγύηση και Εξαιρέσεις), 2) τις εμπειρίες ή υποδείξεις άλλων μερών ή 3) οποιαδήποτε αποτελέσματα ή οικονομίες που μπορεί να επιτύχει ο Δικαιούχος Άδειας Χρήσης.
- ια. Η IBM έχει συνάψει συμβάσεις με ορισμένους οργανισμούς ("Εμπορικοί Συνεργάτες της IBM" – "IBM Business Partners") για την προώθηση, διάθεση και υποστήριξη ορισμένων Προγραμμάτων. Οι Εμπορικοί Συνεργάτες της IBM εξακολουθούν να είναι ανεξάρτητοι οργανισμοί που λειτουργούν χωριστά από την IBM. Η IBM δεν είναι υπεύθυνη για τις πράξεις ή τις δηλώσεις Εμπορικών Συνεργατών της IBM ή για την εκπλήρωση των υποχρεώσεων που έχουν προς το Δικαιούχο Άδειας Χρήσης.
- ιβ. Οι όροι περί αδειών χρήσης και αποζημίωσης για πνευματική ιδιοκτησία που περιλαμβάνονται σε άλλες συμβάσεις που έχει συνάψει ο Δικαιούχος Άδειας Χρήσης με την IBM (όπως π.χ. η Σύμβαση Πελατών IBM) δεν ισχύουν για άδειες χρήσης Προγραμμάτων που χορηγούνται βάσει της παρούσας Σύμβασης.

## 14. Γεωγραφική Εμβέλεια και Εφαρμοστέο Δίκαιο

### 14.1 Εφαρμοστέο Δίκαιο

Και τα δύο μέρη συμφωνούν στην εφαρμογή της νομοθεσίας της χώρας στην οποία ο Δικαιούχος Άδειας Χρήσης απέκτησε την άδεια χρήσης του Προγράμματος όσον αφορά στην ισχύ, ερμηνεία και εκτέλεση όλων των αντίστοιχων δικαιωμάτων, καθηκόντων και υποχρεώσεων του Δικαιούχου Άδειας Χρήσης και της IBM που απορρέουν από, ή σχετίζονται καθ' οποιονδήποτε τρόπο με, τα θέματα που καλύπτει η Σύμβαση, χωρίς να λαμβάνονται υπόψη τυχόν αντιθέσεις αρχών δικαίου.

Δεν εφαρμόζεται η Σύμβαση των Ηνωμένων Εθνών περί Συμβάσεων για τη Διεθνή Πώληση Αγαθών.

### 14.2 Δικαιοδοσία

Όλα τα δικαιώματα, τα καθήκοντα και οι υποχρεώσεις υπόκεινται στη δικαιοδοσία των δικαστηρίων της χώρας στην οποία ο Δικαιούχος Άδειας Χρήσης απέκτησε την άδεια χρήσης του Προγράμματος.



## Μέρος 2—Όροι που Εμπίπτουν στο Δίκαιο κάθε Χώρας

Για τις άδειες χρήσης που χορηγούνται στις χώρες που προσδιορίζονται παρακάτω, οι ακόλουθοι όροι αντικαθιστούν ή τροποποιούν τους αναφερόμενους όρους στο Μέρος 1. Όλοι οι όροι στο Μέρος 1 που δεν επηρεάζονται από αυτές τις τροποποιήσεις παραμένουν ως έχουν και εξακολουθούν να ισχύουν. Το παρόν Μέρος 2 οργανώνεται ως εξής:

- Τροποποιήσεις στο Μέρος 1, Άρθρο 14 (Εφαρμοστέο Δίκαιο και Δικαιοδοσία) για διάφορες χώρες, και
- Τροποποιήσεις σε άλλους όρους της Σύμβασης για χώρες της Ευρώπης, Μέσης Ανατολής και Αφρικής.

### Τροποποιήσεις στο Μέρος 1, Άρθρο 14 (Εφαρμοστέο Δίκαιο και Δικαιοδοσία) για διάφορες χώρες

#### 14.2 Δικαιοδοσία

*Η ακόλουθη παράγραφος αφορά στη δικαιοδοσία και αντικαθιστά την ενότητα 14.2 (Δικαιοδοσία) για τις χώρες που εμφανίζονται παρακάτω:*

Όλα τα δικαιώματα, τα καθήκοντα και οι υποχρεώσεις υπόκεινται στη δικαιοδοσία των δικαστηρίων της χώρας στην οποία ο Δικαιούχος Άδειας Χρήσης απέκτησε την άδεια χρήσης του Προγράμματος, εκτός από τις χώρες που προσδιορίζονται παρακάτω, όπου αποκλειστικά αρμόδια για την επίλυση όλων των διαφορών που απορρέουν από ή σχετίζονται με την παρούσα Σύμβαση, συμπεριλαμβανομένων των συνοπτικών νομικών διαδικασιών, θα είναι τα ακόλουθα δικαστήρια:

#### ΕΥΡΩΠΗ, ΜΕΣΗ ΑΝΑΤΟΛΗ ΚΑΙ ΑΦΡΙΚΗ

στην **Ελλάδα**: το αρμόδιο δικαστήριο της Αθήνας.

#### ΤΡΟΠΟΠΟΙΗΣΕΙΣ ΓΙΑ ΧΩΡΕΣ ΤΗΣ ΕΥΡΩΠΗΣ, ΜΕΣΗΣ ΑΝΑΤΟΛΗΣ ΚΑΙ ΑΦΡΙΚΗΣ (ΕΜΕΑ)

#### ΚΡΑΤΗ ΜΕΛΗ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ

### 8. Εγγύηση και Εξαίρεσεις

*Το ακόλουθο κείμενο προστίθεται στο Άρθρο 8 (Εγγύηση και Εξαίρεσεις):*

Στην Ευρωπαϊκή Ένωση ("ΕΕ"), οι καταναλωτές έχουν νόμιμα δικαιώματα βάσει της ισχύουσας εθνικής νομοθεσίας που δίνει την πώληση καταναλωτικών αγαθών. Τα εν λόγω δικαιώματα δεν επηρεάζονται από τις διατάξεις αυτού του Άρθρου 8 (Εγγύηση και Εξαίρεσεις). Η Περιορισμένη Εγγύηση έχει παγκόσμια ισχύ.

### 13. Γενικά

*Το ακόλουθο κείμενο αντικαθιστά το εδάφιο 13.ε:*

(1) **Ορισμοί**—Για τους σκοπούς του παρόντος εδαφίου 13.ε, ισχύουν οι ακόλουθοι πρόσθετοι ορισμοί:

- Επαγγελματικά Στοιχεία Επικοινωνίας (Business Contact Information)**—στοιχεία επαγγελματικής επικοινωνίας που αποκαλύπτονται από το Δικαιούχο Άδειας Χρήσης στην IBM, συμπεριλαμβανομένων ονομάτων, επαγγελματικών τίτλων, επαγγελματικών διευθύνσεων, αριθμών τηλεφώνου και διευθύνσεων e-mail υπαλλήλων και εργολάβων του Δικαιούχου Άδειας Χρήσης. Για την Αυστρία, την Ιταλία και την Ελβετία, τα Επαγγελματικά Στοιχεία Επικοινωνίας περιλαμβάνουν επίσης πληροφορίες για το Δικαιούχο Άδειας Χρήσης και τους υπεργολάβους του ως νομικά πρόσωπα (για παράδειγμα, στοιχεία για τα έσοδα του Δικαιούχου Άδειας Χρήσης ή άλλα οικονομικά στοιχεία).
- Προσωπικό Επαγγελματικής Επικοινωνίας (Business Contact Personnel)**—οι υπάλληλοι και οι εργολάβοι του Δικαιούχου Άδειας Χρήσης στους οποίους αναφέρονται τα Επαγγελματικά Στοιχεία Επικοινωνίας.
- Αρχή Προστασίας Δεδομένων (Data Protection Authority)**—η αρχή που έχει ιδρυθεί στα πλαίσια της Νομοθεσίας περί Προστασίας Δεδομένων και Ηλεκτρονικών Επικοινωνιών σε

μία συγκεκριμένη χώρα ή, για χώρες εκτός της Ευρωπαϊκής Ένωσης, η αρχή που είναι υπεύθυνη για την επιτήρηση της προστασίας δεδομένων προσωπικού χαρακτήρα στη συγκεκριμένη χώρα ή (για οποιαδήποτε από τις ανωτέρω περιπτώσεις) οποιοδήποτε προβλεπόμενο από το νόμο διάδοχο νομικό πρόσωπο της εν λόγω αρχής.

- (δ) **Νομοθεσία περί Προστασίας Δεδομένων και Ηλεκτρονικών Επικοινωνιών (Data Protection & Electronic Communications Legislation)**—(i) η ισχύουσα τοπική νομοθεσία και οι αντίστοιχοι κανονισμοί που θεσπίστηκαν με σκοπό τη συμμόρφωση με τις απαιτήσεις της Οδηγίας 95/46/EC της Ευρωπαϊκής Ένωσης (περί της επεξεργασίας δεδομένων προσωπικού χαρακτήρα και της ελεύθερης κίνησης των εν λόγω δεδομένων) και της Οδηγίας 2002/58/EC της Ευρωπαϊκής Ένωσης (περί της επεξεργασίας δεδομένων προσωπικού χαρακτήρα και της προστασίας της ιδιωτικότητας στον τομέα των ηλεκτρονικών επικοινωνιών) ή (ii) για χώρες εκτός της Ευρωπαϊκής Ένωσης, η νομοθεσία ή/και οι κανονισμοί που θεσπίστηκαν στη συγκεκριμένη χώρα αναφορικά με την προστασία δεδομένων προσωπικού χαρακτήρα και τη ρύθμιση ηλεκτρονικών επικοινωνιών που περιλαμβάνουν την ανταλλαγή δεδομένων προσωπικού χαρακτήρα ή (και στις δύο ανωτέρω περιπτώσεις) οποιαδήποτε προβλεπόμενη από το νόμο αντικατάσταση ή τροποποίηση των ανωτέρω.
- (ε) **Όμιλος IBM (IBM Group)**—η International Business Machines Corporation με έδρα την Armonk, New York, Η.Π.Α., οι θυγατρικές της και οι αντίστοιχοι Εμπορικοί Συνεργάτες και υπεργολάβους.
- (2) Ο Δικαιούχος Άδειας Χρήσης εξουσιοδοτεί την IBM:
- (α) να επεξεργάζεται και να χρησιμοποιεί Επαγγελματικά Στοιχεία Επικοινωνίας εντός του Ομίλου IBM στα πλαίσια της υποστήριξης του Δικαιούχου Άδειας Χρήσης, συμπεριλαμβανομένης και της παροχής υπηρεσιών υποστήριξης, και για το σκοπό της περαιτέρω ενίσχυσης των επιχειρηματικών σχέσεων μεταξύ του Δικαιούχου Άδειας Χρήσης και του Ομίλου IBM, συμπεριλαμβανομένης, ενδεικτικά και όχι περιοριστικά, της επικοινωνίας με Προσωπικό Επαγγελματικής Επικοινωνίας (μέσω e-mail ή άλλως) και της προώθησης προϊόντων και υπηρεσιών του Ομίλου IBM (ο "Καθορισμένος Σκοπός"), και
- (β) να αποκαλύπτει Επαγγελματικά Στοιχεία Επικοινωνίας σε άλλα μέλη του Ομίλου IBM μόνο στα πλαίσια της επίτευξης του Καθορισμένου Σκοπού.
- (3) Η IBM συμφωνεί ότι η επεξεργασία όλων των Επαγγελματικών Στοιχείων Επικοινωνίας θα πραγματοποιείται σύμφωνα με τη Νομοθεσία περί Προστασίας Δεδομένων και Ηλεκτρονικής Επικοινωνίας και ότι τα εν λόγω Στοιχεία θα χρησιμοποιούνται μόνο για τον Καθορισμένο Σκοπό.
- (4) Στο βαθμό που απαιτείται από τη Νομοθεσία περί Προστασίας Δεδομένων και Ηλεκτρονικής Επικοινωνίας, ο Δικαιούχος Άδειας Χρήσης δηλώνει ότι (α) έχει αποκτήσει (ή θα αποκτήσει) τις απαιτούμενες συγκαταθέσεις και ότι έχει απευθύνει (ή θα απευθύνει) τις απαιτούμενες ειδοποιήσεις στο Προσωπικό Επαγγελματικής Επικοινωνίας ώστε ο Όμιλος IBM να είναι σε θέση να επεξεργάζεται και να χρησιμοποιεί τα Επαγγελματικά Στοιχεία Επικοινωνίας για τον Καθορισμένο Σκοπό.
- (5) Ο Δικαιούχος Άδειας Χρήσης εξουσιοδοτεί την IBM να μεταβιβάσει Επαγγελματικά Στοιχεία Επικοινωνίας εκτός του Ευρωπαϊκού Οικονομικού Χώρου, εφόσον η εν λόγω μεταβίβαση πραγματοποιηθεί βάσει συμβατικών όρων που έχουν εγκριθεί από την Αρχή Προστασίας Δεδομένων ή κατά άλλον τρόπο επιτρέπεται στα πλαίσια της Νομοθεσίας περί Προστασίας Δεδομένων και Ηλεκτρονικών Επικοινωνιών.

# Perjanjian Lisensi Program Internasional

## Bagian 1 – Syarat-syarat Umum

DENGAN MENGUNDUH, MEMASANG, MENYALIN, MENGAKSES, MENEKAN TOMBOL "TERIMA" ATAU DENGAN CARA LAIN MENGGUNAKAN PROGRAM, PEMEGANG LISENSI MENYETUJUI SYARAT-SYARAT PERJANJIAN INI. APABILA ANDA MENERIMA SYARAT-SYARAT INI ATAS NAMA PEMEGANG LISENSI, ANDA MENYATAKAN DAN MENJAMIN BAHWA ANDA MEMILIKI WEWENANG SEPENUHNYA UNTUK MENGIKAT PEMEGANG LISENSI DENGAN SYARAT-SYARAT INI. APABILA ANDA TIDAK MENYETUJUI SYARAT-SYARAT INI,

- JANGAN MENGUNDUH, MEMASANG, MENYALIN, MENGAKSES, MENEKAN TOMBOL "TERIMA" ATAU MENGGUNAKAN PROGRAM; DAN
- SEGERA MENGEMBALIKAN MEDIA, DOKUMENTASI, DAN BUKTI KEPEMILIKAN YANG TIDAK TERPAKAI KEPADA PIHAK DARI MANA ANDA MENDAPATKANNYA UNTUK SUATU PENGEMBALIAN UANG ATAS JUMLAH YANG TELAH DIBAYARKAN. APABILA PROGRAM TELAH DIUNDUH, MUSNAHKAN SEMUA SALINAN PROGRAM.

### 1. Definisi

"**Penggunaan yang Sah**" – tingkat yang ditetapkan di mana Pemegang Lisensi berhak untuk melaksanakan atau menjalankan Program. Tingkat tersebut dapat diukur berdasarkan jumlah pengguna, jutaan unit layanan ("MSU"), Unit Nilai Prosesor ("PVU") atau tingkat penggunaan lainnya yang ditetapkan oleh IBM.

"**IBM**" – International Business Machines Corporation atau salah satu anak perusahaannya.

"**Informasi tentang Lisensi**" ("**IL**") – dokumen yang memberikan informasi dan syarat-syarat tambahan yang مخصوص untuk Program. IL Program tersedia di [www.ibm.com/software/sla](http://www.ibm.com/software/sla). IL juga dapat dilihat dalam direktori Program dengan menggunakan perintah sistem atau sebagai buklet yang dimasukkan bersama dengan Program.

"**Program**" – hal-hal berikut ini, termasuk asli dan seluruh atau sebagian salinan: 1) instruksi dan data yang dapat dibaca oleh mesin, 2) komponen, berkas, dan modul, 3) konten audio-visual (seperti gambar, teks, rekaman atau foto), dan 4) materi yang dilisensikan terkait (seperti kunci dan dokumentasi).

"**Bukti Kepemilikan**" ("**BK**") – bukti Penggunaan yang Sah Pemegang Lisensi. BK juga merupakan bukti kelayakan Pemegang Lisensi untuk mendapatkan garansi, harga terbaru di masa yang akan datang, apabila ada, dan kesempatan-kesempatan khusus atau promosi yang potensial. Apabila IBM tidak memberikan BK kepada Pemegang Lisensi, maka IBM dapat menerima kuitansi penjualan yang telah dibayar asli atau catatan penjualan lainnya dari salah satu pihak (IBM atau penjual kembalinya) yang darinya Pemegang Lisensi mendapatkan Program sebagai BK, dengan ketentuan bahwa kuitansi penjualan atau catatan penjualan lainnya tersebut menetapkan nama Program dan Penggunaan yang Sah yang telah didapatkan.

"**Periode Garansi**" – satu tahun, dimulai pada tanggal saat Pemegang Lisensi awal diberi lisensi.

### 2. Susunan Perjanjian

Perjanjian ini termasuk **Bagian 1 – Syarat-syarat Umum**, **Bagian 2 – Syarat-syarat Khusus Tiap Negara** (apabila ada), IL, dan BK dan merupakan perjanjian yang lengkap antara Pemegang Lisensi dan IBM terkait dengan penggunaan Program. Perjanjian ini menggantikan setiap komunikasi lisan atau tertulis sebelumnya antara Pemegang Lisensi dan IBM tentang penggunaan Program oleh Pemegang Lisensi. Syarat-syarat Bagian 2 dapat menggantikan atau memodifikasi syarat-syarat Bagian 1. Sepanjang terdapat ketidaksesuaian, IL berlaku atas kedua Bagian tersebut.

### 3. Pemberian Lisensi

Program adalah milik IBM atau pemasok IBM serta diberi hak cipta dan lisensi, tetapi tidak dijual.

IBM memberikan lisensi yang tidak eksklusif kepada Pemegang Lisensi untuk 1) menggunakan Program sampai dengan Penggunaan yang Sah sebagaimana ditetapkan dalam BK, 2) membuat dan memasang salinan-salinan untuk mendukung Penggunaan yang Sah tersebut, dan 3) membuat salinan cadangan, semua dengan ketentuan bahwa

- a. Pemegang Lisensi telah mendapatkan Program secara sah dan mematuhi syarat-syarat Perjanjian ini;
- b. salinan cadangan tidak bekerja kecuali apabila Program yang dicadangkan tidak dapat bekerja;
- c. Pemegang Lisensi mereproduksi semua pemberitahuan tentang hak cipta dan keterangan kepemilikan lainnya dalam masing-masing salinan atau sebagian salinan Program;
- d. Pemegang Lisensi memastikan bahwa setiap individu yang menggunakan Program (yang diakses dari jarak dekat atau jarak jauh) 1) melakukan hal tersebut hanya atas nama Pemegang Lisensi dan 2) mematuhi syarat-syarat Perjanjian ini;
- e. Pemegang Lisensi tidak 1) menggunakan, menyalin, memodifikasi atau mendistribusikan Program kecuali apabila diizinkan secara tegas dalam Perjanjian ini; 2) merakit kembali, menyusun kembali, dengan cara lain, menerjemahkan atau merekayasa kembali Program, kecuali apabila diizinkan oleh undang-undang tanpa adanya kemungkinan pelepasan kontrak; 3) menggunakan setiap komponen, berka, modul, konten audio visual atau materi yang dilisensikan terkait yang terpisah dari Program tersebut; atau 4) mensublisensikan, menyewa atau menyewakan Program; dan
- f. apabila Pemegang Lisensi mendapatkan Program ini sebagai Program Pendukung, Pemegang Lisensi menggunakan Program ini hanya untuk mendukung Program Utama dan tunduk kepada setiap batasan dalam lisensi untuk Program Utama, atau, apabila Pemegang Lisensi mendapatkan Program ini sebagai Program Utama, Pemegang Lisensi menggunakan semua Program Pendukung hanya untuk mendukung Program ini dan tunduk kepada setiap batasan dalam Perjanjian ini. Untuk tujuan Butir "f" ini, "Program Pendukung" adalah Program yang merupakan bagian dari Program IBM lainnya ("Program Utama") dan diidentifikasi sebagai Program Pendukung dalam IL Program Utama. (Untuk mendapatkan lisensi terpisah untuk Program Pendukung tanpa pembatasan-pembatasan ini, Pemegang Lisensi sebaiknya menghubungi pihak yang darinya Pemegang Lisensi telah mendapatkan Program Pendukung.)

Lisensi ini berlaku untuk masing-masing salinan Program yang dibuat oleh Pemegang Lisensi.

### **3.1 Tukar Tambah, Pembaruan, Perbaikan, dan Tambahan**

#### **3.1.1 Tukar Tambah**

Apabila Program digantikan oleh Program tukar tambah, lisensi Program yang digantikan segera diakhiri.

#### **3.1.2 Pembaruan, Perbaikan, dan Tambahan**

Pada saat Pemegang Lisensi menerima pembaruan, perbaikan atau tambahan untuk Program, Pemegang Lisensi menerima syarat-syarat tambahan atau syarat-syarat yang berbeda yang berlaku untuk pembaruan, perbaikan atau tambahan tersebut yang ditetapkan dalam IL-nya. Apabila syarat-syarat tambahan atau syarat-syarat yang berbeda tidak diberikan, maka pembaruan, perbaikan atau tambahan tersebut semata-mata tunduk kepada Perjanjian ini. Apabila Program digantikan oleh pembaruan, Pemegang Lisensi setuju untuk segera berhenti menggunakan Program yang digantikan.

### **3.2 Lisensi Jangka Waktu Tertentu**

Apabila IBM melisensikan Program selama jangka waktu tertentu, lisensi Pemegang Lisensi diakhiri pada akhir jangka waktu tertentu, kecuali apabila Pemegang Lisensi dan IBM sepakat untuk memperbarui lisensi Program tersebut.

### **3.3 Jangka Waktu dan Pengakhiran**

Perjanjian ini berlaku sampai perjanjian ini diakhiri.

IBM dapat mengakhiri lisensi Pemegang Lisensi apabila Pemegang Lisensi tidak mematuhi syarat-syarat Perjanjian ini.

Apabila lisensi diakhiri karena alasan apa pun oleh salah satu pihak, Pemegang Lisensi setuju untuk segera berhenti menggunakan dan memusnahkan semua salinan Program Pemegang Lisensi. Setiap syarat Perjanjian ini yang berdasarkan sifatnya melampaui pengakhiran Perjanjian ini tetap berlaku sampai syarat tersebut dipenuhi, dan berlaku untuk masing-masing penerus dan penerima pengalihan hak kedua belah pihak.

#### **4. Biaya-biaya**

Biaya-biaya didasarkan pada Penggunaan yang Sah yang telah didapatkan, yang ditetapkan dalam BK. IBM tidak memberikan kredit atau pengembalian uang atas biaya-biaya yang telah jatuh tempo atau dibayar, kecuali apabila ditetapkan lain dalam Perjanjian ini.

Apabila Pemegang Lisensi ingin meningkatkan Penggunaannya yang Sah, Pemegang Lisensi harus memberitahukan kepada IBM atau pengecer (reseller) IBM yang sah terlebih dahulu dan membayar setiap biaya yang berlaku.

#### **5. Pajak**

Apabila suatu lembaga mengenakan bea, pajak, retribusi atau biaya terhadap Program, tidak termasuk bea, pajak, retribusi atau biaya yang didasarkan pada pendapatan bersih IBM, maka Pemegang Lisensi setuju untuk membayar jumlah tersebut, sebagaimana ditetapkan dalam tagihan atau dokumentasi tentang pembebasan pajak atas pasokan. Pemegang Lisensi bertanggung jawab atas setiap pajak properti pribadi untuk Program sejak tanggal saat Pemegang Lisensi mendapatkan program tersebut. Apabila suatu lembaga mengenakan bea cukai, pajak, retribusi atau biaya untuk impor ke dalam atau ekspor, transfer, akses atau penggunaan Program ke luar negeri di mana Pemegang Lisensi awal mendapatkan lisensi, maka Pemegang Lisensi setuju bahwa pihaknya bertanggung jawab atas, dan akan membayar, setiap jumlah yang dikenakan.

#### **6. Jaminan Uang Kembali**

Apabila Pemegang Lisensi tidak puas dengan Program karena alasan apa pun dan merupakan Pemegang Lisensi awal, Pemegang Lisensi dapat mengakhiri lisensi dan mendapatkan pengembalian uang atas jumlah yang telah dibayar oleh Pemegang Lisensi untuk Program, dengan ketentuan bahwa Pemegang Lisensi mengembalikan Program dan BK kepada pihak yang darinya Pemegang Lisensi telah mendapatkan Program dan BK tersebut dalam jangka waktu 30 hari sejak tanggal BK diterbitkan untuk Pemegang Lisensi. Apabila lisensi adalah lisensi untuk jangka waktu tertentu yang tunduk kepada pembaruan, maka Pemegang Lisensi dapat mendapatkan pengembalian uang hanya apabila Program dan BK-nya dikembalikan dalam jangka waktu 30 hari pertama sejak jangka waktu yang pertama. Apabila Pemegang Lisensi telah mengunduh Program, Pemegang Lisensi sebaiknya menghubungi pihak yang darinya Pemegang Lisensi telah mendapatkan Program tersebut untuk mendapatkan instruksi-instruksi tentang cara untuk mendapatkan pengembalian uang.

#### **7. Transfer Program**

Pemegang Lisensi dapat mentransfer Program serta semua hak dan kewajiban lisensi Pemegang Lisensi kepada pihak lainnya hanya apabila pihak tersebut menyetujui syarat-syarat Perjanjian ini. Apabila lisensi diakhiri karena alasan apa pun oleh salah satu pihak, Pemegang Lisensi dilarang mentransfer Program kepada pihak lainnya. Pemegang Lisensi tidak dapat mentransfer sebagian 1) Program atau 2) Penggunaan yang Sah atas Program. Pada saat Pemegang Lisensi mentransfer Program, Pemegang Lisensi juga harus mentransfer salinan kertas Perjanjian ini, termasuk IL dan BK. Segera setelah transfer dilakukan, lisensi Pemegang Lisensi berakhir.

#### **8. Jaminan dan Pengecualian**

##### **8.1 Garansi Terbatas**

IBM menjamin bahwa Program, pada saat digunakan dalam lingkungan operasinya yang ditetapkan, akan sesuai dengan spesifikasi-spesifikasinya. Spesifikasi-spesifikasi Program dan informasi tentang lingkungan operasi yang ditetapkan dapat dilihat di dalam dokumentasi yang menyertai Program (seperti berka bacalah aku (read-me file)) atau informasi lainnya yang dipublikasikan oleh IBM (seperti surat pemberitahuan). Pemegang Lisensi setuju bahwa

dokumentasi tersebut dan konten Program lainnya hanya dapat disediakan dalam bahasa Inggris, kecuali apabila diwajibkan lain oleh undang-undang setempat tanpa adanya kemungkinan pelepasan atau pembatasan kontrak.

Garansi hanya berlaku untuk sebagian Program yang tidak dimodifikasi. IBM tidak menjamin operasi Program tanpa henti dan yang bebas dari kesalahan, atau menjamin bahwa IBM akan memperbaiki semua kecacatan Program. Pemegang Lisensi bertanggung jawab atas hasil-hasil yang didapatkan dari penggunaan Program.

Selama Periode Garansi, IBM memberikan kepada Pemegang Lisensi akses ke basis data IBM yang berisi informasi tentang kecacatan-kecacatan Program yang telah diketahui, perbaikan-perbaikan atas kecacatan, pembatasan-pembatasan, dan jalan-jalan pintas tanpa adanya biaya tambahan. Untuk informasi lebih lanjut, bacalah Panduan Dukungan Perangkat Lunak IBM di [www.ibm.com/software/support](http://www.ibm.com/software/support).

Apabila Program tidak berfungsi sebagaimana dijamin selama Periode Garansi dan permasalahan tidak dapat diselesaikan dengan informasi yang tersedia di dalam basis data IBM, Pemegang Lisensi dapat mengembalikan Program dan BK-nya kepada pihak (IBM atau penjual kembalinya) yang darinya Pemegang Lisensi telah mendapatkan Program dan BK tersebut dan menerima pengembalian uang atas jumlah yang telah dibayarkan oleh Pemegang Lisensi. Setelah mengembalikan Program, lisensi Pemegang Lisensi berakhir. Apabila Pemegang Lisensi telah mengunduh Program, Pemegang Lisensi sebaiknya menghubungi pihak yang darinya Pemegang Lisensi telah mendapatkan Program tersebut untuk mendapatkan instruksi-instruksi tentang cara untuk mendapatkan pengembalian uang.

## 8.2 Pengecualian

**JAMINAN-JAMINAN INI ADALAH JAMINAN-JAMINAN EKSKLUSIF PEMEGANG LISENSI DAN MENGANTIKAN SEMUA JAMINAN ATAU KETENTUAN LAINNYA, SECARA TEGAS ATAU TERSIRAT, TERMASUK, TETAPI TIDAK TERBATAS PADA, SETIAP JAMINAN ATAU KETENTUAN APA PUN SECARA TERSIRAT TENTANG KELAYAKAN UNTUK DIPERJUALBELIKAN, KUALITAS YANG MEMUASKAN, KESESUAIAN UNTUK TUJUAN TERTENTU, HAK MILIK, DAN SETIAP JAMINAN ATAU KETENTUAN TENTANG TIDAK ADANYA PELANGGARAN. BEBERAPA NEGARA ATAU YURISDIKSI TIDAK MEMPERBOLEHKAN PENGECCUALIAN TENTANG JAMINAN SECARA TEGAS ATAU TERSIRAT. OLEH KARENA ITU, PENGECCUALIAN DI ATAS MUNGKIN TIDAK BERLAKU UNTUK PEMEGANG LISENSI. DALAM HAL TERSEBUT, JAMINAN-JAMINAN TERSEBUT DIBATASI SELAMA PERIODE GARANSI YANG DIWAJIBKAN OLEH UNDANG-UNDANG. TIDAK ADA JAMINAN APA PUN YANG BERLAKU SETELAH PERIODE TERSEBUT. BEBERAPA NEGARA ATAU YURISDIKSI TIDAK MEMPERBOLEHKAN BATASAN-BATASAN TENTANG BERAPA LAMA JAMINAN YANG TERSIRAT BERLAKU. OLEH KARENA ITU, BATASAN DI ATAS MUNGKIN TIDAK BERLAKU UNTUK PEMEGANG LISENSI.**

**JAMINAN-JAMINAN INI MEMBERIKAN HAK-HAK HUKUM YANG SPESIFIK KEPADA PEMEGANG LISENSI. PEMEGANG LISENSI JUGA DAPAT MEMILIKI HAK LAINNYA YANG BERBEDA-BEDA ANTARA NEGARA YANG SATU DENGAN NEGARA YANG LAIN ATAU ANTARA YURISDIKSI YANG SATU DENGAN YURISDIKSI YANG LAIN.**

**JAMINAN-JAMINAN DALAM PASAL 8 (JAMINAN DAN PENGECCUALIAN) INI DIBERIKAN SEMATA-MATA OLEH IBM. AKAN TETAPI, SANGGAHAN-SANGGAHAN DALAM SUBPASAL 8.2 (PENGECCUALIAN) INI JUGA BERLAKU UNTUK PARA PEMASOK KODE PIHAK KETIGA IBM. PARA PEMASOK MEMBERIKAN KODE TERSEBUT TANPA ADANYA JAMINAN ATAU KETENTUAN APA PUN. AYAT INI TIDAK MEMBATALKAN KEWAJIBAN-KEWAJIBAN JAMINAN IBM BERDASARKAN PERJANJIAN INI.**

## 9. Data dan Basis Data Pemegang Lisensi

Untuk membantu Pemegang Lisensi dalam mengisolasi penyebab permasalahan pada Program, IBM dapat meminta agar Pemegang Lisensi 1) memperbolehkan IBM untuk mengakses sistem Pemegang Lisensi dari jarak jauh atau 2) mengirimkan informasi atau data sistem Pemegang Lisensi kepada IBM. Akan tetapi, IBM tidak diwajibkan untuk memberikan asistensi tersebut kecuali

apabila IBM dan Pemegang Lisensi mengadakan perjanjian tertulis secara terpisah yang atas dasarnya IBM setuju untuk memberikan kepada Pemegang Lisensi jenis dukungan tersebut, yang tidak termasuk dalam kewajiban-kewajiban jaminan IBM dalam Perjanjian ini. Dalam hal apa pun, IBM menggunakan informasi tentang kesalahan-kesalahan dan permasalahan-permasalahan untuk meningkatkan produk dan layanannya serta membantu pemberian tawaran-tawaran dukungan terkait yang dilakukannya. Untuk tujuan-tujuan ini, IBM dapat menggunakan badan-badan dan para subkontraktor IBM (termasuk dalam satu negara atau lebih selain negara di mana Pemegang Lisensi berada), dan Pemegang Lisensi memberikan wewenang kepada IBM untuk melakukan hal tersebut.

Pemegang Lisensi tetap bertanggung jawab atas 1) setiap data dan konten dari setiap basis data yang disediakan oleh Pemegang Lisensi untuk IBM, 2) pilihan dan pelaksanaan prosedur dan kendali yang terkait dengan akses, keamanan, enkripsi, penggunaan, dan transmisi data (termasuk setiap data yang dapat diidentifikasi secara pribadi), serta 3) cadangan dan pemulihan atas setiap basis data dan setiap data yang disimpan. Pemegang Lisensi tidak akan mengirimkan atau memberikan kepada IBM akses ke setiap informasi yang dapat diidentifikasi secara pribadi, dalam bentuk data atau bentuk apa pun lainnya, dan akan bertanggung jawab atas biaya-biaya dan jumlah-jumlah lainnya yang wajar yang mungkin ditanggung oleh IBM terkait dengan setiap informasi tersebut yang secara tidak sengaja diberikan kepada IBM atau kehilangan atau pengungkapan informasi tersebut oleh IBM, termasuk biaya-biaya dan jumlah-jumlah lainnya yang timbul dari tuntutan pihak ketiga.

## **10. Batasan Kewajiban**

Batasan-batasan dan pengecualian-pengecualian dalam Pasal 10 (Batasan Kewajiban) ini berlaku sepanjang batasan-batasan dan pengecualian-pengecualian tersebut tidak dilarang oleh undang-undang yang berlaku tanpa adanya kemungkinan pelepasan kontrak.

### **10.1 Hal-hal yang Mungkin Menjadi Tanggung Jawab IBM**

Keadaan-keadaan dapat timbul apabila, karena wanprestasi dari pihak IBM atau kewajiban lainnya, Pemegang Lisensi berhak untuk mendapatkan ganti rugi dari IBM. Terlepas dari alasan Pemegang Lisensi untuk menuntut ganti rugi dari IBM (termasuk pelanggaran yang mendasar, kelalaian, pernyataan yang salah, atau kontrak lainnya atau tuntutan atas tindakan kejahatan), seluruh kewajiban IBM untuk semua tuntutan secara keseluruhan yang timbul dari atau terkait dengan masing-masing Program atau dengan cara lain, yang timbul berdasarkan Perjanjian ini tidak akan melampaui jumlah dari setiap 1) ganti rugi karena cedera badan (termasuk kematian) dan kerusakan terhadap properti yang bersifat tetap (real property) dan properti pribadi yang berwujud dan 2) ganti rugi aktual atas kerusakan langsung, sampai sebesar-besarnya biaya yang telah dibayarkan oleh Pemegang Lisensi untuk Program yang menjadi subjek tuntutan (apabila Program tunduk kepada biaya-biaya tetap dalam jangka waktu tertentu maka sampai sebesar-besarnya biaya-biaya selama jangka waktu dua belas bulan).

Batas ini juga berlaku untuk setiap pengembang dan pemasok Program IBM. Batas ini merupakan jumlah maksimum tanggung jawab IBM serta para pengembang dan pemasok Programnya secara bersama-sama.

### **10.2 Hal-hal yang Bukan Merupakan Tanggung Jawab IBM**

**DALAM SITUASI APA PUN JUGA, IBM, PARA PENGEMBANG ATAU PEMASOK PROGRAMNYA TIDAK BERTANGGUNG JAWAB ATAS SALAH SATU HAL BERIKUT INI, BAHKAN APABILA TELAH DIINFORMASIKAN BAHWA TERDAPAT KEMUNGKINAN TERJADI HAL-HAL BERIKUT INI:**

- a. KEHILANGAN ATAU KERUSAKAN DATA;
- b. KERUSAKAN / KERUGIAN KHUSUS, INSEIDENTIL, CONTOH, ATAU KERUSAKAN / KERUGIAN TAK LANGSUNG, ATAU UNTUK SETIAP KERUSAKAN / KERUGIAN SEBAB-AKIBAT EKONOMIS; ATAU
- c. HILANGNYA LABA, BISNIS, PENDAPATAN, NAMA BAIK (GOODWILL), ATAU SIMPANAN YANG DIHARAPKAN.



## 11. Verifikasi terhadap Kepatuhan

Untuk tujuan-tujuan Pasal 11 (Verifikasi terhadap Kepatuhan) ini, "Syarat-syarat Perjanjian Lisensi Program Internasional" ini berarti 1) Perjanjian ini serta perubahan-perubahan dan dokumen-dokumen transaksi yang berlaku yang diberikan oleh IBM, dan 2) kebijakan-kebijakan perangkat lunak IBM yang dapat dilihat di situs web Kebijakan Perangkat Lunak IBM ([www.ibm.com/software/policies](http://www.ibm.com/software/policies)), termasuk tetapi tidak terbatas pada kebijakan-kebijakan tersebut yang terkait dengan cadangan, penetapan harga subkapasitas, dan migrasi.

Hak-hak dan kewajiban-kewajiban yang tercantum dalam Pasal 11 ini tetap berlaku selama periode saat Program dilisensikan kepada Pemegang Lisensi dan selama dua tahun berikutnya.

### 11.1 Proses Verifikasi

Pemegang Lisensi setuju untuk menciptakan, menyimpan, dan memberikan kepada IBM dan para auditornya catatan-catatan tertulis yang akurat, keluaran (output) sistem, dan informasi sistem lainnya yang memadai untuk memberikan verifikasi yang dapat diaudit bahwa penggunaan semua Program oleh Pemegang Lisensi sesuai dengan Syarat-syarat Perjanjian Lisensi Program Internasional, termasuk, tetapi tidak terbatas pada, semua syarat pemberian lisensi dan kualifikasi penetapan harga yang berlaku dari IBM. Pemegang Lisensi bertanggung jawab untuk 1) memastikan bahwa pihaknya tidak melampaui Penggunaannya yang Sah dan 2) tetap sesuai dengan Syarat-syarat Perjanjian Lisensi Program Internasional.

Setelah adanya pemberitahuan yang wajar, IBM dapat memverifikasi kepatuhan Pemegang Lisensi terhadap Syarat-syarat Perjanjian Lisensi Program Internasional di semua lokasi dan untuk semua lingkungan di mana Pemegang Lisensi menggunakan (untuk tujuan apa pun) Program-program dengan tunduk kepada Syarat-syarat Perjanjian Lisensi Program Internasional. Verifikasi tersebut akan dilakukan dengan cara yang seminimal mungkin mengganggu bisnis Pemegang Lisensi, dan dapat dilakukan di tempat-tempat Pemegang Lisensi, selama jam-jam kerja normal. IBM dapat menggunakan auditor yang independen untuk membantu verifikasi tersebut, dengan ketentuan bahwa IBM memiliki perjanjian kerahasiaan tertulis yang ada pada auditor tersebut.

### 11.2 Resolusi

IBM akan memberitahukan kepada Pemegang Lisensi secara tertulis apabila verifikasi tersebut menunjukkan bahwa Pemegang Lisensi telah menggunakan Program dengan cara yang melampaui Penggunaannya yang Sah atau dengan cara lain, tidak sesuai dengan Syarat-syarat Perjanjian Lisensi Program Internasional. Pemegang Lisensi setuju untuk segera membayar kepada IBM secara langsung biaya-biaya yang ditetapkan oleh IBM dalam tagihan untuk 1) setiap kelebihan penggunaan tersebut, 2) dukungan untuk kelebihan penggunaan tersebut selama kurang dari jangka waktu kelebihan penggunaan tersebut atau dua tahun, dan 3) setiap biaya tambahan dan kewajiban lainnya yang ditentukan yang diakibatkan oleh verifikasi tersebut.

## 12. Pemberitahuan Pihak Ketiga

Program dapat termasuk kode pihak ketiga yang dilisensikan oleh IBM, bukan pihak ketiga, kepada Pemegang Lisensi berdasarkan Perjanjian ini. Pemberitahuan-pemberitahuan, apabila ada, untuk kode pihak ketiga ("Pemberitahuan Pihak Ketiga") dimasukkan hanya untuk informasi Pemegang Lisensi. Pemberitahuan-pemberitahuan ini dapat dilihat di dalam berkas(-berkas) PEMBERITAHUAN Program. Informasi tentang cara untuk mendapatkan sumber kode untuk kode pihak ketiga tertentu dapat dilihat di dalam Pemberitahuan Pihak Ketiga. Apabila di dalam Pemberitahuan Pihak Ketiga, IBM mengidentifikasi kode pihak ketiga sebagai "Kode Pihak Ketiga yang Dapat Dimodifikasi", IBM memberikan wewenang kepada Pemegang Lisensi untuk 1) memodifikasi Kode Pihak Ketiga yang Dapat Dimodifikasi dan 2) merekayasa kembali modul-modul Program yang terhubung secara langsung dengan Kode Pihak Ketiga yang Dapat Dimodifikasi dengan ketentuan bahwa modul-modul tersebut hanya untuk tujuan debug modifikasi-modifikasi Pemegang Lisensi atas kode pihak ketiga tersebut. Kewajiban-kewajiban layanan dan dukungan IBM, apabila ada, berlaku hanya untuk Program yang tidak dimodifikasi.



### 13. Umum

- a. Tidak ada satu pun dalam Perjanjian ini yang mempengaruhi hak-hak konsumen yang didasarkan pada undang-undang yang tidak dapat dilepaskan atau dibatasi oleh kontrak.
- b. Untuk Program-program yang diberikan oleh IBM kepada Pemegang Lisensi dalam bentuk yang berwujud, IBM memenuhi kewajiban kewajiban pengiriman dan penyerahannya setelah Program-program tersebut diserahkan kepada pengangkut yang ditunjuk oleh IBM, kecuali apabila disepakati lain secara tertulis oleh Pemegang Lisensi dan IBM.
- c. Apabila terdapat ketentuan Perjanjian ini yang dianggap tidak sah atau tidak dapat diberlakukan, ketentuan-ketentuan Perjanjian lainnya yang tersisa tetap berlaku sepenuhnya.
- d. Pemegang Lisensi setuju untuk mematuhi semua peraturan perundang-undangan ekspor dan impor yang berlaku, termasuk peraturan-peraturan tentang embargo dan sanksi serta larangan-larangan ekspor A. S. untuk penggunaan-penggunaan akhir tertentu dan untuk para pengguna tertentu.
- e. Pemegang Lisensi memberikan wewenang kepada International Business Machines Corporation dan anak perusahaannya (dan para penerus, penerima pengalihan hak, kontraktor, dan Mitra Bisnis IBM mereka) untuk menyimpan dan menggunakan informasi kontak bisnis Pemegang Lisensi di mana pun mereka menjalankan bisnis, terkait dengan produk-produk dan layanan-layanan IBM, atau sebagai kelanjutan dari hubungan bisnis IBM dengan Pemegang Lisensi.
- f. Masing-masing pihak akan memberikan kesempatan yang wajar kepada pihak lainnya untuk mematuhi sebelum pihaknya mengajukan tuntutan bahwa pihak lainnya belum memenuhi kewajiban-kewajibannya berdasarkan Perjanjian ini. Para pihak akan berupaya dengan itikad baik untuk menyelesaikan semua sengketa, perselisihan atau tuntutan di antara para pihak yang terkait dengan Perjanjian ini.
- g. Kecuali apabila diwajibkan lain oleh undang-undang yang berlaku tanpa adanya kemungkinan pelepasan atau batasan kontrak: 1) tidak ada satu pihak pun yang akan mengambil tindakan hukum, tanpa memperhatikan bentuknya, untuk setiap tuntutan yang timbul dari atau terkait dengan Perjanjian ini dalam jangka waktu lebih dari dua tahun setelah timbulnya penyebab tuntutan; dan 2) setelah berakhirnya batas waktu tersebut, setiap tuntutan tersebut dan semua hak masing-masing yang terkait dengan tuntutan berakhir.
- h. Pemegang Lisensi atau IBM tidak bertanggung jawab atas kegagalan dalam memenuhi setiap kewajiban yang diakibatkan oleh penyebab-penyebab di luar kendalinya.
- i. Tidak ada hak atau dasar tuntutan untuk pihak ketiga yang diciptakan oleh Perjanjian ini, dan IBM tidak bertanggung jawab atas tuntutan-tuntutan pihak ketiga terhadap Pemegang Lisensi, kecuali apabila diizinkan dalam Subpasal 10.1 (Hal-hal yang Mungkin Menjadi Tanggung Jawab IBM) di atas karena cedera badan (termasuk kematian) atau kerusakan terhadap properti pribadi yang bersifat tetap atau berwujud yang merupakan tanggung jawab IBM secara hukum kepada pihak ketiga tersebut.
- j. Dalam mengadakan Perjanjian ini, tidak ada satu pihak pun yang mendasarkan pada setiap pernyataan yang tidak ditetapkan dalam Perjanjian ini, termasuk tetapi tidak terbatas pada setiap pernyataan yang terkait dengan: 1) kinerja atau fungsi Program, selain yang dijamin secara tegas dalam Pasal 8 (Jaminan dan Pengucualian) di atas; 2) pengalaman-pengalaman atau rekomendasi-rekomendasi para pihak lainnya; atau 3) hasil atau simpanan apa pun yang dapat dicapai oleh Pemegang Lisensi.
- k. IBM telah menandatangani perjanjian-perjanjian dengan perusahaan-perusahaan tertentu (disebut sebagai "Para Mitra Bisnis IBM") untuk mempromosikan, memasarkan, dan mendukung Program-program tertentu. Para Mitra Bisnis IBM tetap bersifat independen dan terpisah dari IBM. IBM tidak bertanggung jawab atas tindakan-tindakan atau pernyataan-pernyataan Para Mitra Bisnis IBM atau kewajiban-kewajiban yang mereka miliki terhadap Pemegang Lisensi.
- l. Syarat-syarat lisensi dan pemberian ganti rugi atas kekayaan intelektual dari perjanjian-perjanjian Pemegang Lisensi lainnya dengan IBM (seperti Perjanjian Konsumen IBM) tidak berlaku untuk lisensi-lisensi Program yang diberikan berdasarkan Perjanjian ini.

### 14. Cakupan Geografis dan Undang-undang yang Mengatur

#### 14.1 Undang-undang yang Mengatur

Kedua belah pihak sepakat bahwa pelaksanaan undang-undang negara di mana Pemegang Lisensi telah mendapatkan lisensi Program akan mengatur, menafsirkan, dan memberlakukan semua hak,

tugas, dan kewajiban Pemegang Lisensi dan IBM yang timbul dari, atau yang dengan cara apa pun terkait dengan, pokok materi Perjanjian ini, dengan tidak memperhatikan ketidaksesuaian prinsip undang-undang.

Konvensi Perserikatan Bangsa-Bangsa tentang Kontrak Penjualan Barang Internasional (United Nations Convention on Contracts for the International Sale of Goods) tidak berlaku.

#### 14.2 Yurisdiksi

Semua hak, tugas, dan kewajiban tunduk kepada pengadilan-pengadilan negara di mana Pemegang Lisensi telah mendapatkan lisensi Program.

## Bagian 2 – Syarat-syarat Khusus Tiap Negara

Untuk lisensi-lisensi yang diberikan di Indonesia, syarat-syarat berikut ini menggantikan atau memodifikasi syarat-syarat yang dijadikan acuan dalam Bagian 1. Semua syarat dalam Bagian 1 yang tidak diubah oleh perubahan-perubahan ini tetap tidak berubah dan tetap berlaku. Bagian 2 ini disusun sebagai berikut:

- Perubahan negara terhadap Bagian 1, Pasal 14 (Undang-undang dan Yurisdiksi yang Mengatur); dan
- Perubahan negara Asia Pasifik terhadap syarat-syarat Perjanjian lainnya.

### Perubahan negara terhadap Bagian 1, Pasal 14 (Undang-undang dan Yurisdiksi yang Mengatur)

#### 14.3 Arbitrase

*Ayat-ayat berikut ini ditambahkan sebagai Subpasal 14.3 (Arbitrase) yang baru sebagaimana ayat-ayat tersebut berlaku untuk Indonesia. Ketentuan-ketentuan Subpasal 14.3 ini berlaku atas ketentuan-ketentuan Subpasal 14.2 (Yurisdiksi) sepanjang diizinkan oleh undang-undang dan peraturan tata tertib yang mengatur yang berlaku:*

Masing-masing pihak akan memberikan kesempatan yang wajar kepada pihak lainnya untuk mematuhi sebelum pihaknya mengajukan tuntutan bahwa pihak lainnya belum memenuhi kewajiban-kewajibannya berdasarkan Perjanjian ini. Para pihak akan berupaya dengan itikad baik untuk menyelesaikan semua sengketa, perselisihan atau tuntutan di antara para pihak yang terkait dengan Perjanjian ini. Kecuali diwajibkan lain oleh undang-undang yang berlaku tanpa adanya kemungkinan pelepasan atau batasan kontrak, i) tidak ada satu pihak pun yang akan mengambil tindakan hukum, tanpa memperhatikan bentuknya, yang timbul karena atau terkait dengan Perjanjian ini atau transaksi apa pun berdasarkan Perjanjian ini dalam jangka waktu lebih dari dua tahun setelah timbulnya dasar tuntutan; dan ii) setelah batas waktu tersebut, setiap tindakan hukum yang timbul karena Perjanjian ini atau transaksi apa pun berdasarkan Perjanjian ini dan semua hak masing-masing yang terkait dengan setiap tindakan tersebut berakhir.

Sengketa-sengketa yang timbul karena atau terkait dengan Perjanjian ini pada akhirnya akan diselesaikan melalui arbitrase yang akan diadakan di Jakarta, Indonesia, sesuai dengan aturan-aturan Badan Arbitrase Nasional Indonesia ("BANI") yang berlaku pada saat itu. Putusan arbitrase akan bersifat final dan mengikat para pihak tanpa adanya banding dan akan dibuat secara tertulis serta mencantumkan temuan-temuan fakta dan kesimpulan-kesimpulan hukum.

Arbiter akan berjumlah tiga orang, dengan masing-masing pihak dalam sengketa tersebut berhak menunjuk seorang arbiter. Kedua arbiter yang ditunjuk oleh para pihak akan menunjuk arbiter ketiga yang akan bertindak sebagai ketua untuk memimpin proses penyelesaian sengketa tersebut. Lowongan dalam jabatan ketua akan diisi oleh Ketua BANI. Lowongan-lowongan lainnya akan diisi oleh masing-masing pihak yang mencalonkan. Proses-proses hukum akan berlanjut dari tahap proses-proses hukum sebelumnya pada saat terdapat lowongan.

Apabila salah satu pihak menolak atau dengan kata lain, tidak menunjuk arbiter dalam jangka waktu 30 hari sejak tanggal pada saat pihak lainnya menunjuk arbiternya, arbiter yang ditunjuknya pertama kali akan menjadi arbiter tunggal, dengan ketentuan bahwa arbiter tersebut ditunjuk dengan cara yang sah dan tepat.

Semua proses hukum akan dilaksanakan, termasuk semua dokumen yang disampaikan dalam proses hukum tersebut akan dibuat, dalam bahasa Inggris dan/atau Indonesia.

## **PERUBAHAN-PERUBAHAN NEGARA ASIA PASIFIK**

### **INDONESIA**

#### **3.3 Jangka Waktu dan Pengakhiran**

*Kalimat berikut ini ditambahkan ke ayat terakhir:*

Kedua belah pihak melepaskan ketentuan Pasal 1266 Kitab Undang-undang Hukum Perdata, sepanjang ketentuan pasal tersebut mewajibkan keputusan pengadilan untuk mengakhiri perjanjian yang menciptakan kewajiban-kewajiban bersama.

# Accordo Internazionale di Licenza di Programmi

## Parte 1 – Condizioni Generali

SCARICANDO, INSTALLANDO, COPIANDO, ACCEDENDO, FACENDO CLIC SUL PULSANTE "ACCETTO", O UTILIZZANDO IL PROGRAMMA, IL LICENZIATARIO ACCETTA LE CLAUSOLE DEL PRESENTE ACCORDO. SE SI ACCETTANO TALI CLAUSOLE PER CONTO DEL LICENZIATARIO, SI DICHIA E GARANTISCE DI AVERE PIENA AUTORITA' DI VINCOLARE IL LICENZIATARIO ALLE PRESENTI CLAUSOLE. SE NON SI ACCETTANO LE PRESENTI DISPOSIZIONI,

- NON SCARICARE, INSTALLARE, COPIARE, ACCEDERE, FARE CLIC SUL PULSANTE "ACCETTO", O UTILIZZARE IL PROGRAMMA; E
- RESTITUIRE IMMEDIATAMENTE I SUPPORTI NON UTILIZZATI, LA DOCUMENTAZIONE, E LA PROVA DI TITOLARITA' ALLA PARTE DA CUI E' STATA OTTENUTA PER UN RIMBORSO DEL CORRISPETTIVO PAGATO. SE IL PROGRAMMA E' STATO SCARICATO, DISTRUGGERE TUTTE LE COPIE DEL PROGRAMMA.

### 1. Definizioni

**"Uso Autorizzato"** – il livello specificato per il quale il Licenziatario è autorizzato ad eseguire o far funzionare il Programma. Quel livello può essere misurato per numero di utenti, MSU (millions of service units), Processor Value Unit ("PVU"), o un altro livello di utilizzo specificato da IBM.

**"IBM"** – International Business Machines Corporation o una delle sue consociate.

**"Informazioni relative alla licenza" ("LI")** – un documento che fornisce informazioni e qualsiasi clausola aggiuntiva specifica ad un Programma. La LI del Programma è disponibile presso il sito [www.ibm.com/software/sla](http://www.ibm.com/software/sla). E' possibile trovare la LI anche nella directory del Programma, utilizzando un comando di sistema, o nel libretto incluso con il Programma.

**"Programma"** – sia il programma originale che tutte le copie integrali o parziali di esso: 1) istruzioni in formato leggibile dalla macchina e dati, 2) componenti, file e moduli, 3) contenuto audiovisivo (quale immagini, testo, registrazioni o figure), e 4) materiali su licenza associati (come chiavi e documentazioni).

**"Prova di titolarità" ("PoE")** – prova dell'autorizzazione all'utilizzo di un Programma da parte del Licenziatario. La PoE rappresenta anche titolo del Licenziatario per beneficiare della garanzia, dei corrispettivi per futuri aggiornamenti, se esistenti, e di eventuali offerte speciali o promozionali. In caso IBM non fornisca una PoE al Licenziatario, allora IBM può accettare come PoE la ricevuta originale dei pagamenti effettuati o di altre registrazioni di vendita effettuate dal soggetto (IBM o suo rivenditore) da cui il Licenziatario ha acquisito il Programma, a condizione che sia specificato il nome del Programma ed il livello di utilizzo acquisito.

**"Periodo di garanzia"** – un anno, a partire dalla data in cui è stata concessa la licenza al Licenziatario originale.

### 2. Struttura dell'Accordo

Questo accordo è suddiviso in **Parte 1 – Condizioni Generali**, **Parte 2 – Condizioni applicabili ai singoli Paesi** (se esistenti), la LI, e la PoE e costituisce l'accordo integrale tra il Licenziatario e IBM relativamente all'uso del Programma. Sostituisce qualsiasi altra precedente comunicazione verbale o scritta intercorsa tra il Licenziatario ed IBM relativa all'uso del Programma da parte del Licenziatario. Le condizioni incluse nella Parte 2 possono sostituire o modificare quelle contenute nella Parte 1. In caso di conflitto, la LI prevarrà su entrambe le Parti.

### 3. Concessione della Licenza

Il Programma è di proprietà di IBM o di un fornitore IBM, ed è tutelato dalle leggi sul diritto di autore, viene concesso in licenza, ma non viene venduto.

IBM concede al Licenziatario una licenza non esclusiva per 1) utilizzare il Programma fino al livello di utilizzo specificato nella PoE, 2) effettuare ed installare copie per supportare tale utilizzo e 3) effettuare una copia di backup, tutto a condizione che

- a. il Licenziatario abbia legalmente ottenuto il Programma e soddisfi le clausole di questo Accordo;
- b. la copia di backup non funzioni a meno che il Programma di cui è eseguito il backup non possa funzionare;
- c. Il Licenziatario riproduca su ciascuna copia, anche parziale, del Programma le indicazioni relative al diritto d'autore e ogni altra indicazione relativa a diritti di proprietà;
- d. il Licenziatario si assicuri che chiunque utilizzi il Programma (con accesso locale o remoto) 1) rispetti l'uso autorizzato e 2) rispetti le clausole di questo Accordo;
- e. Il Licenziatario non 1) utilizzi, copi o distribuisca il Programma fatto salvo quanto previsto nel presente Accordo; 2) assembli a ritroso, compili a ritroso, o in altro modo traduca o esegua il reverse engineering del Programma, salvo laddove espressamente consentito dalle norme inderogabili di legge, senza possibilità di deroga contrattuale;; 3) utilizzi alcuna delle componenti del Programma, dei file, dei moduli, del contenuto audio-visivo, o di materiale correlato concesso in licenza separatamente dal Programma; o 4) sublicenzi, conceda in noleggio o locazione il Programma; e
- f. se il Licenziatario ottiene questo Programma come Programma di supporto, utilizzi questo Programma solo per supportare il Programma Principale e sia soggetto a qualsiasi limitazione nella licenza per il Programma Principale, o, se il Licenziatario ottiene questo Programma come Programma Principale, utilizzi tutti i Programmi di Supporto solo per supportare questo Programma, e sia soggetto a tutte le limitazioni in questo Accordo. Ai fini di questo punto "f," per "Programma di Supporto" si intende un Programma che è parte di un altro Programma IBM ("Programma Principale") e identificato come Programma di Supporto nella LI del Programma Principale. (Per ottenere una licenza a parte ad un Programma di Supporto senza tali limitazioni, il Licenziatario dovrà contattare la parte da cui ha ottenuto il Programma di Supporto.)

Questa licenza si applica ad ogni copia del Programma effettuata dal Licenziatario.

### **3.1 Trade-up, Aggiornamenti, Correzione (Fix) e Patch**

#### **3.1.1 Trade-up**

Se il Programma è sostituito da un Programma di trade-up, la licenza del Programma sostituito terminerà immediatamente.

#### **3.1.2 Aggiornamenti, Correzione (Fix) e Patch**

Quando il Licenziatario riceve un aggiornamento, correzione, o patch ad un Programma, accetta qualsiasi clausola aggiuntiva o differente applicabile a tale aggiornamento, correzione o patch specificata nella sua LI. Se non sono fornite clausole aggiuntive o differenti, allora gli aggiornamenti, correzioni o patch sono soggetti solo a questo Accordo. Se il Programma è sostituito da un aggiornamento, il Licenziatario accetta di sospendere subito l'uso del Programma sostituito.

#### **3.2 Licenze con durata fissa**

Se IBM concede in licenza il Programma per una durata fissa, la licenza del Licenziatario cesserà alla fine della durata fissa, a meno che il Licenziatario e IBM non accettino di rinnovarla.

#### **3.3 Termine e Revoca**

Questo Accordo resterà in vigore fino alla revoca.

IBM potrà revocare la licenza del Licenziatario qualora questi non rispetti le clausole del presente Accordo.

In caso di revoca della licenza da entrambe le parti, per qualsiasi motivo, il Licenziatario accetta di sospendere subito l'uso e distruggere tutte le copie del Programma effettuate. Qualsiasi clausola del presente Accordo che per sua natura si estende oltre la cessazione dell'Accordo, resterà in vigore fino al suo adempimento e si applicherà ai rispettivi successori e agli assegnatari delle parti.

#### **4. Canoni**

I canoni si basano sull'Uso Autorizzato ottenuto, specificato nella PoE. IBM non rilascia crediti o rimborsi per somme già dovute o pagate, salvo se diversamente specificato in questo Accordo.

Se il Licenziatario desidera aumentare il proprio Uso Autorizzato, dovrà comunicarlo in anticipo ad IBM o ad un rivenditore autorizzato IBM e pagare tutti i corrispettivi applicabili.

#### **5. Tasse**

Qualora qualsiasi autorità imponga sul Programma una tassa, un'imposta, un dazio, o un canone, con l'esclusione di quelli basati sul reddito imponibile di IBM, allora il Licenziatario accetta di pagare l'ammontare o si dovrà fornire documentazione dell'esenzione eventualmente spettante. Il Licenziatario è responsabile di qualsiasi tassa relativa alla proprietà personale sul Programma dalla data del suo acquisto. Qualora un'autorità imponga un dazio doganale, una tassa, un'imposta o un canone per l'importazione, l'esportazione, il trasferimento, l'accesso o l'utilizzo del Programma al di fuori del paese in cui il Licenziatario originario ha ottenuto la licenza, allora il Licenziatario accetta di essere responsabile per qualsiasi somma imposta e di pagarla.

#### **6. Garanzia di rimborso**

Qualora il Licenziatario non sia soddisfatto del Programma per qualsiasi ragione e sia anche il Licenziatario originale, potrà ottenere un rimborso del corrispettivo pagato per il Programma, a condizione che il Licenziatario restituisca il Programma e la sua PoE alla parte da cui lo ha acquistato entro 30 giorni dalla data in cui la PoE è stata inviata al Licenziatario. Se la licenza è concessa per una durata fissa soggetta a rinnovo, allora il Licenziatario potrà ottenere un rimborso solo se il Programma e la sua PoE saranno restituiti entro 30 giorni dalla data iniziale. Se il Licenziatario ha scaricato il Programma, dovrà contattare la parte da cui lo ha ottenuto per istruzioni su come ottenere il rimborso.

#### **7. Trasferimento del Programma**

Il Licenziatario può trasferire il Programma e tutti i suoi obblighi e diritti di licenza a terze parti solo se tale parte accetta le clausole del presente Accordo. In caso di revoca della licenza da entrambe le parti, per qualsiasi motivo, il Licenziatario non potrà trasferire il Programma ad un'altra parte. Il Licenziatario non può trasferire una parte 1) del Programma o 2) dell'Uso Autorizzato del Programma. Con il trasferimento del Programma, il Licenziatario dovrà anche trasferire una copia cartacea del presente Accordo, incluse LI e PoE. Subito dopo il trasferimento, l'autorizzazione ad utilizzare il programma è revocata.

#### **8. Garanzia ed Esclusioni**

##### **8.1 Limitazione della garanzia**

IBM garantisce che il Programma, quando utilizzato nel suo ambiente operativo, sarà conforme alle sue specifiche. Le informazioni sulle Specifiche del Programma e sull'ambiente operativo specificato sono contenute nella documentazione che accompagna il Programma (come un file read-me) o in altre informazioni pubblicate da IBM (come una lettera d'annuncio). Il licenziatario accetta che tale documentazione e altro contenuto del Programma possano essere forniti solo in lingua Inglese, salvo laddove diversamente richiesto dalla normativa locale escludendo la possibilità di rinuncia o limitazione contrattuale.

La garanzia si applica solo alla parte non modificata del Programma. IBM non garantisce il funzionamento ininterrotto o privo di errori del Programma né che IBM correggerà tutti i difetti del Programma. Il licenziatario è responsabile dei risultati derivanti dall'uso del Programma.

Durante il Periodo di Garanzia, IBM offre al Licenziatario l'accesso ai database IBM che contengono informazioni sui difetti conosciuti del Programma, correzioni dei difetti, limitazioni d'uso e procedure di esclusione (bypass) senza alcun onere aggiuntivo. Per ulteriori informazioni consultare il Manuale IBM di Supporto Software reperibile presso il sito web [www.ibm.com/software/](http://www.ibm.com/software/) support.

Se un Programma non funziona come garantito durante il Periodo di garanzia ed il problema non può essere risolto tramite le informazioni disponibili nei database IBM, il Licenziatario potrà restituire il Programma e la sua PoE al soggetto (IBM o suo rivenditore) da cui è stato acquisito e ricevere il rimborso del corrispettivo pagato. Dopo aver restituito il Programma, l'autorizzazione ad utilizzare il Programma è revocata. Se il Licenziatario ha scaricato il Programma, dovrà contattare la parte da cui lo ha ottenuto per istruzioni su come ottenere il rimborso.

## **8.2 Esclusioni**

**TALI GARANZIE COSTITUISCONO LE GARANZIE ESCLUSIVE DEL LICENZIATARIO E SOSTITUISCONO TUTTE LE ALTRE GARANZIE O CONDIZIONI, ESPRESSE O IMPLICITE, IVI INCLUSE, MA NON LIMITATE A, GARANZIE O CONDIZIONI IMPLICITE DI COMMERCIALITÀ, DI QUALITÀ, IDONEITÀ PER UNO SCOPO PARTICOLARE, TITOLARITÀ, E NON VIOLAZIONE. POICHÉ LA LEGISLAZIONE DI ALCUNI PAESI NON CONSENTE L'ESCLUSIONE DELLE GARANZIE ESPRESSE O IMPLICITE, LA SUDETTA ESCLUSIONE POTREBBE NON ESSERE APPLICABILE. IN TAL CASO, TALI GARANZIE SARANNO LIMITATE ALLA DURATA DEL PERIODO DI GARANZIA. NESSUNA GARANZIA È APPLICABILE DOPO TALE PERIODO. POICHÉ LA LEGISLAZIONE DI ALCUNI PAESI NON CONSENTE LIMITAZIONI BASATE SULLA DURATA DI UNA GARANZIA IMPLICITA, LA SUDETTA LIMITAZIONE POTREBBE NON ESSERE APPLICABILE.**

**TALI GARANZIE DANNO DIRITTI LEGALI SPECIFICI AL LICENZIATARIO. IL LICENZIATARIO PUO' ANCHE OTTENERE ULTERIORI DIRITTI DERIVANTI DALLA LEGISLAZIONE SPECIFICA DI CIASCUN PAESE.**

**LE GARANZIE IN QUESTA SEZIONE 8 (GARANZIE ED ESCLUSIONI) SONO FORNITE SOLO DA IBM. TUTTAVIA, ANCHE LE RINUNCE IN QUESTA SOTTO-SEZIONE 8.2 (ESCLUSIONI), SONO APPLICABILI AI FORNITORI DI IBM DI CODICE DI TERZE PARTI. QUESTI FORNITORI FORNISCONO TALE CODICE SENZA GARANZIE O CONDIZIONI DI ALCUN TIPO. QUESTO PARAGRAFO NON ANNULLA GLI OBBLIGHI DI GARANZIA DI IBM IN BASE AL PRESENTE ACCORDO.**

## **9. Dati e Database del Licenziatario**

Per assistere il Licenziatario nell'isolare la causa di un problema con il Programma, IBM può richiedere che il Licenziatario 1) consenta ad IBM di accedere in remoto al sistema del Licenziatario o 2) invii le informazioni del Licenziatario o i dati del sistema a IBM. Tuttavia, IBM non è obbligata a fornire tale assistenza a meno che IBM ed il Licenziatario non abbiano stipulato un accordo scritto a parte in base al quale IBM accetta di fornire al Licenziatario quel tipo di supporto che va oltre gli obblighi di garanzia di IBM in questo Accordo. In ogni caso, IBM utilizzerà le informazioni sugli errori e i problemi per migliorare i suoi prodotti e servizi ed assistere il Licenziatario con la fornitura di offerte di supporto correlate. A tali scopi, IBM può utilizzare enti o subappaltatori di IBM (anche in uno o più paesi diversi da quello in cui ha sede il Licenziatario), ed il Licenziatario autorizza IBM a procedere in tal senso.

Il Licenziatario resta responsabile per 1) i dati ed il contenuto di qualsiasi database che il Licenziatario rende disponibile ad IBM, 2) la scelta e l'implementazione di procedure e controlli relativi all'accesso, alla sicurezza, alla crittografia, all'uso e alla trasmissione di dati (inclusi dati personali), e 3) il backup e il recupero di database e dati memorizzati. Il Licenziatario non invierà o fornirà ad IBM accesso ad informazioni personali, sotto forma di dati o in altri formati, e sarà responsabile dei costi ragionevoli e di qualsiasi altra somma che IBM si trovi ad affrontare relativa alle informazioni erroneamente fornite ad IBM o alla perdita o divulgazione di tali informazioni da parte di IBM, incluse quelle derivanti da pretese di risarcimento di terze parti.

## **10. Limitazione di Responsabilità**

Le limitazioni ed esclusioni in questa Sezione 10 (Limitazione di Responsabilità) si applicano nei limiti in cui non sono vietate dalla legislazione applicabile senza possibilità di deroga contrattuale.

## 10.1 Articoli per cui IBM può essere responsabile

Possono verificarsi circostanze in cui, per fatto imputabile ad IBM o per responsabilità di terzi, il Licenziatario abbia il diritto ad un risarcimento da parte di IBM. In questi casi, indipendentemente da ciò che dà titolo all'utilizzatore a richiedere il risarcimento danni ad IBM, (incluso colpa grave, negligenza, erronee dichiarazioni o altri fatti di natura contrattuale o extracontrattuale), la responsabilità di IBM è limitata 1) ai danni fisici alla persona (incluso il decesso), danni alla proprietà immobiliare e personale e 2) nel caso di ogni altro danno diretto fino al corrispettivo pagato per il Programma oggetto del reclamo.

Questo limite si applica anche a qualsiasi sviluppatore e fornitore dei Programmi IBM. Ciò rappresenta il massimo per cui IBM e i suoi sviluppatori e fornitori del Programma sono collettivamente responsabili.

## 10.2 Articoli per cui IBM non è responsabile

**IN NESSUN CASO IBM, GLI SVILUPPATORI DEL PROGRAMMA O I FORNITORI SARANNO RESPONSABILI PER QUANTO SEGUE, ANCHE SE INFORMATI DELLA POSSIBILITÀ DEL LORO VERIFICARSI:**

- a. **PERDITA O DANNEGGIAMENTO DI DATI;**
- b. **DANNI SPECIALI, INCIDENTALI, ESEMPLARI, O INDIRETTI, O QUALSIASI ALTRO DANNO ECONOMICO CONSEGUENTE; O**
- c. **MANCATI GUADAGNI, PERDITA DI OPPORTUNITÀ COMMERCIALE, DI REDDITO, DI BENEFICI, O MANCATI RISPARMI.**

## 11. Verifica della conformità

Ai fini di questa Sezione 11 (Verifica della Conformità), per "Clausole del Programma IPLA" si intende 1) questo Accordo e gli emendamenti applicabili e i documenti della transazione forniti da IBM, e 2) le politiche software IBM che si possono trovare sul sito web IBM Software Policy ([www.ibm.com/software/policies](http://www.ibm.com/software/policies)), incluse ad esempio quelle politiche relative al backup, alla determinazione dei prezzi per sub-capacity, e alla migrazione.

I diritti e gli obblighi stabiliti in questa Sezione 11 resteranno in vigore per il periodo in cui il Programma è concesso in licenza al Licenziatario e per i due anni successivi.

### 11.1 Processo di Verifica

Il licenziatario accetta di creare, conservare e fornire ad IBM e ai suoi revisori accurate registrazioni scritte, esito delle analisi svolte mediante strumenti di sistema e altre informazioni relative al sistema sufficienti a fornire una verifica che dimostri che l'uso del Licenziatario di tutti i Programmi è conforme alle Clausole del Programma IPLA, incluse, ad esempio, tutte le clausole delle licenze applicabili ad IBM e le clausole di qualifica dell'assegnazione dei prezzi. Il Licenziatario è responsabile 1) di garantire che non supererà il suo Uso Autorizzato, e 2) di restare conforme alle Clausole del Programma IPLA.

Con ragionevole preavviso, IBM può verificare la conformità con le Clausole del Programma IPLA del Licenziatario presso tutte le sedi e per tutti gli ambienti in cui il Licenziatario utilizza (per qualsiasi scopo) i Programmi in base alle Clausole del Programma IPLA. Tale verifica sarà condotta in modo da arrecare il minor disturbo possibile al Licenziatario, e potrà essere condotta presso la sede del Licenziatario, durante il normale orario lavorativo. IBM può utilizzare un revisore esterno in tale verifica, a condizione che IBM abbia sottoscritto con tale revisore un accordo di riservatezza ancora in vigore.

### 11.2 Risoluzione

Qualora IBM dovesse riscontrare che il Licenziatario ha utilizzato il Programma oltre il suo Uso Autorizzato o in modo non conforme alle Clausole del Programma IPLA, lo comunicherà al Licenziatario per iscritto. Il Licenziatario accetta di pagare subito direttamente ad IBM il corrispettivo specificato da IBM in una fattura per 1) qualsiasi uso superiore, 2) il supporto di tale uso per un periodo minore alla durata di tale uso in eccesso o per due anni, e 3) qualsiasi corrispettivo aggiuntivo e altra responsabilità determinata a seguito di tale verifica.



## 12. Avvisi di Terze Parti

Il Programma può includere codice di terze parti che IBM, non la terza parte, concede in licenza al Licenziatario in base al presente Accordo. Gli avvisi per il codice di terze parti, se esistenti, ("Avvisi di Terze Parti") sono inclusi solo per informazioni del Licenziatario. E' possibile trovare tali avvisi nei file NOTICES del Programma. Le informazioni su come ottenere il codice sorgente per determinato codice di terze parti si possono trovare negli Avvisi delle Terze Parti. Se negli Avvisi delle Terze Parti IBM dovesse identificare codice di terze parti come "Codice di Terze Parti Modificabile", IBM autorizza il Licenziatario a 1) modificare il Codice di Terze Parti Modificabile e 2) eseguire il reverse engineer dei moduli del Programma che si interfacciano direttamente con il Codice di Terze Parti Modificabile a condizione che sia solo allo scopo di eseguire il debug delle modifiche del Licenziatario per tale codice di terze parti. Gli obblighi di servizio e supporto di IBM, se esistenti, si applicano solo al Programma non modificato.

## 13. Generale

- a. Le disposizioni del presente Accordo non pregiudicano in alcun modo le garanzie legali del consumatore che non possono essere escluse o limitate per contratto.
- b. Per i Programmi che IBM fornisce al Licenziatario in formato tangibile, IBM adempirà ai propri obblighi di distribuzione e consegna alla consegna di tali Programmi al corriere designato da IBM, salvo quanto diversamente concordato per iscritto tra il Licenziatario ed IBM.
- c. Qualora una qualsiasi clausola del presente Accordo dovesse essere dichiarata invalida o inefficace, le restanti clausole del presente Accordo rimarranno pienamente in vigore ed efficaci.
- d. Il Licenziatario accetta di rispettare tutte le disposizioni di legge e le normative applicabili in materia di importazione ed esportazione, incluse le norme sull'embargo degli Stati Uniti e le sanzioni e divieti sull'esportazione per determinati utilizzi o determinati utenti.
- e. Il Licenziatario autorizza International Business Machines Corporation e le sue consociate (e i loro successori e assegnatari, appaltatori e Business Partner IBM) di memorizzare e utilizzare le informazioni relative a contatti, laddove vi siano rapporti commerciali, ovunque essi operino, insieme ai prodotti e servizi IBM, per usi relativi alle attività commerciali tra IBM e il Licenziatario.
- f. Ciascuna parte consente all'altra l'opportunità ragionevole di conformarsi prima che questa reclami la mancata conformità ai suoi obblighi in base al presente Accordo. Le parti tenderanno in buona fede di risolvere tutte le dispute, i disaccordi o i reclami relativi al presente Accordo.
- g. Salvo quanto diversamente richiesto dalla legislazione applicabile, senza possibilità di rinuncia contrattuale o limitazione: 1) nessuna parte intraprenderà un'azione legale, indipendentemente dalla forma, per qualsiasi reclamo derivante da o relativo al presente Accordo per oltre due anni a far data dalla causa che ha dato vita all'azione; e 2) alla scadenza di tale limite, qualsiasi pretesa e diritto rispettivo relativo al reclamo decadono.
- h. Né il Licenziatario né IBM saranno ritenuti responsabili per eventuali inadempimenti dovuti a cause che esulano dal proprio controllo.
- i. Il presente Accordo non creerà alcun diritto o azione legale da terze parti, né IBM sarà responsabile di alcun reclamo da parte di terzi, fatto salvo laddove consentito nella suddetta Sottosezione 10.1 (Articoli per cui IBM può essere responsabile) per danni fisici (incluso il decesso) o danni tangibili a proprietà personale per cui IBM è legalmente responsabile.
- j. Nel concludere il presente Accordo, nessuna delle parti conterà su dichiarazioni non specificate in questo Accordo, incluse, ad esempio, dichiarazioni relative: 1) a prestazioni o funzionamento del Programma, diverse da quanto espressamente garantito nella suddetta Sezione 8 (Garanzia ed Esclusioni); 2) alle esperienze o ai consigli di altre parti; o 3) a risultati o risparmi che il Licenziatario possa raggiungere.
- k. IBM ha stipulato accordi con determinate organizzazioni (chiamate "Business Partner IBM") per promuovere, commercializzare, e supportare determinati Programmi. I Business Partner IBM restano indipendenti e separati da IBM. IBM non è responsabile per le azioni o le dichiarazioni dei Business Partner IBM o dei loro obblighi nei confronti del Licenziatario.
- l. Le clausole di licenza e di indennizzo di proprietà intellettuale di altri accordi del Licenziatario con IBM (come l'IBM Customer Agreement) non si applicano alle licenze del Programma concesse in base al presente Accordo.

## **14. Ambito geografico e Legge Regolatrice**

### **14.1 Legge Regolatrice**

Entrambe le parti concordano sull'applicazione delle leggi del paese in cui è stata acquistata la licenza del Programma al fine di disciplinare, interpretare ed applicare tutti i diritti e le obbligazioni che derivano, o in qualche modo sono correlati al presente Accordo, indipendentemente dal conflitto di principi di legge.

La Convenzione delle Nazioni Unite sui Contratti per la Vendita Internazionale di Merci non è applicabile.

### **14.2 Giurisdizione**

Tutti i diritti, i doveri e le obbligazioni sono soggetti agli organi giudiziari del paese in cui è stata acquistata la licenza al Programma.

## **Parte 2 – Condizioni applicabili ai singoli Paesi**

Per le licenze concesse in licenza nei paesi specificati di seguito, le seguenti clausole sostituiscono o modificano le clausole cui si è fatto riferimento nella Parte 1. Tutte le clausole della Parte 1 non modificate da questi emendamenti restano immutate e in vigore. Questa Parte 2 è organizzata nel modo seguente:

- Più emendamenti alla Parte 1 relativi ai singoli paesi, Sezione 14 (Legge Regolatrice e Giurisdizione); e
- Europa, Medio Oriente, e Africa emendamenti ai singoli paesi per altre clausole dell'Accordo.

### **Più emendamenti alla Parte 1 relativi ai singoli paesi, Sezione 14 (Legge Regolatrice e Giurisdizione)**

#### **14.2 Giurisdizione**

*Il seguente paragrafo si riferisce alla giurisdizione e sostituisce la Sottosezione 14.2 (Giurisdizione) in quanto si applica a quei paesi identificati di seguito:*

Tutti i diritti, i doveri e gli obblighi sono soggetti agli organi giudiziari del paese in cui è stata acquisita la licenza al Programma salvo nei paesi identificati di seguito in cui tutte le dispute derivanti da o correlate al presente Accordo, inclusi i procedimenti sommari, saranno portati dinanzi alla giurisdizione esclusiva dei seguenti tribunali competenti e ad essa soggetti:

#### **EUROPA, MEDIO ORIENTE E AFRICA**

in **Italia**: i tribunali di Milano;

#### **EUROPA, MEDIO ORIENTE, AFRICA (EMEA) EMENDAMENTI AI SINGOLI PAESI**

#### **STATI MEMBRI DELL'UNIONE EUROPEA**

### **8. Garanzia ed Esclusioni**

*Quanto segue si aggiunge alla Sezione 8 (Garanzia ed Esclusione):*

Nell'Unione Europea ("UE"), i consumatori hanno diritti legali in base alla legislazione nazionale applicabile che regola la vendita dei beni al consumatore. Quanto descritto nella presente Sezione 8 Garanzia ed Esclusioni non riguarda tali diritti. L'ambito territoriale della Garanzia Limitata è su scala mondiale.

### 13. Condizioni Generali

*Quanto segue sostituisce l' Articolo 13.e:*

- (1) **Definizioni** – Ai fini di questo Articolo 13.e, si applicano le seguenti definizioni aggiuntive:
- (a) **Informazioni sui Contatti Aziendali** – le informazioni sui contatti relativi all'azienda divulgate dal Licenziatario ad IBM, inclusi nomi, titoli, indirizzi aziendali, numeri di telefono e indirizzi email dei dipendenti ed appaltatori del Licenziatario. Per Austria, Italia e Svizzera, le Informazioni sui Contatti Aziendali includono anche informazioni sul Licenziatario e i suoi appaltatori come persona giuridica (ad esempio, dati sul fatturato del Licenziatario e altre informazioni transazionali)
  - (b) **Personale di Contatto Aziendale** – i dipendenti e appaltatori del Licenziatario a cui si riferiscono le Informazioni sui Contatti Aziendali.
  - (c) **Autorità sulla Protezione di Dati** – l'autorità stabilita dalla Legislazione sulla Protezione dei Dati e sulle Comunicazioni Elettroniche nel paese applicabile o, per i paesi non-UE, l'autorità responsabile della supervisione della protezione dei dati personali in quel paese, o (per quanto detto prima) qualsiasi successore debitamente nominato.
  - (d) **Legislazione sulla Protezione dei Dati e sulle Comunicazioni Elettroniche** – (i) le legislazione e normativa locale applicabile in vigore che implementa i requisiti della Direttiva UE 95/46/EC (sulla protezione degli individui relativamente all'elaborazione dei dati personali e alla libera circolazione di tali dati) e della Direttiva UE 2002/58/EC (relativa all'elaborazione dei dati personali e alla tutela della privacy nel settore delle comunicazioni elettroniche); o (ii) per i paesi non-UE, la legislazione e/o la normativa passata nel paese applicabile relativa alla protezione dei dati personali e alla regolamentazione delle comunicazioni elettroniche che coinvolgono dati personali, inclusa (per quanto detto prima) qualsiasi sostituzione o modifica legale.
  - (e) **IBM Group** – International Business Machines Corporation di Armonk, New York, USA, le sue consociate e i loro rispettivi Business Partner e subappaltatori.
- (2) Il Licenziatario autorizza IBM:
- (a) ad elaborare e utilizzare le Informazioni sui Contatti Aziendali all'interno di IBM Group a supporto del Licenziatario inclusa la fornitura di servizi di supporto, e allo scopo di promuovere le relazioni di business tra il Licenziatario e IBM Group, incluso, ad esempio, contattare il Personale di Contatti Aziendali (via email o in altro modo) e commercializzare prodotti e servizi di IBM Group (lo "Scopo Specificato"); e
  - (b) a divulgare le Informazioni sui Contatti Aziendali ad altri membri di IBM Group in base allo Scopo Specificato.
- (3) IBM accetta che tutte le Informazioni sui Contatti Aziendali saranno elaborate in conformità con la Legislazione sulla Protezione dei Dati e sulle Comunicazioni Elettroniche e saranno utilizzate solo per lo Scopo Specificato.
- (4) Nei limiti richiesti dalla Legislazione sulla Protezione dei Dati e sulle Comunicazioni Elettroniche, il Licenziatario dichiara (a) di aver ottenuto (o che otterrà) le autorizzazioni dal (e ha rilasciato (o rilascerà) avvisi al) Personale sui Contatti Aziendali necessarie al fine di consentire ad IBM Group di elaborare e utilizzare le Informazioni sui Contatti Aziendali per lo Scopo Specificato.
- (5) Il Licenziatario autorizza IBM a trasferire le Informazioni sui Contatti Aziendali al di fuori dell' Area Economica Europea, a condizione che il trasferimento sia effettuato in base alle clausole contrattuali approvate dalla Legislazione sulla Protezione dei Dati e sulle Comunicazioni Elettroniche.

## **10. Limitazione di Responsabilità**

*Quanto segue sostituisce le clausole della Sezione 10 (Limitazione di Responsabilità) nella loro interezza.*

Fatto salvo quanto stabilito da norme inderogabili di legge:

### **10.1 Articoli per cui IBM può essere responsabile**

La responsabilità complessiva di IBM per qualsiasi pretesa di risarcimento per qualsiasi danno e perdita derivante dall'adempimento dei propri obblighi in base a o in associazione con il presente accordo o dovuta ad altre cause correlate all'accordo è limitata solo alla compensazione di quei danni e quelle perdite provate e realmente derivanti come conseguenza diretta del mancato adempimento di tali obblighi (se è colpa di IBM) o di tale causa, per un ammontare massimo pari al corrispettivo pagato dal Licenziatario per il Programma che ha causato i danni (se il Programma è soggetto a canoni per la durata fissa, fino al corrispettivo pari a dodici mesi).

La suddetta limitazione non si applicherà ai danni alle persone (incluso il decesso) e ai danni tangibili al patrimonio e alla proprietà privata (beni mobili e immobili) per cui IBM è legalmente responsabile.

### **10.2 Articoli per cui IBM non è responsabile**

**IN NESSUN CASO IBM, O UNO QUALSIASI DEI SUOI SVILUPPATORI DI PROGRAMMI, SARÀ RESPONSABILE DEI SEGUENTI EVENTI, ANCHE SE INFORMATA DELLA POSSIBILITÀ DEL LORO VERIFICARSI: 1) PERDITA O DANNEGGIAMENTO DI DATI; 2) DANNI INCIDENTALI, ESEMPLARI O INDIRETTI, O QUALSIASI DANNO ECONOMICO CONSEGUENTE; E/O 3) LUCRO CESSANTE, MANCATI AFFARI, PERDITA COMMERCIALE, DI REDDITO, DI BENEFICI, O MANCATI RISPARMI ANCHE SE DERIVANTI COME IMMEDIATA CONSEGUENZA DALL'EVENTO CHE HA PRODOTTO IL DANNO.**

### **10.3 Fornitori e Sviluppatori del Programma**

La limitazione ed esclusione di responsabilità qui accettata si applica non solo alle attività eseguite da IBM, ma anche a quelle eseguite dai suoi fornitori e sviluppatori di Programmi, e rappresenta l'ammontare massimo per il quale IBM, i suoi fornitori e sviluppatori di Programmi, sono complessivamente responsabili.

# プログラムのご使用条件

## 第 1 章 – 共通条項

お客様がライセンシー（使用許諾を受けた個人、会社、その他の法人）として本件プログラムをダウンロード、導入、複製、アクセス、「同意」ボタンをクリック、または使用することにより、本「プログラムのご使用条件」（以下「本使用条件」といいます。）に同意したものと見なされます。お客様がライセンシーの代行者として本使用条件に同意する場合、お客様は、ライセンシーに本使用条件を遵守させる全権限を有していることを表明および保証いただくものとします。本使用条件に同意いただけない場合、

- ・ お客様は、本件プログラムのダウンロード、導入、複製、アクセス、「同意」ボタンのクリック、または使用することなく、かつ
- ・ 直ちに未使用の記録媒体、文書およびライセンス証書をその調達元に返却することにより、これと引き換えに支払済料金の返金を受けることができます。本件プログラムをダウンロードした場合には、本件プログラムおよびそのすべての複製物を破棄してください。

### 1. 定義

**使用許諾範囲** – ライセンシーが本件プログラムを実行または稼働することを許諾された特定の範囲をいいます。かかる範囲は、ユーザーの数、MSU (Millions of Service Units)、プロセッサ・バリュー・ユニット（以下「PVU」といいます。）、または IBM が特定するその他の使用許諾の範囲により規定されます。

**IBM** – International Business Machines Corporation またはその子会社をいいます。

**ライセンス情報（以下「LI」といいます。）** – 本件プログラムに固有の情報および追加条件を提供する文章をいいます。本件プログラムの LI は、[www.ibm.com/software/sla](http://www.ibm.com/software/sla) から入手することができます。LI は本件プログラムのディレクトリー内で（システム・コマンドなどを使用して確認します。）または本件プログラムに含まれている小冊子として提供される場合もあります。

**本件プログラム** – 原本およびそのすべての複製物（全体複製か部分複製かを問いません。）を含めて、次のものをいいます。1) 機械で読み取りうる形の命令およびデータ、2) その構成要素、ファイルおよびモジュール、3) 視聴覚コンテンツ（イメージ、テキスト、録音、画像など）、ならびに 4) 関連するライセンス資料（キーおよび付属文書など）。

**ライセンス証書（以下「PoE」といいます。）** – ライセンシーの使用許諾範囲の証明をいいます。また、PoE は、本件プログラムに対する保証サービス、将来における本件プログラムの更新料金（発表される場合）または販売促進用の特別な措置（提供される場合）等を受けるライセンシーの資格を確認し証明するものです。IBM がライセンシーに PoE を発行しない場合、IBM は、ライセンシーが本件プログラムを調達した調達元（IBM または IBM ビジネス・パートナー）が発行した領収書原票、その他の販売記録を PoE とみなす場合があります。その場合、本件プログラムの名称と取得した使用許諾範囲が明記されていることが前提となります。

**保証期間** – 最初のライセンシーが使用権を付与された日から 1 年をいいます。

### 2. 使用条件の構成

本使用条件は、第 1 章 – 共通条項、第 2 章 – 各国固有の条項（該当する場合）、LI、および PoE から構成され、本件プログラムの使用に関するライセンシーと IBM 間の完全、唯一の合意文書であり、ライセンシーの本件プログラムの使用に関する、ライセンシーおよび IBM 間の事前の口頭または書面による通知等のすべてに代わるものです。第 2 章に、第 1 章の条件に対する追加条件または変更条件が記載されている場合があります。LI と第 1 章および第 2 章に齟齬がある場合、LI が優先するものとします。

### 3. 使用権の許諾

本件プログラムは IBM または IBM サプライヤーが所有権を有しています。本件プログラムは、著作権により保護されており、使用許諾されるものであって、売買の対象となるものではありません。

IBM は、ライセンシーに対し、次の事項を行うための非独占的使用権を許諾します。1) PoE で規定された使用許諾範囲内で本件プログラムを使用すること、2) かかる使用許諾範囲において本件プログラムの複製物を作成し導入すること、および 3) バックアップ・コピーを作成すること。ただし、これらは、以下のすべての条件を満たす場合に限りです。

- a. ライセンシーは、合法的に本件プログラムを取得し、本使用条件に従って使用すること。
- b. バックアップを作成した場合は、本件プログラムが実行できない場合を除き、かかるバックアップ・コピーを実行しないこと。
- c. ライセンシーは、本件プログラムの複製物に、全部複製か部分複製かを問わず、本件プログラムに表示されているものと同一の著作権表示およびその他の所有権表示を行なうこと。
- d. ライセンシーは、遠隔地からのアクセスを含めて本件プログラムを使用する何人（なんびと）もが、1) ライセンシーのためにのみ使用し、かつ 2) 本使用条件に定める義務を遵守するよう、適切な処置を講じること。
- e. ライセンシーは、1) 本使用条件に明記されている場合を除き、本件プログラムを使用、複製、修正もしくは配布しないこと、2) 強行規定のある場合を除き、本件プログラムを逆コンパイル、逆アセンブル、その他の態様で翻案、もしくはリバース・エンジニアリングしないこと、3) 本件プログラムの構成要素、ファイル、モジュール、視聴覚コンテンツもしくは関連するライセンス資料を本件プログラムとは分離して使用しないこと、または 4) 本件プログラムを再使用許諾、賃貸もしくは貸与（リースを含みます。）しないこと。
- f. ライセンシーは、「従プログラム」（本項後段で定義されます。）として本件プログラムを取得する場合、「主プログラム」（本項後段で定義されます。）をサポートし、主プログラムの使用権規定のいかなる制限にも従うことを条件に、本件プログラムを使用することができず。また、ライセンシーは、主プログラムとして本件プログラムを取得する場合、本件プログラムをサポートし、本使用条件中のいかなる制限にも従うことを条件に、すべての従プログラムを使用するものとします。本項「f」において、「従プログラム」とは、別の IBM プログラム（「主プログラム」といいます。）の一部であり、当該プログラムの LI に従プログラムとして規定される本件プログラムをいいます。（制約事項のない従プログラムの使用権を別途取得するには、ライセンシーは、従プログラムの調達元に連絡してください。）

本使用条件は、ライセンシーが作成する本件プログラムの各複製物にも適用されます。

#### 3.1 トレードアップ、更新、フィックス、およびパッチ

##### 3.1.1 トレードアップ

本件プログラムがトレードアップ・プログラムにより置き換えられる場合、置き換えられた本件プログラムの使用権は、直ちに終了します。

##### 3.1.2 更新、フィックス、およびパッチ

ライセンシーが、本件プログラムに対する更新、フィックス、およびパッチを受領する場合、ライセンシーは、本件プログラムの LI で規定され、当該更新、フィックス、およびパッチに適用されるすべての追加条項または異なる使用条件に同意するものとします。追加条項または異なる使用条件が提供されない場合、更新、フィックス、およびパッチは本使用条件にのみ従うものとします。本件プログラムが更新により置き換えられる場合、ライセンシーは、置き換えられた本件プログラムの使用を直ちに中止するものとします。

## 3.2 期限付使用権

IBM が期限付で本件プログラムを使用許諾する場合、ライセンシーの使用権は、ライセンシーおよび IBM がその期限の更新に同意しない限り、定められた期限の満了と共に終了します。

## 3.3 期間および終了

本使用条件は、解約されるまで有効に存続します。

ライセンシーが本使用条件の条項に違反した場合、IBM はライセンシーに対する使用権を終了することができます。

いずれかの当事者が、理由のいかんを問わず使用権を終了する場合、ライセンシーは、直ちに使用を中止し、ライセンシーの所有する本件プログラムおよびそのすべての複製物を破棄するものとします。本使用条件の終了後も性質上存続すべき条項は、その履行が終了するまで有効に存続し、両当事者ならびにその継承人および譲受人に適用されます。

## 4. 料金

料金は、PoE に記載される使用許諾範囲に基づくものとします。IBM は、既に支払期日の到来している料金または支払済みの料金は返還しないものとします。ただし、本使用条件で別途規定がある場合は除きます。

ライセンシーは、使用許諾範囲を拡大する場合、事前に IBM または IBM 認定の再販者に通知し、所定の料金を支払うものとします。

## 5. 税金

本件プログラムに対し税金その他の公租公課（ただし IBM に対する法人税を除きます。）が課せられるときは、ライセンシーは、免税書類を提出する場合を除き、請求書記載の金額を支払うものとします。本件プログラムに対して課せられる動産税については、取得日以降は、ライセンシーの負担とします。最初ライセンシーが使用権を付与された国以外で、本件プログラムの輸出、移転、アクセスまたは使用に対して関税その他の公租公課が課せられるときは、ライセンシーは責任をもって請求額を支払うものとします。

## 6. 解約可能期間

ライセンシーが、理由のいかんを問わず本件プログラムに満足せず、かつ最初の使用権取得者である場合、ライセンシーは使用権を解約し、ライセンシーが本件プログラムに対して支払った料金の返金を受けることができます。ただし、PoE がライセンシーに発行されてから 30 日以内に本件プログラムおよび PoE をその調達元に返却する場合に限ります。使用権の更新が必要となる期限付使用権の場合、ライセンシーは本件プログラムおよびその PoE の初回の使用権が付与された期日から 30 日以内に返却される場合のみ、返金を受けることができます。本件プログラムをダウンロードした場合の返金の受け方については、本件プログラムの調達元にお問い合わせください。

## 7. 本件プログラムの移転

ライセンシーは、本件プログラムおよびライセンシーが本件プログラムを使用する権利ならびにこれに関する義務のすべてを第三者に移転することができます。ただし、かかる第三者が本使用条件に同意する場合に限ります。いずれかの当事者が、理由のいかんを問わず使用権を終了する場合、ライセンシーは、第三者に本件プログラムを移転することはできません。ライセンシーは、1) 本件プログラムの一部または 2) 本件プログラムの使用許諾範囲の一部を移転することはできません。ライセンシーは、本件プログラムを移転する場合、LI および PoE を含め、本使用条件のハードコピーも移転するものとします。移転後、ライセンシーの使用権は直ちに終了します。



## 8. 保証および適用除外

### 8.1 保証の内容と制限

IBM は、本件プログラムを所定の稼働環境で使用する限り、その仕様に合致することを保証します。本件プログラムの仕様および所定の稼働環境については、本件プログラムと共に提供される文書（「README」ファイルなど）または発表レター等 IBM が公開する情報に記載があります。ライセンシーは、国または地域により強行規定がある場合を除き、かかる文書およびその他のプログラム・コンテンツが英語で提供される場合があることを了承するものとします。

かかる保証は、本件プログラムの変更の加えられていない部分についてのみ適用されるものとします。IBM は、本件プログラムの実行が中断しないこともしくはその実行に誤りがないこと、または、すべての本件プログラムのすべての誤りが修正されることを保証するものではありません。本件プログラムの使用結果については、ライセンシーの責任とします。

保証期間中、IBM は、ライセンシーに対して、既知の本件プログラムの誤り、誤りの修正、制限事項および回避措置に関する情報を含んだ IBM データベースへのアクセスを追加料金無しで提供します。詳細については [www.ibm.com/software/support](http://www.ibm.com/software/support) の Software Support Handbook を参照してください。

保証期間中に本件プログラムが保証通り稼働しない場合で、かつ IBM データベースにある情報で問題を解決できない場合には、ライセンシーは、本件プログラムおよびその PoE をその調達元（IBM またはIBMビジネス・パートナー）に返却することにより、これと引き換えに支払済料金の返金を受けることができます。本件プログラムを返却後は、ライセンシーの使用権は終了します。本件プログラムをダウンロードした場合の返金の受け方については、本件プログラムの調達元にお問い合わせください。

### 8.2 保証の適用除外

本保証はライセンシーに提供される保証のすべてを規定したもので、法律上の瑕疵担保責任、商品性の保証、十分な品質の保証、特定目的適合性の保証、権原の保証、および第三者の権利の不侵害の保証も含むすべての明示もしくは黙示の保証責任または保証条件に代わるものとします。国または地域によっては、強行規定により保証責任の制限が禁じられる場合があり、この場合上記の保証責任の制限はライセンシーに適用されません。ただし、この場合の保証も保証期間内に限定され、当該保証期間終了後は、いかなる保証も適用されません。国または地域によっては、法律の強行規定により、保証の適用期間の制限が禁じられている場合があり、この場合上記の保証の適用期間の制限はライセンシーに適用されません。

本保証は、ライセンシーに一定の法的権利を付与しますが、国または地域によって異なる場合があります。

本項（8. 保証および適用除外）に定める保証は IBM が単独で提供するものです。ただし、本号（8.2 適用除外）に定める免責 は、第三者コードを提供する IBM サプライヤーにも適用されます。IBM サプライヤーは、当該コードをいかなる保証責任も条件も負うことなく提供するものです。本段落は、本使用条件に基づく IBM の保証義務を無効にするものではありません。

## 9. ライセンシーのデータおよびデータベース

本件プログラムに関する問題の原因を特定し、ライセンシーを支援するために、IBM はライセンシーに対し次のいずれかを要請する場合があります。1) ライセンシーのシステムへの遠隔アクセスを IBM に許可すること。2) ライセンシーの情報またはシステム・データをIBMに送信すること。ただし、かかる支援は、本使用条件におけるIBMの保証義務の範囲内で提供されるものであり、その範囲を超えるサポートの提供については、別途書面による契約が必要です。いかなる場合であっても、IBM は、エラーおよび問題に関する情報を自社の製品の改良とサービス向上のために使用し、関連するサポート・オファリングの提供に役立てるために使用します。この目的のために、IBM はライセンシーが存在する国およびそれ以外の国に存在するIBM 事業体および従契約者を使用することができるものとし、ライセンシーはこれを許可するものとします。



次の事項に関しては、すべて、ライセンシーの責任とします。1) ライセンシーが IBM にアクセスを提供するデータベースのデータおよびコンテンツ。2) データ（個人識別可能データを含みます。）へのアクセス、セキュリティ、暗号化、使用および送信に関する手続きおよび管理の選択および実施。3) データベースおよび保管データのバックアップおよびリカバリー。ライセンシーは、個人情報へのアクセスをデータまたはその他の形式を問わず、一切 IBM に送付または提供しないものとします。誤って IBM に提供された個人情報に関わる、または個人情報のIBMによる喪失または開示に関連して、IBM が被る相当額の費用およびその他の金額については、第三者からの申し立て分も含め、ライセンシーの負担とさせていただきます。

## 10. 責任の制限

本項（10. 責任の制限）で定める制限および適用除外は、強行規定により禁止されない範囲で適用されます。

### 10.1 IBM の責任

ライセンシーが IBM の責に帰すべき事由（契約不履行、過失、不実表示または不法行為などを含みます。）に基づく損害に対して救済を求める場合、各本件プログラムに起因または関連する、または本使用条件の下で提起される IBM の賠償責任総額は、請求の原因を問わず、次の各号に定めるものの総額を上限とします。1) IBM の故意もしくは過失によってお客様に生じた身体、生命および有体物に対する賠償責任。2) 現実に発生した通常かつ直接の損害に対し、損害発生の直接原因となった本件プログラムの使用料金相当額（本件プログラムが期限付き料金の対象の場合、期限付き料金の12 ヶ月分とします。）を限度とする金銭賠償責任。

この制限は、IBM本件プログラムの開発者およびサプライヤーに対しても適用されます。IBM および IBMプログラムの開発者ならびにサプライヤーに対して重複して損害賠償を請求することはできません。

### 10.2 IBM の免責

いかなる場合においても、IBM および IBM のプログラム開発者ならびにサプライヤーは、その予見の有無を問わず発生した以下の損害については賠償責任を負いません。

- a. データの喪失、または損傷。
- b. 特別損害、付随的損害、懲罰的損害または間接損害、およびそのほかの拡大損害
- c. 逸失利益（ビジネス、収益、信用または節約すべかりし費用を含みます。）

## 11. 遵守状況の確認

本項（11. 遵守状況の確認）において「IPLA プログラム条件」（本使用条件に基づき提供されるプログラムに適用される諸条件）は、以下を意味します。1) 本使用条件、適用される修正条項および IBM が提供する取引文書。2) IBM Software Policy (IBM Software Policy ウェブサイト ([www.ibm.com/softwarepolicies](http://www.ibm.com/softwarepolicies)) 記載のバックアップ、サブキャパシティ料金および移行に関わるポリシーなど。)

本項で定める権利および義務は、本件プログラムがライセンシーに対し使用許諾される期間中、およびその終了後 2 年間有効とします。

### 11.1 確認プロセス

ライセンシーは、本件プログラムについて、適用される IBM の使用許諾条件および料金条件等からなるすべての IPLA プログラム条件を遵守して使用していることを証明するために十分な、書面による正確な記録、システム・ツールからの出力、およびその他のシステム情報を作成、保持し、IBM および IBM の監査人に提供することに同意するものとします。ライセンシーは、以下いずれの事項についても責任を負うものとします。1) ライセンシーは、その使用許諾範囲を超えないことを保証すること。2) IPLA プログラム条件を遵守すること。

IBM は、相当な通知を行ったうえで、ライセンサーが IPLA プログラム条件に従って本件プログラムを使用（その目的は問いません。）するすべての施設および環境で、IPLA プログラム条件に関するライセンサーの遵守状況を確認できるものとします。当該確認は、ライセンサーの業務の中断を最小限にする方法で、通常の業務時間内に、ライセンサーの施設内で行われるものとなります。IBM は、当該目的のために独立監査人（以下「監査人」といいます。）を使用することができるものとし、監査人との間で書面による機密保持契約を締結します。

## 11.2 解決

IBM は、当該確認においてライセンサーが本件プログラムの使用許諾範囲を超えてそれを使用し、または IPLA プログラム条件を遵守していないことが判明した場合、ライセンサーにその旨を書面で通知するものとします。ライセンサーは、IBM が請求書に記載する次のすべての項目に対する料金を速やかに直接 IBM に支払うものとします。1) 使用許諾範囲を超える使用、2) かかる超過使用に対して受けたサポートに対する料金（使用許諾範囲を超えて使用した期間、または2年間のうち、短い期間。）、3) 当該確認の結果決定される追加の使用料金およびその他の賠償金額。

## 12. 第三者コードに関する特記事項

本件プログラムには、第三者ではなく IBM が本使用条件に基づきライセンサーに使用許諾する第三者コードが含まれる場合があります。第三者コードに関する特記事項（以下「第三者特記事項」といいます。）が含まれる場合、かかる特記事項はライセンサーのためだけの情報として提供されます。当該特記事項は、本件プログラムの NOTICES ファイルに記載されています。特定の第三者コードのソース・コードの入手方法に関する情報は、「第三者特記事項」に記載があります。「第三者特記事項」の中で IBM が第三者コードを「修正可能第三者コード」と特定する場合、IBM は、ライセンサーに対して、1) 「修正可能第三者コード」を修正すること、および2) 当該第三者コードに対するライセンサーによる修正をデバッグすることを目的とする場合に限り「修正可能第三者コード」と直接インターフェースをとる本件プログラムのモジュールにリバース・エンジニアリングを行なうことを許可します。IBM にサービスおよびサポートの義務がある場合は、修正されていない本件プログラムに対してのみ適用されます。

## 13. その他

- a. 本使用条件は、消費者保護法規によるお客様の権利を変更するものではありません。
- b. IBM が物理的な媒体によりライセンサーに提供する本件プログラムは、IBM指定の運送会社に渡すまで、IBM がその出荷および配送の責任を負います。ただし、ライセンサーとIBMが別途書面に合意する場合を除きます。
- c. 本使用条件のいずれかの条項が無効または履行強制ができないとされた場合でも、その他の条項は有効に存続するものとします。
- d. ライセンサーは、特定の使用目的または特定のユーザーへの輸出に関するすべての輸出入関連適用法令（関連する米国の禁輸措置および制裁措置を含みます。）を遵守することに同意するものとします。
- e. ライセンサーは、International Business Machines Corporation およびその子会社（およびそれらの承継人、譲受人、従契約者ならびに IBM ビジネス・パートナー）が、IBM 製品およびサービスに関連して、または IBM のライセンサーとの取引関係をより緊密にする目的で、お客様の連絡先個人情報（氏名、電話番号、電子メール・アドレスを含みます。）を営業活動を行う任意の場所に保管して使用することを許可するものとします。
- f. いずれの当事者も、相手側の本使用条件に基づく義務の不履行に対する権利を行使する前に、相当期間を定めてその是正を催告するものとします。両当事者は、本使用条件に関連する両当事者間のすべての紛争、意見の相違、または申し立てについて、誠意を持って解決するよう努めるものとします。
- g. 強行規定がある場合を除き、本使用条件に基づくいかなる請求権も、請求が可能となった時から24か月を経過した場合には、時効により消滅します。
- h. いずれの当事者も、自己の責めに帰すことのできない事由から生じた損害については、責任を負わないものとします。

- i. 本使用条件により第三者に対していかなる訴権または請求権も生じるものではなく、またライセンスンシーに対する第三者からの賠償請求について IBM が責任を負うものではありません。ただし、上記 第10.1号（IBM が責任を負う項目）で認められた、IBM がかかる第三者に対して法的に責任を有する、身体、生命、および有体物に対する賠償責任は除きます。
- j. いずれの当事者も、本使用条件に同意するにあたり、次の事項を含め（これらに限定されるものではありません。）、本使用条件で明示されるもの以外の表明に依拠するものではないことに同意します。 1) 本件プログラムの性能または機能。（第8項（保証および適用除外）で明示的に保証されているものを除きます。） 2) 相手方当事者の経験または推奨。 3) ライセンシーが達成し得る効果または節減。
- k. IBM は、特定の法人（以下「IBM ビジネス・パートナー」といいます。）と特定の本件プログラムの販売促進、販売およびサポートに関して契約を締結していますが、IBM ビジネス・パートナーは、引き続き IBM から独立した別個の存在です。IBM は、IBM ビジネス・パートナーの活動または声明、または IBM ビジネス・パートナーのライセンスンシーに対する義務に関し、責任を負いません。
- l. ライセンシーが IBM との間で取り交わしたその他の契約書（IBM Customer Agreement など）で規定される使用権および知的財産の補償に関する条項は、本使用条件の下で付与されるプログラム使用権には適用されません。

## 14. 地理的範囲および準拠法

### 14.1 準拠法

両当事者は、法原理の矛盾に関する場合を除き、本契約から生じる、または本契約に関連する両当事者のすべての権利義務を、規制、解釈、実施するために、ライセンスンシーが本件プログラムの使用権を取得した国の法律を適用することに同意するものとします。

国際売買契約に関する国連条約 (United Nations Convention on Contracts for the International Sale of Goods) は適用されません。

### 14.2 裁判管轄権

すべての権利および義務については、ライセンスンシーが本件プログラムの使用権を取得した国の裁判所の判断に従うものとします。

## 第 2 章 – 各国固有の条項

日本で付与される 使用権については、以下の条件が第 1 章で示された条件を置き換えるかまたはかかる条件を修正するものとします。第 1 章の使用条件で、これらの修正が加えられない使用条件は、すべて、変更されず、引き続き有効に存続するものとします。

### 13. その他

13.f の後に次の条件が挿入されます。

本書に関する疑義が生じた場合は、当事者双方が信義誠実の原則に従って協議するものとします。

# 국제 프로그램 라이선스 계약

## 제 1 부 - 일반 조항

본 프로그램을 다운로드, 설치, 복사, 액세스 또는 사용하거나 "승인" 단추를 클릭함으로써 라이선스 사용자는 본 계약의 조항에 동의하게 됩니다. 만일 귀하가 라이선스 사용자를 대표하여 본 계약의 조항을 승인하는 경우, 귀하는 귀하에게 해당 라이선스 사용자가 이들 조항을 준수하도록 할 완전한 권한이 있음을 보증하고 진술합니다. 본 계약 조건에 동의하지 않는 경우,

- 본 프로그램을 다운로드, 설치, 복사, 액세스 또는 사용하거나 "승인" 단추를 클릭하지 마시고,
- 사용하지 않은 미디어, 문서 및 해당 라이선스 증서를 구입처에 즉시 반환하고 지불한 금액을 환불받으십시오. 본 프로그램을 다운로드한 경우에는 본 프로그램의 모든 사본을 파괴하십시오.

### 1. 용어 정의

"허가된 사용" - 라이선스 사용자가 본 프로그램을 실행할 수 있는 지정된 레벨입니다. 해당 레벨은 사용자 수, MSU(Millions of Service Unit), PVU(Processor Value Unit) 또는 IBM이 지정하는 기타 사용 레벨로 측정됩니다.

"IBM" - International Business Machines Corporation 또는 그 계열사 중 하나입니다.

"라이선스 정보" ("LI") - 프로그램에 대한 정보 및 추가 조항을 제공하는 문서입니다. 본 프로그램의 라이선스 정보는 [www.ibm.com/software/sla](http://www.ibm.com/software/sla)에서 확인할 수 있습니다. 또한 라이선스 정보는 시스템 명령을 사용하여 본 프로그램의 디렉토리에서 보거나 본 프로그램과 함께 제공되는 소책자에서 볼 수 있습니다.

"프로그램" - 프로그램 원본 및 원본의 전체 또는 부분 사본을 포함한 1) 기계 판독 가능 지침 및 데이터, 2) 구성요소, 파일 및 모듈, 3) 음성/영상 내용물(예: 이미지, 텍스트, 녹음 자료 또는 영상) 및 4) 관련 라이선스가 부여된 자료(예: 키 및 문서)입니다.

"라이선스 증서" ("PoE") - 라이선스 사용자의 허가된 사용을 증명해 주는 문서입니다. 라이선스 증서는 라이선스 사용자가 보증 서비스, 본 프로그램의 차후 업데이트 프로그램에 대한 가격(발표되는 경우) 및 특별 판촉 기회를 이용할 수 있다는 것을 인정하는 근거가 됩니다. IBM에서 라이선스 사용자에게 라이선스 증서를 제공하지 않는 경우, IBM은 지불 완료 판매 영수증의 원본이나 본 프로그램을 취득한 당사자(IBM 또는 IBM 리셀러)에게서 받은 기타 판매 기록을 라이선스 증서로 승인할 수 있습니다. 단, 이들 문서에 본 프로그램 이름 및 취득한 사용 레벨이 명시되어 있어야 합니다.

"보증 기간" - 원래 라이선스 사용자에게 라이선스가 부여된 날로부터 1년입니다.

### 2. 계약 구조

본 계약은 본 프로그램의 사용에 관한 라이선스 사용자와 IBM 간의 완전한 계약으로 제 1 부 - 일반 조항, 제 2 부 - 국가별 고유 조항(해당 조항이 있는 경우), 라이선스 정보 및 라이선스 증서로 이루어져 있습니다. 본 계약은 라이선스 사용자의 본 프로그램 사용과 관련된 라이선스 사용자와 IBM 간의 모든 이전 구두 또는 서면 의사 교환을 대체합니다. 제 2 부의 조항은 제 1 부의 조항을 대체하거나 수정합니다. 조항이 상충하는 경우에는 라이선스 정보가 두 부분의 조항에 우선하여 적용됩니다.

### 3. 라이선스 부여

본 프로그램의 소유권은 IBM 또는 IBM 공급자에게 있고 저작권의 보호를 받으며 판매되지 않습니다.

IBM은 라이선스 사용자에게 1) 라이선스 증서에 명시된 허가된 사용까지 본 프로그램을 사용하고 2) 이러한 허가된 사용을 지원하기 위해 사본을 작성하고 설치하며 3) 백업 사본을 작성할 수 있는 비독점적 사용권을 부여합니다. 단,

- a. 라이선스 사용자는 본 프로그램을 적법하게 취득하고 본 계약의 조항을 준수해야 합니다.
- b. 백업된 원본 프로그램을 실행할 수 있는 경우에는 백업 사본이 실행되지 않아야 합니다.

- c. 라이선스 사용자는 본 프로그램의 모든 사본 또는 부분 사본에 모든 저작권 표시 및 기타 소유권 표시를 해야 합니다.
- d. 라이선스 사용자는 본 프로그램(로컬 또는 원격으로 액세스하여) 사용하는 모든 사용자가 1) 라이선스 사용자를 대신해서만 본 프로그램을 사용하고 2) 본 계약의 조항을 준수하도록 해야 합니다.
- e. 라이선스 사용자에게는 다음과 같은 행위가 금지됩니다. 1) 본 계약에서 명시적으로 허용되는 경우를 제외하고 본 프로그램을 사용, 복사, 수정 또는 배포하는 행위, 2) 계약상의 면제 가능성 없이 관련 법령에 의해 명시적으로 허용되는 경우를 제외하고 본 프로그램을 리버스 어셈블, 리버스 컴파일 또는 달리 변환하거나 리버스 엔지니어하는 행위, 3) 본 프로그램의 구성요소, 파일, 모듈, 음성/영상 내용물 또는 라이선스가 있는 관련 자료를 해당 프로그램과 별도로 사용하는 행위 또는 4) 본 프로그램을 재라이선스 부여, 대여 또는 리스하는 행위
- f. 라이선스 사용자가 본 프로그램을 보조 프로그램으로 취득하는 경우 라이선스 사용자는 주 프로그램을 지원하고 주 프로그램에 대한 라이선스의 제한사항을 준수하기 위한 용도로만 본 프로그램을 사용하고, 라이선스 사용자가 본 프로그램을 주 프로그램으로 취득하는 경우 라이선스 사용자는 본 프로그램을 지원하고 본 계약의 제한사항을 준수하기 위한 용도로만 모든 보조 프로그램을 사용해야 합니다. 이 "f" 항의 목적상 "보조 프로그램"은 다른 IBM 프로그램(이하 "주 프로그램")의 일부이며 주 프로그램의 라이선스 정보에서 보조 프로그램으로 표시됩니다. (이러한 제한사항 없이 지원 프로그램에 대한 라이선스를 별도로 취득하려면 라이선스 사용자는 지원 프로그램 구입처에 문의해야 합니다.)

본 라이선스는 라이선스 사용자가 작성하는 본 프로그램의 각 사본에 적용됩니다.

### 3.1 트레이드업, 업데이트, 수정사항 및 패치

#### 3.1.1 트레이드업

본 프로그램이 트레이드업 프로그램으로 대체되는 경우 대체된 프로그램의 라이선스는 즉시 해지됩니다.

#### 3.1.2 업데이트, 수정사항 및 패치

라이선스 사용자에게 프로그램에 대한 업데이트, 수정사항 또는 패치가 제공되는 경우 라이선스 사용자는 라이선스 정보에 명시된 해당 업데이트, 수정사항 또는 패치에 적용 가능한 추가 조항 또는 상이한 조항을 승인합니다. 추가 조항 또는 상이한 조항이 제공되지 않는 경우, 해당 업데이트, 수정사항 또는 패치에는 본 계약만 적용됩니다. 본 프로그램이 업데이트로 대체되는 경우 라이선스 사용자는 대체된 프로그램의 사용을 즉시 중단한다는 것에 동의합니다.

### 3.2 고정 기간 라이선스

IBM이 고정 기간 동안 본 프로그램의 라이선스를 부여하는 경우, 라이선스 사용자와 IBM이 갱신에 동의하는 경우가 아니면 라이선스 사용자의 라이선스는 고정 기간 만료 시 해지됩니다.

### 3.3 기간과 해지

본 계약은 해지될 때까지 유효합니다.

IBM은 라이선스 사용자가 본 계약의 조항을 준수하지 않는 경우 라이선스 사용자의 라이선스를 해지할 수 있습니다.

어떤 이유론든 일방 당사자가 라이선스를 해지한 경우 라이선스 사용자는 본 프로그램의 사용을 즉시 중단하고 라이선스 사용자의 사본을 모두 파괴한다는 것에 동의합니다. 본 계약의 해지 이후에도 일부 조항은 그 특성상 이행이 될 때까지 유효하며 양 당사자의 승계자 및 양수인에게도 적용됩니다.

### 4. 요금

요금은 라이선스 증서에 지정된 취득한 허가된 사용을 기준으로 부과됩니다. IBM은 본 계약에서 명시하는 경우를 제외하고 이미 지불했거나 지불했어야 할 요금을 환불하거나 이러한 요금에 대해 크레디트를 인정하지 않습니다.

라이선스 사용자는 허가된 사용을 늘리려면 IBM 또는 허가된 IBM 리셀러에게 사전에 통지하고 해당 요금을 지불해야 합니다.



## 5. 세금

관계 당국이 본 프로그램에 대해 관세, 세금, 부담금 또는 기타 비용(IBM 순이익에 대한 세금은 제외)을 부과하는 경우, 라이선스 사용자는 청구서에 명시된 금액을 지불하거나 면세 증명서를 제출해야 합니다. 라이선스 사용자는 본 프로그램을 취득한 이후에 본 프로그램에 부과되는 모든 개인 재산세를 지불할 책임이 있습니다. 관계 당국이 최초 라이선스 사용자에게 라이선스가 부여된 국가 외부에서의 본 프로그램 수입이나 수출, 양도, 액세스 또는 사용에 대해 관세, 세금, 부담금 또는 비용을 부과하는 경우 라이선스 사용자는 부과된 금액에 대한 납부 의무를 지며 해당 금액을 지불한다는 것에 동의합니다.

## 6. 환불 보증

라이선스 사용자는 본 프로그램의 최초 라이선스 사용자로서 어떠한 이유로든 본 프로그램에 만족하지 않는 경우, 라이선스를 해지하고 본 프로그램에 대해 지불한 금액을 환불받을 수 있습니다. 단, 라이선스 사용자는 라이선스 증서가 라이선스 사용자에게 발행된 날로부터 30일 이내에 본 프로그램 및 라이선스 증서를 구입처에 반환해야 합니다. 라이선스가 고정 기간 라이선스여서 갱신해야 하는 경우, 라이선스 사용자는 초기 기간의 처음 30일 이내에 본 프로그램 및 해당 라이선스 증서를 반환하는 경우에만 환불받을 수 있습니다. 라이선스 사용자가 본 프로그램을 다운로드한 경우, 라이선스 사용자는 본 프로그램 구입처에 환불받는 방법을 문의해야 합니다.

## 7. 프로그램 양도

라이선스 사용자는 본 프로그램을 양도받으려는 제3자가 본 계약의 조항에 동의하는 경우에만 해당 당사자에게 본 프로그램 및 라이선스 사용자의 모든 라이선스 권리와 의무를 양도할 수 있습니다. 어떤 이유로든 일방 당사자가 라이선스를 해지한 경우, 라이선스 사용자는 본 프로그램을 제3자에게 양도할 수 없습니다. 라이선스 사용자는 1) 본 프로그램 또는 2) 본 프로그램 허가된 사용의 일부를 양도할 수 없습니다. 라이선스 사용자가 본 프로그램을 양도하는 경우, 라이선스 사용자는 라이선스 정보 및 라이선스 증서를 포함하여 본 계약의 하드카피도 양도해야 합니다. 양도 후 즉시 사용자의 라이선스가 해지됩니다.

## 8. 보증 및 제외사항

### 8.1 보증 제한

IBM은 본 프로그램이 명시된 가동 환경에서 사용되는 경우 명세대로 작동됨을 보증합니다. 본 프로그램의 명세 및 명시된 가동 환경 정보는 본 프로그램에 동봉되는 문서(예: read-me 파일)나 IBM의 기타 정보 문서(예: 발표 문서)에서 확인할 수 있습니다. 계약상의 면제 또는 제한 가능성 없이 해당 법률에서 요구하는 경우를 제외하고, 라이선스 사용자는 해당 문서 및 기타 프로그램 콘텐츠가 영어로만 제공될 수 있다는 것에 동의합니다.

이러한 보증은 본 프로그램의 수정되지 않은 부분에 한해 적용됩니다. IBM은 본 프로그램이 중단이나 오류 없이 작동된다는 것을 보증하지 않으며 IBM이 모든 프로그램 결함을 수정할 것이라고 보증하지 않습니다. 라이선스 사용자가 본 프로그램을 사용함으로써 초래되는 결과는 전적으로 라이선스 사용자의 책임입니다.

보증 기간 동안 IBM은 라이선스 사용자에게 이미 알려진 프로그램 결함, 결함 정정사항, 제한사항 및 우회 조치가 포함된 IBM 데이터베이스에 대한 액세스를 추가 비용 부담 없이 제공합니다. 자세한 내용은 IBM Software Support Handbook([www.ibm.com/software/support](http://www.ibm.com/software/support))을 참조하십시오.

본 프로그램이 보증 기간 동안 보증된 대로 작동하지 않고 IBM 데이터베이스에서 제공하는 정보로 문제점을 해결할 수 없는 경우, 라이선스 사용자는 본 프로그램 및 해당 라이선스 증서를 구입처(IBM 또는 IBM 리셀러)에 반환하고 지불한 금액을 환불받을 수 있습니다. 본 프로그램을 반환한 후에는 라이선스 사용자의 라이선스가 해지됩니다. 라이선스 사용자가 본 프로그램을 다운로드한 경우, 라이선스 사용자는 본 프로그램 구입처에 환불받는 방법을 문의해야 합니다.

### 8.2 제외사항

상기 보증은 라이선스 사용자의 배타적 보증으로서 상품성, 품질 만족, 특정 목적에의 적합성, 소유권에 대한 명시적 보증이나 조건과 타인의 권리 침해에 대한 보증이나 조건을 포함하여(단, 이에 한하지 않음) 명시적이든 묵시적이든 기타 모든 보증이나 조건을 대체합니다. 일부 국가나 관할권에서는 명시적이거나 묵시적인 보증의 제외사항이 허용되지 않으므로 위의 제외사항이 라이선스 사용자에게 적용되지 않을 수 있습니다.

이러한 경우, 해당 보증은 보증 기간 동안에만 적용됩니다. 보증 기간 이후에는 보증이 적용되지 않습니다. 일부 국가나 관할권에서는 묵시적 보증의 유효 기간에 대한 제한사항이 허용되지 않으므로 위의 제한사항이 라이선스 사용자에게 적용되지 않을 수 있습니다.

상기 보증은 라이선스 사용자에게 특정한 법적 권리를 부여합니다. 라이선스 사용자는 국가나 관할권에 따라 다양한 기타 권리를 가질 수도 있습니다.

본 8항(보증 및 제외사항)의 보증은 IBM만 제공합니다. 그러나 본 8.2항(제외사항)의 면책사항은 제3자 코드의 IBM 공급자에게도 적용됩니다. 해당 공급자는 어떠한 보증이나 조건 없이 이러한 코드를 제공합니다. 본 단락은 본 계약에 의거한 IBM의 보증 의무를 무효화하지 않습니다.

## 9. 라이선스 사용자 데이터 및 데이터베이스

라이선스 사용자가 본 프로그램에 대한 문제점의 원인을 파악하도록 돕기 위해 IBM은 라이선스 사용자에게 1) IBM이 라이선스 사용자의 시스템을 원격으로 액세스하도록 허용하거나 2) 라이선스 사용자 정보 또는 시스템 데이터를 IBM에게 보내도록 요청할 수 있습니다. 그러나 본 계약의 IBM 보증 범위를 벗어난 해당 유형의 지원을 라이선스 사용자에게 제공하는 것에 IBM이 동의한다는 서면 계약을 IBM과 라이선스 사용자 간 별도로 체결한 경우가 아니면 IBM은 해당 지원을 제공할 의무가 없습니다. 어느 경우라도 IBM은 제품 및 서비스를 개선하고 관련 지원(Support) 오퍼링(Offering) 제공을 지원하기 위해 오류 및 문제점에 대한 정보를 사용합니다. 이러한 목적으로 IBM은 IBM 관계회사 및 하도급자(라이선스 사용자가 있는 국가가 아닌 국가 중 하나 이상에 있는 관계회사 및 하도급자 포함)를 사용할 수 있으며 라이선스 사용자는 IBM에게 이를 수행할 권한을 부여합니다.

라이선스 사용자는 1) 라이선스 사용자가 IBM이 사용할 수 있게 하는 데이터 및 데이터베이스의 콘텐츠, 2) 데이터(개인적으로 식별 가능한 데이터 포함)의 액세스, 보안, 암호화, 사용 및 전송에 관한 절차 및 관리의 선택 및 구현과 3) 데이터베이스와 저장된 데이터의 백업 및 복구에 대해 책임을 집니다. 라이선스 사용자는 데이터나 기타 형식으로 개인적으로 식별 가능한 정보를 보내거나 해당 정보에 대한 액세스를 IBM에게 제공하지 않으며 실제로 IBM에게 제공된 해당 정보 또는 IBM에 의한 해당 정보의 유실이나 공개와 관련하여 IBM에게 발생할 수 있는 적절한 비용 및 기타 금액에 대해 책임을 집니다.

## 10. 책임 제한

본 10항(책임 제한)의 제한사항 및 제외사항은 계약상의 면제 가능성 없이 해당 법률에서 금지하지 않는 범위에서 최대한 적용됩니다.

### 10.1 IBM이 책임을 지는 항목

IBM의 채무 불이행이나 불법 행위로 인하여 라이선스 사용자에게 손해가 발생한 경우 라이선스 사용자는 IBM으로부터 손해를 배상받을 수 있습니다. 라이선스 사용자가 IBM으로부터 손해 배상을 청구할 수 있는 원인(중대한 계약 위반, 과실, 부실 표시, 기타 계약 또는 불법 행위 배상 청구 포함)에 관계없이 각 프로그램과 관련하여 발생하거나 본 계약에 의거하여 발생하는 모든 배상 청구에 대한 IBM의 책임은 전체적으로 다음을 초과하지 않습니다. 1) 신체 상해(사망 포함)와 부동산 및 유체 재산상의 손해 2) 기타 직접적인 실 손해에 대해 배상 청구의 원인이 된 본 프로그램에 대해 라이선스 사용자가 지불한 요금(프로그램이 고정 기간 요금제인 경우, 최대 12개월까지 요금).

이러한 제한은 IBM 프로그램 개발자 및 공급자에게도 적용됩니다. IBM, IBM 프로그램 개발자 및 공급자의 책임은 각자의 책임을 합하여 위 책임 한도를 초과하지 않습니다.

### 10.2 IBM이 책임을 지지 않는 항목

어떠한 경우에도 IBM, IBM의 프로그램 개발자 또는 공급자는 다음 사항의 발생 가능성을 통지 받은 경우에도 다음에 대해 책임을 지지 않습니다.

- a. 데이터의 유실 또는 손상
- b. 특별 손해, 부수 손해, 징벌적 손해, 간접 손해 또는 경제적인 결과적 손해 또는
- c. 기대했던 이익, 영업 기회, 매출, 영업권 또는 비용 절감이 실행되지 못함으로 인해 발생하는 손해.

## 11. 조항 준수 확인

본 11항(조항 준수 확인)의 목적상, "IBM 프로그램 라이선스 계약(IPLA) 프로그램 조항"은 1) 본 계약 및 IBM이 제공하는 적용 가능한 수정본 및 거래 서류와 2) IBM Software Policy 웹 사이트 ([www.ibm.com/software/policies](http://www.ibm.com/software/policies))에 있는 IBM 소프트웨어 policy(백업, 분할 용량 기준 가격 책정 및 마이그레이션 관련 policy를 포함하나 이에 한하지 않음)를 의미합니다.

본 11항에 명시된 권리와 의무는 본 프로그램의 라이선스가 라이선스 사용자에게 부여된 기간 및 향후 2년 동안 유효합니다.

### 11.1 확인 프로세스

라이선스 사용자는 라이선스 사용자가 IPLA 프로그램 조항(IBM의 적용 가능한 모든 라이선스 부여 및 가격 책정 가격 조항을 포함하나 이에 한하지 않음)을 준수하여 모든 프로그램을 사용하는지에 대한 감사 가능한 확인을 제공하기에 충분한 정도의 정확한 서면 기록, 시스템 도구 출력 및 기타 시스템 정보를 작성하고 보유하며 IBM 및 IBM의 감사원에게 제공한다는 것에 동의합니다. 라이선스 사용자는 1) 허가된 사용을 초과하지 않도록 확인하고 2) IPLA 프로그램 조항을 준수할 책임이 있습니다.

적절한 통지로 IBM은 라이선스 사용자가 어떤 용도로든 IPLA 프로그램 조항이 적용되는 프로그램을 사용하는 모든 사이트 및 환경에서 라이선스 사용자가 IPLA 프로그램 조항을 준수하는지 확인할 수 있습니다. 이러한 확인은 라이선스 사용자의 영업 방해로 최소화하는 방법으로 수행되며 라이선스 사용자의 근무지 사이트에서 정상 근무 시간 중에 수행될 수 있습니다. IBM은 외부 감사원을 통해 이러한 확인을 지원할 수 있습니다. 단, IBM은 해당 감사원과 체결한 서면 기밀정보 수령합의서가 있어야 합니다.

### 11.2 해결 방법

IBM은 이러한 확인에서 라이선스 사용자가 허가된 사용을 초과하여 프로그램을 사용했거나 IPLA 프로그램 조항을 준수하지 않음을 알게된 경우 라이선스 사용자에게 서면으로 통지합니다. 라이선스 사용자는 IBM이 1) 초과 사용, 2) 초과 사용과 2년 중 더 짧은 기간 동안의 해당 초과 사용에 대한 지원 및 3) 확인의 결과로서 판별된 추가 요금 및 기타 책임에 대해 청구서에 명시한 요금을 즉시 IBM에게 직접 지불한다는 것에 동의합니다.

## 12. 제3자 주의사항

본 프로그램에는 제3자가 아니라 IBM이 본 계약에 의거하여 라이선스 사용자에게 라이선스를 부여하는 제3자 코드가 포함될 수 있습니다. 제3자 코드에 대한 주의사항(이하 "제3자 주의사항")은 라이선스 사용자의 정보용으로만 포함됩니다(해당되는 경우). 이러한 주의사항은 프로그램의 NOTICES 파일에서 확인할 수 있습니다. 특정 제3자 코드에 대한 소스 코드를 얻는 방법에 대한 정보는 제3자 주의사항에서 확인할 수 있습니다. 제3자 주의사항에서 IBM이 제3자 코드를 "수정할 수 있는 제3자 코드"로 표시하는 경우, IBM은 라이선스 사용자에게 1) 수정할 수 있는 제3자 코드를 수정하고 2) 수정할 수 있는 제3자 코드와 직접 인터페이스를 수행하는 프로그램 모듈을 리버스 엔지니어할 수 있는 권한을 부여합니다. 단, 이러한 권한은 해당 제3자 코드에 대한 라이선스 사용자의 수정사항을 디버깅하기 위한 용도로만 부여됩니다. IBM의 서비스 및 지원 의무(해당되는 경우는 수정되지 않은 프로그램에만 적용됩니다).

## 13. 일반사항

- 본 계약의 어떠한 조항도 계약에 의해 포기 또는 제한될 수 없는 강행 법규 상의 소비자 권리에 영향을 미치지 않습니다.
- IBM은 유형의 형태로 라이선스 사용자에게 제공하는 프로그램에 대해 라이선스 사용자와 IBM이 서면으로 달리 합의하지 않는 한, IBM이 지정한 운송업체에 해당 프로그램을 인도하여 포장 및 운송 의무를 수행합니다.
- 본 계약의 일부 조항이 무효이거나 시행이 불가능한 경우에도 본 계약의 나머지 조항은 완전히 유효합니다.
- 라이선스 사용자는 최종 사용자 또는 특정 사용자에 대한 수출에 대한 미국 통상 금지 및 제재 규정과 금지 조항을 포함한 모든 수출입 관련 법규를 준수한다는 것에 동의합니다.



- e. 라이선스 사용자는 IBM 제품 및 서비스 사용 시 또는 라이선스 사용자와 IBM의 비즈니스 관계 축진을 위해 IBM 및 그 계열사(및 이들의 승계자 및 양수인, 하도급자 및 IBM 비즈니스 파트너)가 영업을 하는 곳에서는 어디서나 라이선스 사용자의 담당자 정보를 저장하고 사용할 수 있도록 허용합니다.
- f. 각 당사자는 상대방이 본 계약의 의무를 다하지 않았음을 이유로 배상을 청구하기 전에 상대방에게 계약을 준수할 수 있는 적절한 기회를 제공합니다. 양 당사자는 본 계약과 관련된 당사자 간의 모든 분쟁, 의견 차이 또는 배상 청구를 성실하게 해결하기 위해 노력합니다.
- g. 제한사항 또는 계약상의 면제 가능성 없이 해당 법률에 달리 명시되지 않는 한 1) 소송 제기의 원인 발생 후 2년이 지나면 어느 당사자도 본 계약에서 발생하거나 본 계약과 관련하여 발생한 배상 청구에 대해 어떤 양식으로는 법적 조치를 제기하지 않으며 2) 해당 제한 기간이 만료되면 해당 배상 청구와 이러한 배상 청구에 관련된 각각의 권리는 모두 무효로 됩니다.
- h. 라이선스 사용자와 IBM은 통제 불가능한 사유로 의무사항을 이행하지 못한 경우 이에 대해 면책됩니다.
- i. 본 계약에서는 제3자에 대한 소송 제기의 원인 또는 권리가 생성되지 않으며 IBM은 라이선스 사용자에게 대한 제3자의 어떠한 배상 청구에 대해서도 책임이 없습니다. 단, 상기 10.1항(IBM이 책임을 지는 항목)에 설명된 IBM에 법적으로 책임이 있는 신체 손해(사망 포함)와 부동산 및 유체 재산상의 손해에 대해서는 IBM에 책임이 있습니다.
- j. 본 계약 체결 시 어느 당사자도 다음에 관한 보증을 포함하여(단, 이에 한하지 않음) 본 계약에 명시되지 않은 보증을 신뢰하지 않습니다. 1) 위의 8항(보증 및 제외사항)에서 명시적으로 보증된 사항 이외의 본 프로그램 성능 또는 기능, 2) 제3자의 경험이나 권장사항 또는 3) 라이선스 사용자가 달성할 수 있는 결과 또는 비용 절감.
- k. IBM은 특정 프로그램을 지원하고 영업을 촉진하고 판매하기 위해 특정 조직("IBM 비즈니스 파트너"라고 함)과의 계약에 동의했습니다. IBM 비즈니스 파트너는 IBM과는 독립적이며 별개의 조직입니다. IBM은 IBM 비즈니스 파트너의 행위나 의사 표시 또는 IBM 비즈니스 파트너의 라이선스 사용자에게 대한 의무에 대해 책임을 지지 않습니다.
- l. 라이선스 사용자와 IBM과의 기타 계약(예: IBM 기본 계약)의 라이선스 및 지적 재산권 면책 조항은 본 계약에 의거하여 부여된 프로그램 라이선스에 적용되지 않습니다.

## 14. 계약 적용 지역과 준거법

### 14.1 준거법

양 당사자는 본 계약으로부터 또는 본 계약과 관련하여 발생한 라이선스 사용자와 IBM의 모든 권리 및 의무를 통제, 해석 및 강제하는 데 있어 준거법 결정의 원칙에 관계없이 라이선스 사용자가 본 프로그램 라이선스를 취득한 국가의 법률이 적용된다는 것에 동의합니다.

국제 물품 매매 계약에 관한 유엔 협약(United Nations Convention on Contracts for the International Sale of Goods)은 적용되지 않습니다.

### 14.2 관할권

모든 권리 및 의무에 대해서는 라이선스 사용자가 본 프로그램 라이선스를 취득한 국가의 법원에 관할권이 있습니다.

## 제 2 부 - 국가별 고유 조항

한국의 경우 적용되는 국가별 고유 조항이 없습니다.

# Tarptautinė programinės įrangos licencinė sutartis

## 1 dalis—bendrosios sąlygos

**ATSISIŪSDAMAS, DIEGDAMAS, KOPIJUODAMAS, PASIEKIAMAS PROGRAMA, SPAUSDAMAS MYGTUKĄ „SUTINKU“ AR KITAIS BŪDAIS NAUDODAMAS PROGRAMA, LICENCIATAS SUTINKA SU ŠIOS SUTARTIES SĄLYGOMIS. JEIGU SU ŠIOS LICENCIJOS SĄLYGOMIS SUTINKATE LICENCIATO VARDU, JŪS PAREIŠKIATE IR GARANTUOJATE, KAD PRISIIMATE VISĄ ATSAKOMYBĘ UŽ ŠIŲ SĄLYGŲ LAIKYMĄSI. JEIGU NESUTINKATE SU ŠIOMIS SĄLYGOMIS,**

- **NESIŪSKITE, NEDIEKITE, NEKOPIJUOKITE, NEBANDYKITE PASIEKTI PROGRAMOS, NESPAUSKITE MYGTUKO „SUTINKU“ AR NESINAUDOKITE PROGRAMA; IR**
- **NEDELSDAMI GRĄŽINKITE NENAUDOTAS LAIKMENAS, DOKUMENTACIJĄ IR NUOSAVYBĖS TEISĖS DOKUMENTĄ ŠALIAI, IŠ KURIOS JUOS GAVOTE, KAD SUSIGRĄŽINTUMĖTE UŽ PROGRAMĄ SUMOKĖTUS PINIGUS. JEI PROGRAMA BUVO ATSISIŪSTA, SUNAIKINKITE VISAS PROGRAMOS KOPIJAS.**

### 1. Apibrėžimai

**Įgaliotasis naudojimas**—numatytas lygis, apibrėžiantis, kaip Licenciatas įgaliotas paleisti ir vykdyti Programą. Šis lygis gali būti nustatomas pagal naudotojų skaičių, paslaugų vienetų milijonus (MSU), procesoriaus vertės vienetus (PVU) arba kitus naudojimo lygius, kuriuos nurodo IBM.

**IBM**—„International Business Machines Corporation“ arba vienas iš jos filialų.

**Licencijos informacija (LI)**—dokumentas, kuriame pateikta specifinė informacija apie Programą ir papildomos sąlygos. Programos LI galima rasti internete adresu: [www.ibm.com/software/sla](http://www.ibm.com/software/sla). LI taip pat galima rasti Programos kataloge, naudojant sisteminę komandą, arba lankstinuke, kuris pridėtas prie Programos.

**Programa**—šie išvardyti dalykai, jų originalai ir visos išsamios arba dalinės kopijos: 1) kompiuterio skaitomos instrukcijos ir duomenys, 2) komponentai, failai ir moduliai, 3) garsinė ir vaizdinė medžiaga (pvz., vaizdai, tekstas, įrašai ar paveikslėliai), ir 4) susijusi licencijos medžiaga (tokia, kaip raktai ir dokumentacija).

**Nuosavybės teisės dokumentas (NTD)**—Licencianto įgaliotojo naudojimo įrodymas. NTD taip pat įrodo, kad Licenciatas galės naudotis garantiniu aptarnavimu, būsimų naujinimų kainomis, jei tokie bus išleisti, ir galimais specialiais ar reklamos pasiūlymais. Jeigu IBM nepateikia Licenciatui NTD, tada IBM vietoj NTD gali priimti originalų pirkimo kvitą ar kitą pirkimo dokumentą iš šalies (arba IBM, arba jos platintojo), iš kurios Licenciatas įsigijo Programą, su sąlyga, kad dokumente nurodytas Programos pavadinimas bei suteiktos Įgaliotojo naudojimo sąlygos.

**Garantijos laikas**—vieneri metai nuo datos, kai Licenciatui suteikta licencija.

### 2. Sutarties struktūra

Šią sutartį sudaro: **1 dalis—bendrosios sąlygos, 2 dalis—konkrečiai šaliai taikomos sąlygos** (jei tokių yra), LI ir NTD, ir tai yra galutinis susitarimas tarp Licencianto ir IBM dėl naudojimosi Programa. Ji pakeičia bet kokią ankstesnę žodinių ar raštinių bendravimą tarp Licencianto ir IBM, kurių metu buvo aptariamas Licencianto naudojimasis Programa. 2 dalies sąlygos gali pakeisti 1 dalies sąlygas. Atsiradus bet kokiems prieštaravimams, bus remiamasi LI.

### 3. Licencijos suteikiamos teisės

Programa yra IBM arba IBM platintojo nuosavybė, ginama autoriaus teisių, naudojimuisi ja suteikiama licencija, bet ji nėra parduodama.

IBM suteikia Licenciatui neišimtinę licenciją 1) naudoti Programą pagal Įgaliotojo naudojimo sąlygas, nurodytas NTD, 2) kurti ir diegti kopijas, kurios palaikytų Įgaliotąjį naudojamąsi programa, ir 3) kurti atsarginę kopiją su sąlyga, kad

- a. Licenciatas teisėtai įsigijo Programą ir laikosi šios Sutarties sąlygų;
- b. atsarginė kopija nepaleidžiama, nebent neveikia pati Programa, kurios atsarginė kopija sukurta;

- c. Licenciatas ant kiekvienos Programos išsamios ar dalinės kopijos nurodo visą autoriaus teisių informaciją bei kitus nuosavybės ženklus;
- d. Licenciatas užtikrina, kad kiekvienas, kuris naudoja Programą (vietinė ar nuotoline prieiga) 1) naudoja tik Licenciato vardą ir 2) laikosi šios Sutarties sąlygų;
- e. Licenciatas 1) nenaudoja, nekopijuoja, nekeičia ir neplatina Programos, nebent tai aiškiai leidžiama šioje Sutartyje; 2) nebando išardyti, dekompileuoti, versti ar atkurti Programos kodo, nebent tai aiškiai leidžiama įstatymais ir nesuteikiama teisė atsisakyti sutartyse; 3) nenaudoja jokių Programos komponentų, failų, modulių, garsinio ir vaizdinio turinio ar susijusios licencijuotos medžiagos atskirai nuo Programos; ir 4) neišduoda licencijos trečiajai šaliai, nenuomoja ir išperkamosios nuomos pagrindais nesuteikia Programos; ir
- f. Jei Licenciatas įgyja šią Programą kaip Pagalbinę programą, Licenciatas naudoja šią Programą tik kaip pagalbinę priemonę, palaikančią Pagrindinę programą, jai taikomi bet kokie Pagrindinės programos licencijos apribojimai, arba, jei Licenciatas įgyja šią programą kaip Pagrindinę programą, Licenciatas naudoja visas Pagalbines programas tik šiai Programai palaikyti, jai taikomi bet kokie šios Sutarties apribojimai. Šiame punkte, „f“ „Pagalbinė programa“ yra Programa, kuri yra kitos IBM Programos („Pagrindinės programos“) dalis ir kuri Pagrindinės programos LI yra nurodoma kaip Pagalbinė programa. (Norėdamas gauti atskirą Pagalbinės programos licenciją be šių apribojimų, Licenciatas turėtų susisiekti šalimi, iš kurios įsigijo Pagalbinę programą.)

Ši licencija taikoma kiekvienai Licenciato padarytai Programos kopijai.

### **3.1 Pakeitimai, atnaujinimai, pataisos ir taisymai**

#### **3.1.1 Pakeitimai**

Jei Programa pakeičiama kita Programa, pakeistos Programos licencija yra nedelsiant nutraukiama.

#### **3.1.2 Atnaujinimai, pataisos ir taisymai**

Kai Licenciatas gauna Programos atnaujinimą, pataisą ar pataisymą, Licenciatas sutinka su bet kokiomis papildomomis ar skirtingomis sąlygomis, taikomomis šiems atnaujinimams, pataisoms ar pataisymams, kurios yra nurodytos LI. Jei nepateikta jokių papildomų ar pakeistų sąlygų, tuomet atnaujinimui, pataisai ar pataisymui taikomos tik šios Sutarties sąlygos. Jei Programa pakeičiama atnaujinimu, Licenciatas sutinka nedelsdamas nutraukti pakeistos Programos naudojimą.

### **3.2 Fiksuotos trukmės licencijos**

Jei IBM suteikia Programai fiksuotos trukmės licenciją, Licenciato licencija baigia galioti, pasibaigus fiksuotam laikotarpiui, nebent Licenciatas ir IBM susitaria ją atnaujinti.

### **3.3 Terminas ir nutraukimas**

Ši sutartis galioja tol, kol yra nutraukiama.

IBM gali nutraukti Licenciato licenciją, jei Licenciatas nesilaiko Sutarties sąlygų.

Jei licencija yra nutraukiama bet kurios šalies iniciatyva dėl bet kokios priežasties, Licenciatas sutinka nedelsdamas nutraukti Programos naudojimą ir sunaikinti visas turimas Programos kopijas. Jei tam tikros Sutarties sąlygos dėl savo pobūdžio išlieka galioti po Sutarties nutraukimo, jos galioja, kol bus įvykdytos, ir taikomos abiejų šalių atitinkamiems teisių perėmėjams ir įgaliotiniams.

### **4. Mokėjimas**

Mokėjimas priklauso nuo Įgaliotojo naudojimo pobūdžio, kuris yra aprašytas NTD. IBM neteikia kreditų, jei vėluojama sumokėti, ir negrąžina jau sumokėtų pinigų, išskyrus atvejus, aprašytus Sutartyje.

Jei Licenciatas nori išplėsti savo Įgaliotojo naudojimo ribas, Licenciatas turi iš anksto pranešti IBM arba įgaliotajam IBM atstovui ir apmokėti visas susijusias išlaidas.

### **5. Mokesčiai**

Jeigu kuri nors valdžios institucija taiko Programai muitą, mokesčius ar kitokią rinkliavą, išskyrus tuos, kurie skaičiuojami nuo IBM grynojo pelno, Licenciatas sutinka sumokėti sąskaitoje faktūroje nurodytą sumą arba

pateikti atleidimo nuo mokesčių dokumentus. Nuo Programos įsigijimo dienos Licenciatas yra atsakingas už bet kokius Programos nuosavybės mokesčius. Jeigu kuri nors valdžios institucija taiko muitą, mokesčius ar kitokią rinkliavą už Programos importą, eksportą, persiuntimą, prieigą ar naudojimą už valstybės, kurioje Licenciatui suteikta licencija, ribų, Licenciatas sutinka sumokėti paskirtą sumą.

## **6. Pinigų grąžinimo garantijos**

Jei pradinis Licenciatas dėl kokių nors priežasčių yra nepatenkintas Programa, jis gali per 30 dienų nuo NTD gavimo datos nutraukti licenciją ir susigrąžinti pinigus, kuriuos mokėjo už Programą, su sąlyga, kad Licenciatas grąžina Programą ir NTD tai šaliai, iš kurios ją įsigijo. Jei suteikta fiksuotos trukmės licencija, kurią galima pratęsti, Licenciatas gali susigrąžinti pinigus tik tuo atveju, jei Programa ir jos NTD sugrąžindami per pirmąsias 30 pirmojo termino dienų. Jeigu Licenciatas Programą atsisisiuntė, jis turi susisiekti su ją išdavusia šalimi ir iš jos gauti pinigų susigrąžinimo instrukcijas.

## **7. Programos perleidimas**

Licenciatas gali perleisti Programą bei visas savo licencines teises ir įsipareigojimus kitai šaliai tik tuo atveju, jei ta šalis sutinka su šios Sutarties sąlygomis. Jei kuri nors šalis dėl tam tikrų priežasčių licenciją nutraukia, Licenciatas negali perleisti Programos trečiajai šaliai. Licenciatas negali perleisti dalies 1) Programos ar 2) Programos Igaliojimo naudojimo. Perleisdamas Programą, Licenciatas kartu su LI ir NTD taip pat privalo perleisti spausdintą šios Sutarties kopiją. Iš karto po perleidimo Licenciato licencija yra nutraukiama.

## **8. Garantija ir išimtys**

### **8.1 Ribotoji garantija**

IBM garantuoja, kad Programa, jei ji naudojama numatytoje veikimo aplinkoje, atitinka specifikacijas. Programos specifikacijos ir nurodytos veikimo aplinkos informacija yra pateikta Programos dokumentacijoje (tokioje kaip „read-me“ failas) arba kituose informacijos šaltiniuose, kuriuos išleido IBM (pvz., pranešime). Licenciatas sutinka, kad tokia dokumentacija ir kitas Programos turinys pateikiami tik anglų kalba, nebent vietos įstatymai reikalauja kitaip, nesuteikiama teisė sutartyje to atsisakyti arba apriboti.

Garantija galioja tik nemodifikuotai Programos daliai. IBM negarantuoja, kad Programa veiks be trikčių ir klaidų ar kad IBM pašalins visus Programos defektus. Licenciatas yra atsakingas už naudojimosi Programa rezultatus.

Garantiniu periodu IBM suteikia Licenciatui nemokamą prieigą prie IBM duomenų bazių, kuriose yra informacija apie žinomos Programos defektus, jų taisymus, apribojimus ir apėjimus. Išsamesnės informacijos rasite IBM programos palaikymo vadove adresu [www.ibm.com/software/support](http://www.ibm.com/software/support).

Jei Garantiniu laikotarpiu Programa neveikia, kaip buvo garantuota, ir problemos negalima išspręsti, naudojantis IBM duomenų bazėse esančia informacija, Licenciatas gali grąžinti Programą ir jos NTD šaliai (arba IBM, arba jos atstovui), iš kurios Licenciatas įsigijo Programą, ir susigrąžinti pinigus. Grąžinus Programą, Licenciato licencija nutraukiama. Jeigu Licenciatas Programą atsisisiuntė, jis turi susisiekti su ją išdavusia šalimi ir iš jos gauti pinigų susigrąžinimo instrukcijas.

### **8.2 Išimtys**

**ŠIOS GARANTIJOS YRA LICENCIATO IŠIMTINĖS GARANTIJOS IR PAKEIČIA VISAS KITAS GARANTIJAS ARSĄLYGAS, IŠREIKŠTAS AR NUMANOMAS, ĮSKAITANT, BET NEAPSIRIBOJANT, BET KOKIAS NUMANOMAS TINKAMUMO PREKYBAI, PATENKINAMOS KOKYBĖS, TINKAMUMO TAM TIKRAI PASKIRČIAI IR BET KOKIAS NUOSAVYBĖS IR NEPAŽEIDŽIAMUMO GARANTIJAS ARSĄLYGAS. KAI KURIOSE JURISDIKCIJOSE NELEIDŽIAMA NEĮTRAUKTI IŠREIKŠTŲ AR NUMANOMŲ GARANTIJŲ, TODĖL ANKŠČIAU IŠVARDYTOS IŠIMTYS LICENCIATUI GALI BŪTI NETAIKOMOS. TOKIU ATVEJU ŠIŲ GARANTIJŲ TAIKYMAS APRIBOJAMAS GARANTIJOS LAIKOTARPIO TRUKME. ŠIAM LAIKOTARPIUI PRAEJUS NEBETAIKOMOS JOKIOS GARANTIJOS. KAI KURIOSE VALSTYBĖSE AR JURISDIKCIJOSE NELEIDŽIAMA RIBOTI NUMANOMAS GARANTIJOS TRUKMĖS, TODĖL ANKŠČIAU PATEIKTI APRIBOJIMAI LICENCIATUI GALI BŪTI NETAIKOMI.**

**ŠIOS GARANTIJOS SUTEIKIA LICENCIATUI APIBRĖŽTAS JURIDINES TEISES. LICENCIATAS TAIP PAT GALI TURĖTI KITŲ TEISIŲ, KURIOS SKIRSIŠ ATSIŽVELGIANT Į JURISDIKCIJĄ.**

**GARANTIJAS, NURODYTAS 8 SKYRIUJE (GARANTIJOS IR ĮŠIMTYS), SUTEIKIA TIK „IBM“. APRIBOJIMAI, PAMINĖTI 8.2 POSKYRYJE (ĮŠIMTYS), TAIP PAT TAIKOMI IR „IBM“ TIEKĖJAMS, VEIKIANTIEMS KAIP TREČIOJI ŠALIS. TOKIE TIEKĖJAI VEIKIA BE JOKIŲ GARANTIJŲ ARSĄLYGŲ. ŠIS PARAGRAFAUS NEPANAIKINA „IBM“ GARANTINIŲ ĮSIPAREIGOJIMŲ, NURODYTŲ ŠIOJE SUTARTYJE.**

## **9. Licenciato duomenys ir duomenų bazės**

Siekdama padėti Licenciatui išspręsti su Programa susijusias problemas, IBM gali paprašyti, kad Licenciatas 1) leistų IBM nuotoliniu būdu prisijungti prie Licenciato sistemos arba 2) atsiųstų savo informaciją ar sistemos duomenis į IBM. Tačiau IBM neprivalo teikti tokios pagalbos, nebent IBM ir Licenciatas pasirašo atskirą susitarimą, kuriame IBM sutinka teikti Licenciatui tokio pobūdžio palaikymą, kuri nėra numatyta šios Sutarties IBM garantiniuose įsipareigojimuose. Bet koku atveju IBM naudoja informaciją apie klaidas ir problemas savo produktams ir paslaugoms tobulinti ir techninei pagalbai teikti. Licenciatas sutinka su tokia IBM, IBM juridinių asmenų ir subrangovų (veikiančių ne tik Licenciato valstybėje) veikla.

Licenciatas lieka atsakingas už 1) bet kokius duomenis ar kitą bet kurios duomenų bazės turinį, kurį jis padaro prieinamą IBM, 2) duomenų prieigos, apsaugos, kodavimo, naudojimo bei duomenų perdavimo (įskaitant ir bet kokius asmeninius duomenis) procedūrų ir kontrolės pasirinkimą ir vykdymą ir 3) visų duomenų bazių ir visų saugomų duomenų atsarginių kopijų sukūrimą bei jų atkūrimą. Licenciatas nesiųs ir nesuteiks IBM prieigos prie asmeninės informacijos, nepriklausomai nuo to, kokios formos ji yra, ir bus atsakingas už pagrįstas išlaidas, kurias IBM patirs dėl tokios informacijos klaidingo perdavimo IBM arba jei IBM prarastų ar paskelbtų tokia informaciją, taip pat ir išlaidas, susijusias su trečiųjų šalių iškeltais ieškiniais.

## **10. Atsakomybės apribojimas**

Apribojimai, pateikti 10 skyriuje (Atsakomybės apribojimas) yra taikomi tiek, kiek leidžia taikomi įstatymai ir neleidžiama atsisakyti sutartyse.

### **10.1 Dalykai, už kuriuos IBM atsakinga**

Gali susiklostyti tokios aplinkybės, kad dėl IBM ar kitų įsipareigojimų nevykdymo Licenciatui būtų suteikta teisė gauti žalos atlyginimą iš IBM. Neatsižvelgiant į pagrindą, pagal kurį Licenciatas gauna teisę reikalauti iš IBM atlyginti žalą (įskaitant esminį pažeidimą, aplaidumą, faktų iškraipymą arba kitą sutarties ar civilinės teisės pažeidimą), išskyrus bet kokią atsakomybę, kurios negalima atsisakyti arba apriboti remiantis atitinkamais įstatymais, visa IBM atsakomybė dėl visų pretenzijų, susijusių su kiekviena Programa, neviršys a) žalos dėl kūno sužalojimo (įskaitant mirtį), žalos nekilnojamajam turtui ir materialiajam asmeniniam turtui atlyginimo; b) bet kokios kitos faktinės tiesioginės žalos, įskaitant mokesčius (jei už Programą mokama fiksuotais terminais, taikomi 12 mėnesių mokesčiai) už Programą, dėl kurios pateiktas ieškinys.

Šis apribojimas taip pat taikomas visiems IBM Programos kūrėjams ir tiekėjams. Tai yra didžiausia IBM ir jos Programos kūrėjų ir tiekėjų kolektyvinės atsakomybės suma.

### **10.2 Dalykai, už kuriuos IBM nėra atsakinga**

**JOKIU ATVEJU IBM, JOS PROGRAMOS KŪRĖJAI AR TIEKĖJAI NĖRA ATSAKINGI UŽ ŠIUOS DALYKUS, NET JEI JIEMS BUVO PRANEŠTA APIE TOKIŲ APLINKYBIŲ ATSIRADIMO GALIMYBĘ:**

- a. **DUOMENŲ PRARADIMĄ AR SUGADINIMĄ;**
- b. **SPECIALIUOSIUS, ATSITIKTINIUS, BAUDINIUS AR NETIESIOGINIUS NUOSTOLIUS, ARBA BET KOKIUS PRIEŽASTINIUS EKONOMINIUS NUOSTOLIUS; ARBA**
- c. **PRARASTĄ PELNĄ, VERSLĄ, PAJAMAS, PRESTIŽĄ AR PLANUOTAS SUTAUPYTI LĖŠAS.**

## **11. Sąlygų laikymosi tikrinimas**

11 skyriuje (Sąlygų laikymosi tikrinimas), „IPLA Programos sąlygos“ reiškia 1) šią Sutartį ir jos pataisymus bei IBM pateiktus sandorio dokumentus, ir 2) IBM programinės įrangos politiką, kurią galima rasti IBM

Programinės įrangos politikos svetainėje ([www.ibm.com/software/policies](http://www.ibm.com/software/policies)), įskaitant, bet neapsiribojant, politiką, susijusią su atsarginėmis kopijomis, pagalbinių talpyklos kainų nustatymu bei informacijos perkėlimu.

11 skyriuje pateikiamos teisės ir įsipareigojimai taikomi visą Programos licencijos galiojimo laiką bei dvejus metus pasibaigus galiojimui.

### 11.1 Tikrinimo procesas

Licenciatas sutinka sukurti, išsaugoti ir pateikti IBM bei jos auditoriams tiksliai rašytines ataskaitas, sistemos įrankių išvestis ir kitą sistemos informaciją, kuri leistų įvertinti, ar Licenciatas, naudodamasis visomis Programomis, laikosi IPLA programos sąlygų, įskaitant, bet neapsiribojant, visas IBM licencijavimo ir kainų nustatymo sąlygas. Licenciatas yra atsakingas, kad 1) tai neviršytų jo Įgaliotojo naudojimo ribų ir 2) atitiktų IPLA Programos sąlygas.

Priimtinai perspėjusi, IBM gali patikrinti, kaip Licenciatas laikosi IPLA programos sąlygų visose darbo vietose ir visose aplinkose, kuriose Licenciatas naudoja Programomis (bet kokių tikslu), kurioms taikomos IPLA programos sąlygos. Toks patikrinimas bus atliktas taip, kad kuo mažiau sutrikdytų Licenciatą veiklą, ir gali būti atliekamas Licenciatą patalpoje darbo valandomis. Tikrinti IBM gali samdyti nepriklausomą auditorių, jei IBM ir auditorius yra pasirašę konfidencialumo sutartį.

### 11.2 Sprendimas

Jei tikrinimo metu paaiškės, kad Licenciatas naudojosi kuria nors Programa, viršydamas Įgaliotojo naudojimo ribas, ar kitu būdu nesilaikė IPLA programos sąlygų, IBM praneš apie tai Licenciatui raštu. Licenciatas sutinka nedelsdamas tiesiogiai IBM padengti išlaidas, kurias IBM nurodo sąskaitoje faktūroje, už 1) bet kokią naudojimosi perviršį, 2) palaikymą, suteiktą šiam perviršiui per naudojimo laikotarpį arba dvejus metus, atsižvelgiant į tai, kuris laikotarpis trumpesnis, ir 3) kitas išlaidas bei įsipareigojimus, nustatytus tikrinimo metu.

## 12. Trečiųjų šalių pastabos

Programoje gali būti trečiųjų šalių kodas, kurį IBM, ne trečioji šalis, suteikia Licenciatui, remdamasi šia Sutartimi. Jei yra pastabų apie trečiųjų šalių kodą („Trečiųjų šalių pastabos“), jos įtrauktos tik Licenciatui informuoti. Šios pastabos pateikiamos Programos faile (-uose) PASTABOS. Informacija, kaip gauti šaltinio kodą tam tikram trečiosios šalies kodui, pateikta skyriuje „Trečiųjų šalių pastabos“. Jei Trečiųjų šalių pastabose IBM trečiosios šalies kodą nurodo kaip „Modifikuojamą trečiosios šalies kodą“, IBM leidžia Licenciatui 1) modifikuoti Modifikuojamą trečiosios šalies kodą ir 2) atkurti kodą Programos modulių, kurie tiesiogiai siejami su Modifikuojamu trečiosios šalies kodu, su sąlyga, kad tai daroma tik norint suderinti Licenciatą modifikacijas su trečiosios šalies kodu. IBM aptarnavimo ir techninės pagalbos įsipareigojimai, jei tokie yra, taikomi tik nemodifikuotai Programai.

## 13. Bendrosios nuostatos

- a. Joks šios Sutarties punktas neturi įtakos įstatymų numatytoms vartotojų teisėms, kurias sutartis galėtų panaikinti ar apriboti.
- b. Tais atvejais, kai Licenciatui IBM Programas pateikia materialios formos, IBM savo siuntimo ir pristatymo įsipareigojimus įvykdo, perdavusi Programas IBM paskirtam vežėjui, nebent Licenciatas ir IBM raštu susitarė kitaip.
- c. Jeigu kuri nors šios Sutarties nuostata laikoma netekusi galios ar neturinti ieškinio galios, kitos šios Sutarties nuostatos lieka galioti.
- d. Licenciatas sutinka laikytis visų taikomų eksporto ir importo įstatymų bei taisyklių, tarp jų JAV embargo ir sankcijų taisyklių bei eksporto draudimų tam tikriems galutiniams vartotojams.
- e. Licenciatas įgalioja „International Business Machines Corporation“ ir jos filialus (bei jų teisių perėmėjus, rangovus ir IBM verslo partnerius) laikyti ir naudoti Licenciatą verslo sandorio informaciją, neatsižvelgiant į sandorių vietą, susijusią su IBM produktais ir paslaugomis, arba IBM ir Licenciatą verslo ryšiams palaikyti.
- f. Kiekviena šalis, prieš iškeldama ieškinį kitai šaliai dėl Sutarties įsipareigojimų nevykdymo, pirmiausia suteikia galimybę įvykdyti tuos įsipareigojimus. Šalys bando gera valia išspręsti iškilusius ginčus, nesutarimus ar ieškinius, susijusius su šia Sutartimi.
- g. Jei kitaip nerekalauja taikomi įstatymai, ir tai nepanaikina bei neapriboja sutarties įsipareigojimų, 1) nė viena šalis nesiims jokių teisinių veiksmų dėl jokio ieškinio, susijusio su šia Sutartimi, jei yra praėję dveji metai nuo įvykio pradžios; ir 2) pasibaigus šiam terminui bet koks ieškinytis ir su juo susijusios atitinkamos teisės netenka galios.

- h. Nei Licenciatas, nei IBM neatsako už savo įsipareigojimų nevykdymą dėl nuo šalių nepriklausančių priežasčių.
- i. Šioje Sutartyje nenumatomos jokios trečiųjų šalių teisės ar veiksmai, ir IBM nėra atsakinga už jokių trečiųjų šalių ieškinius, pateiktus Licenciatui, išskyrus atvejus, nurodytus 10.1 poskyryje (Dalykai, už kuriuos IBM atsakinga), kai IBM juridiskai atsako trečiajai šaliai už kūno sužalojimus (taip pat mirtį) ar turčinę žalą.
- j. Pasirašydamos šią Sutartį, nė viena šalis nesitiki įsipareigojimų vykdymo, nenumatyto Sutartyje, įskaitant, bet neapsiribojant, įsipareigojimus, susijusius su: 1) Programos veikimu, jei tai nenurodyta 8 skyriuje (Garantijos ir išimtys); 2) kitų šalių patirtimi ar rekomendacijomis; arba 3) bet kokiais Licencianto gautais rezultatais.
- k. Programoms reklamuoti, parduoti ar aptarnauti IBM yra pasirašiusi sutartis su tam tikromis organizacijomis (vadinamomis IBM verslo partneriais). IBM verslo partneriai yra nepriklausomos ir atskirai nuo IBM veikiančios institucijos. IBM nėra atsakinga už IBM verslo Partnerių veiksmus ar pareiškimus, ar jų įsipareigojimus Licenciatui.
- l. Licencijos ir intelektualinės nuosavybės nuostolių kompensacijos sąlygos, nurodytos kitose Licencianto sutartyse su IBM (tokiose, kaip IBM kliento sutartis) netaikomos šios Sutarties suteikiamos Programos licencijoms.

## 14. Geografinė veiklos sfera ir taikoma teisė

### 14.1 Taikoma teisė

Abi šalys sutinka, kad vykdydamos, aiškindamos ir įgyvendindamos visas Licencianto ir IBM teises, prievolės ir įsipareigojimus, kylančius ar susijusius su šios Sutarties turiniu, taikys valstybės, kurioje Licenciatas įsigijo Programos licenciją, įstatymus, nepaisant teisės principų prieštaravimų.

Jungtinių Tautų Konvencija dėl tarptautinių prekių pirkimo ir pardavimo sutarčių netaikoma.

### 14.2 Jurisdikcija

Visos teisės, prievolės ir įsipareigojimai yra pavaldūs Valstybės, kurioje Licenciatas įgijo Programos licenciją, teismams.

## 2 dalis – konkrečiai šaliai taikomos sąlygos

Šios sąlygos pakeičia arba modifikuoja toliau išvardytose šalyse suteiktų licencijų sąlygas, nurodytas 1 dalyje. Visos 1 dalyje nurodytos sąlygos, kurių šios pataisos nepakeičia, išlieka nepakeistos ir galiojančios. 2 dalis išdėstoma taip:

- 1 dalies 14 skyriaus (Taikoma teisė ir jurisdikcija) su šalimis susijusios pataisos ir
- Europos, Vidurinių Rytų ir Afrikos šalyse taikomos kitų Sutarties sąlygų pataisos.

### 1 dalies 14 skyriaus (Taikoma teisė ir jurisdikcija) su šalimis susijusios pataisos

#### 14.1 Taikoma teisė

*Skyriaus 14.1 Taikoma teisė 1 pastraipos frazė „valstybės, kurioje Licenciatas įsigijo Programos licenciją, įstatymus“ pakeičiama šiomis frazėmis (atitinkamai pagal šalį):*

#### EUROPA, VIDURINIAI RYTAI IR AFRIKA

**Lietuvoje:** Suomijos įstatymus.

#### 14.3 Arbitražas

*Ši pastraipa pridedama kaip naujas poskyris 14.3 Arbitražas, nes ji taikoma šalims, toliau išskirtoms šriftu. Šio 14.3 poskyrio nuostatos turi aukštesnę teisinę galią nei poskyrio 14.2 Jurisdikcija nuostatos iki ribos, numatytos taikomuose vietos teisės aktuose ir reglamentuose:*

### Lietuva:

Visi su šia Sutartimi susiję ginčai bus galutinai sprendžiami arbitražo teisme, kuris vyks Helsinkyje, Suomijoje, remiantis tuo metu galiojančiais Suomijos arbitražo teisės aktais. Kiekviena šalis paskirs vieną arbitrą. Arbitrai kartu paskirs pirmininką. Jei arbitrams nepavyks susitarti ir paskirti pirmininko, jį paskirs Helsinkio centriniai pramonės ir prekybos rūmai.

## EUROPOS, VIDURINIŲ RYTŲ IR AFRIKOS (EMEA) ŠALIMS TAIKOMOS PATAISOS

### EUROPOS SĄJUNGOS VALSTYBĖS NARĖS

#### 8. Garantija ir išimtyys

*Prie skyriaus 8. Garantija ir išimtyys pridedama ši informacija:*

Europos Sąjungoje (ES) vartotojai turi juridines teises, kurios apibrėžiamos pagal vietos teisės aktus, taikomus plataus vartojimo prekių pardavimui. Nuostatos, išvardytos šiame skyriuje 8. Garantija ir išimtyys, šioms teisėms neturi jokios įtakos. Ribotoji garantija taikoma visame pasaulyje.

#### 13. Bendrosios nuostatos

*13.e punktą pakeičia tokia informacija:*

(1) **Apibrėžtys**—šiam 13.e punktui taikomos tokios papildomos apibrėžtys:

- (a) **Verslo kontaktinė informacija**—su verslu susijusi kontaktinė informacija, kurią Licenciatas pateikia IBM: Licencianto darbuotojų ir subrangovų vardai, pareigos, darbo vietų adresai, telefono numeriai ir el. pašto adresai. Austrijoje, Italijoje ir Šveicarijoje verslo kontaktinė informacija apima ir informaciją apie Licenciatą ir jo subrangovus kaip juridinius asmenis (pavyzdžiui, duomenis apie Licencianto pajamas ir kitą su sandoriais susijusią informaciją).
- (b) **Verslo kontaktiniai asmenys**—Licencianto darbuotojai ir subrangovai, su kuriais susijusi verslo kontaktinė informacija.
- (c) **Duomenų apsaugos institucija**—institucija, įsteigta remiantis konkrečios šalies duomenų apsaugos ir elektroninių ryšių teisės aktais, arba ne ES šalies institucija, atsakinga už asmens duomenų apsaugą toje šalyje, arba (bet kurioje iš anksčiau paminėtų šalių) tinkama tvarka paskirtas tokias pareigas perimantis subjektas.
- (d) **Duomenų apsaugos ir elektroninių ryšių teisės aktai**—(i) taikomi galiojantys vietos teisės aktai ir nuostatos, pagal kurias vykdomi ES direktyvos 95/46/EB (dėl asmens duomenų apsaugos tvarkant asmens duomenis ir dėl laisvo tokių duomenų judėjimo) ir ES direktyvos 2002/58/EB (dėl asmens duomenų tvarkymo ir privatumo apsaugos elektroninių ryšių sektoriuje) reikalavimai, arba (ii) ne ES šalių teisės aktai ir (arba) nuostatos, susijusios su asmens duomenų apsauga ir elektroninių ryšių, kuriems naudojami asmens duomenys, reguliavimu, įskaitant (bet kurioje iš anksčiau paminėtų šalių) visus įstatymų nustatytus pakeitimus arba modifikacijas.
- (e) **IBM grupė**—„International Business Machines Corporation“, esanti JAV, Niujorko valstijos mieste Armonke, jos filialai ir atitinkami verslo partneriai bei subrangovai.

(2) Licenciatas suteikia IBM teise:

- (a) apdoroti ir naudoti verslo kontaktinę informaciją IBM grupėje teikiant Licenciatui palaikymo paslaugas ir siekiant toliau palaikyti verslo ryšius tarp Licencianto ir IBM grupės, įskaitant, be apribojimų, kreipimąsi į verslo kontaktinį asmenį (el. paštu ar kitu būdu) ir IBM grupės produktų ir paslaugų pardavimą („Nurodytas tikslas“), ir
- (b) atskleisti verslo kontaktinio asmens informaciją kitiems IBM grupės nariams tik siekiant Nurodyto tikslo.



- (3) IBM sutinka, kad visa verslo kontaktinė informacija bus apdorojama laikantis duomenų apsaugos ir elektroninių ryšių teisės aktų ir naudojama tik Nurodytu tikslu.
- (4) Iki duomenų apsaugos ir elektroninių ryšių teisės aktų nustatytos ribos Licenciatas patvirtina, kad (a) gavo (arba gaus) visus sutikimus iš verslo kontaktinių asmenų ir jiems pateikė (arba pateiks) visus pranešimus, būtinus norint leisti IBM grupei apdoroti ir naudoti verslo kontaktinę informaciją Nurodytu tikslu.
- (5) Licenciatas suteikia IBM teisę perduoti verslo kontaktinę informaciją už Europos ekonominės zonos ribų, jei toks perdavimas vykdomas pagal sutarties sąlygas, kurias patvirtino duomenų apsaugos institucija, arba jei tokį perdavimą leidžia duomenų apsaugos ir elektroninių ryšių teisės aktai.

# Międzynarodowa Umowa Licencyjna na Program

## Część 1 – Warunki ogólne

**POBIERANIE, INSTALOWANIE, KOPIOWANIE, OTWIERANIE, KLIKANIE PRZYCISKU "AKCEPTUJĘ" ORAZ UŻYWANIE PROGRAMU W JAKIKOLWIEK INNY SPOSÓB OZNACZA AKCEPTACJĘ WARUNKÓW NINIEJSZEJ UMOWY. ZA AKCEPTOWANIE PRZEZ UŻYTKOWNIKA NINIEJSZYCH WARUNKÓW W IMIENIU LICENCJOBIORCY OZNACZA, ŻE UŻYTKOWNIK GWARANTUJE POSIADANIE PEŁNYCH UPRAWNIEN DO PODPORZĄDKOWANIA LICENCJOBIORCY NINIEJSZYM WARUNKOM. JEŚLI UŻYTKOWNIK NIE WYRAŻA ZGODY NA NINIEJSZE WARUNKI,**

- **NIE BĘDZIE POBIERAĆ, INSTALOWAĆ, KOPIOWAĆ, OTWIERAĆ, KLIKAĆ PRZYCISKU "AKCEPTUJĘ" ANI UŻYWAĆ PROGRAMU W INNY SPOSÓB; ORAZ**
- **NATYCHMIAST ZWRÓCI NIEWYKORZYSTANE NOŚNIKI, DOKUMENTACJĘ ORAZ DOKUMENT PROOF OF ENTITLEMENT PODMIOTOWI, OD KTÓREGO NABYŁ PROGRAM, ABY UZYSKAĆ ZWROT ZAPŁACONEJ KWOTY. JEŚLI PROGRAM ZOSTAŁ POBRANY, NALEŻY ZNISZCZYĆ WSZELKIE JEGO KOPIE.**

### 1. Definicje

**"Autoryzowane Używanie"** określa poziom, do jakiego Licencjodawca ma upoważnienie do wykonywania lub uruchamiania Programu. Poziom ten może być mierzony liczbą użytkowników, liczbą jednostek MSU (millions of service units), liczbą procesorowych jednostek wartości (PVU – Processor Value Units) lub w inny sposób określony przez IBM.

**"IBM"** oznacza International Business Machines Corporation lub jedno z przedsiębiorstw podporządkowanych IBM Corp.

**"Informacje Licencyjne" ("LI")** oznaczają dokument zawierający informacje i inne warunki dodatkowe na temat Programu. Dokument "Informacje Licencyjne" dla Programu jest dostępny pod adresem [www.ibm.com/software/sla](http://www.ibm.com/software/sla). Informacje Licencyjne można też znaleźć w katalogu Programu, używając komend systemowych. Dokument ten może też być zawarty w Programie.

**"Program"** oznacza oryginał oraz pełne lub częściowe kopie: 1) instrukcji i danych w formie zapisu maszynowego, 2) komponentów, plików i modułów, 3) zapisów audiowizualnych (takich jak obrazy, tekst, nagrania lub ilustracje), 4) odnoszących się do Programu materiałów licencjonowanych (takich jak klucze i dokumentacja).

**"Proof of Entitlement" ("PoE")** oznacza dokument upoważniający Licencjodawcę do Autoryzowanego Używania. Dokument PoE stanowi również dowód uprawniający Licencjodawcę do korzystania z gwarancji, z cen obowiązujących na kolejne aktualizacje, jeśli takowe mają zastosowanie, oraz ewentualnych specjalnych ofert i promocji. Jeśli IBM nie udostępni Licencjodawcy dokumentu PoE, to IBM może zaakceptować jako PoE oryginalny opłacony rachunek lub inny dokument potwierdzający sprzedaż, otrzymany od podmiotu, od którego Licencjodawca nabył Program (od IBM lub reselera IBM), pod warunkiem że na dokumencie takim wyszczególniona jest nazwa nabytego Programu oraz nabyty poziom Autoryzowanego Używania.

**"Okres Gwarancyjny"** oznacza jeden rok począwszy od daty udzielenia licencji pierwotnemu Licencjodawcy.

### 2. Struktura Umowy

Niniejsza Umowa zawiera **Część 1 – Warunki ogólne, Część 2 – Warunki specyficzne dla poszczególnych krajów** (o ile mają zastosowanie), Informacje Licencyjne oraz dokument PoE, które tworzą kompletną umowę między Licencjodawcą i IBM dotyczącą używania Programu. Umowa ta zastępuje wszelkie wcześniejsze ustne lub pisemne ustalenia dokonane między Licencjodawcą i IBM w zakresie używania Programu. W przypadku jakiegokolwiek sprzeczności, warunki dokumentu "Informacje Licencyjne" mają znaczenie rozstrzygające nad warunkami obu Części.

### 3. Udzielenie licencji

Program ten jest własnością IBM lub dostawcy IBM. Program ten jest chroniony prawem autorskim i stanowi przedmiot umowy licencyjnej, a nie umowy sprzedaży.

IBM udziela Licencjodawcy niewyłącznej licencji na 1) używanie Programu do poziomu Autoryzowanego Używania określonego w dokumencie PoE, 2) wykonywanie i instalowanie kopii w celu świadczenia wsparcia do takiego Autoryzowanego Używania oraz 3) wykonywanie kopii zapasowych, pod warunkiem że

- a. Licencjodawca nabył Program legalnie i przestrzega warunków niniejszej Umowy;
- b. taka kopia zapasowa nie będzie używana dopóki Program, z którego została zrobiona, będzie działał;
- c. Licencjodawca powieli wszelkie uwagi dotyczące praw autorskich oraz wszelkie informacje o prawach własności na każdej pełnej lub częściowej kopii Programu;
- d. Licencjodawca zapewni, że jakakolwiek osoba korzystająca z Programu (lokalnie lub zdalnie) 1) dokonuje tego jedynie w imieniu Licencjodawcy oraz 2) przestrzega warunków niniejszej Umowy;
- e. Licencjodawca nie będzie 1) używać, kopiować, modyfikować ani dystrybuować Programu z wyjątkiem sytuacji wyraźnie wskazanych w niniejszej Umowie; 2) deasemblować, dekompilować Programu i dokonywać jego translacji w inny sposób ani odtwarzać kodu źródłowego, z wyjątkiem sytuacji dozwolonych przez bezwzględnie obowiązujące przepisy prawa, bez możliwości wyłączenia go w drodze umowy; 3) używać jakichkolwiek komponentów Programu, jego plików, modułów, treści audiowizualnych ani związanych z nim materiałów licencjonowanych niezależnie od Programu; 4) udzielać dalszych licencji na Program, wypożyczać go ani wydierżawiać; oraz
- f. jeśli Licencjodawca nabywa niniejszy Program jako Program Dodatkowy, to będzie go używać jedynie do obsługi Programu Głównego, zgodnie z ograniczeniami określonymi w licencji na Program Główny lub, jeśli Licencjodawca nabywa Program jako Program Główny, to będzie używać wszystkich Programów Dodatkowych jedynie w celu obsługi tego Programu, zgodnie z ograniczeniami określonymi w niniejszej Umowie. Na potrzeby punktu "f" przyjmuje się, że "Program Dodatkowy" oznacza Program stanowiący część innego Programu IBM ("Program Główny"), określany jako Program Dodatkowy w Informacjach Licencyjnych dla Programu Głównego. (W celu nabycia oddzielnej licencji na używanie Programu Dodatkowego bez ograniczeń, Licencjodawca powinien skontaktować się z podmiotem, od którego nabył Program Dodatkowy).

Niniejsza licencja ma zastosowanie do każdej kopii Programu wykonanej przez Licencjodawcę.

#### 3.1 Nowsze wersje Programu, aktualizacje i poprawki

##### 3.1.1 Nowsze wersje Programu

Jeśli Program zostanie zastąpiony Programem nowszej wersji, licencja na zastępowany Program wygasa ze skutkiem natychmiastowym.

##### 3.1.2 Aktualizacje i poprawki

Otrzymanie przez Licencjodawcę aktualizacji lub poprawek do Programu oznacza, że Licencjodawca akceptuje wszelkie dodatkowe lub odmiennie warunki mające zastosowanie do takich aktualizacji i poprawek, określone w Informacjach Licencyjnych dla Programu. W przypadku braku dodatkowych lub odmiennych warunków, aktualizacje i poprawki podlegają wyłącznie postanowieniom niniejszej Umowy. Jeśli Program zostanie zastąpiony aktualizacją, Licencjodawca wyraża zgodę na natychmiastowe zaprzestanie korzystania z zastępowanej wersji Programu.

#### 3.2 Licencje czasowe

Jeśli IBM licencjonuje Program na wyznaczony termin, to licencja udzielona Licencjodawcy kończy się wraz z końcem wyznaczonego terminu, chyba że Licencjodawca i IBM wyrażą zgodę na jej odnowienie.

#### 3.3 Czas trwania i rozwiązanie

Niniejsza Umowa obowiązuje do momentu jej rozwiązania.

IBM może rozwiązać licencję udzieloną Licencjodawcy, jeśli Licencjodawca nie będzie przestrzegać warunków niniejszej Umowy.

Jeśli licencja zostanie rozwiązana przez którąkolwiek ze Stron z dowolnej przyczyny, Licencjodawca wyraża zgodę na natychmiastowe zaprzestanie używania Programu oraz zniszczenie wszelkich posiadanych jego kopii. Wszelkie postanowienia niniejszej Umowy, które ze względu na swój charakter pozostają w mocy po jej rozwiązaniu, będą mieć zastosowanie do momentu ich wypełnienia i obowiązywać będą następców prawnych i cesjonariuszy obu Stron.

#### **4. Opłaty**

Opłaty są naliczane na podstawie nabytego poziomu Autoryzowanego Używania, określonego w dokumencie PoE. IBM nie zwraca wcześniej wniesionych lub należnych opłat ani nie uwzględnia ich w rozliczeniach, chyba że niniejsza Umowa stanowi inaczej.

Jeśli Licencjodawca zamierza podwyższyć poziom Autoryzowanego Używania, musi on powiadomić z wyprzedzeniem IBM lub autoryzowanego reselera IBM i wnieść odpowiednie opłaty.

#### **5. Podatki**

Jeśli odpowiednie władze nałożą na Program opłatę skarbową, podatek, opłatę egzekucyjną lub prowizję, z wyłączeniem opłat wynikających z dochodu netto IBM, Licencjodawca zgadza się uiścić taką opłatę w kwocie określonej na fakturze lub dostarczyć dokumentację stwierdzającą prawo do zwolnienia z tej opłaty. Od daty nabycia Programu Licencjodawca ponosi odpowiedzialność z tytułu należnego podatku pośredniego. Jeśli odpowiednie władze nałożą opłatę skarbową, podatek, opłatę egzekucyjną lub prowizję w związku z importem lub eksportem, transferem, uzyskaniem dostępu bądź korzystaniem z Programu poza krajem, w którym została udzielona licencja pierwotnemu Licencjodawcy, to Licencjodawca przyjmuje na siebie odpowiedzialność za wszelkie nałożone opłaty oraz za ich uiszczenie.

#### **6. Gwarancja zwrotu pieniędzy**

Jeśli z jakiegokolwiek powodu Licencjodawca nie jest zadowolony z Programu, a jest pierwotnym Licencjodawcą, to może rozwiązać licencję i uzyskać zwrot kwoty zapłaconej za Program pod warunkiem zwrotu Programu i dokumentu PoE do podmiotu, od którego je nabył, w ciągu 30 dni od daty wydania dokumentu PoE Licencjodawcy. Jeśli licencja jest licencją czasową podlegającą odnowieniu, to Licencjodawca może otrzymać zwrot kwoty pod warunkiem, że Program wraz z dokumentem PoE zostaną zwrócone w ciągu pierwszych 30 dni początkowego okresu obowiązywania. W przypadku pobrania Programu drogą elektroniczną Licencjodawca powinien skontaktować się z podmiotem, od którego nabył Program, aby dowiedzieć się, w jaki sposób uzyskać zwrot kwoty.

#### **7. Przeniesienie Programu**

Licencjodawca może przenieść Program oraz wszelkie przysługujące mu prawa i obowiązki licencyjne na osobę trzecią, o ile osoba taka zaakceptuje warunki niniejszej Umowy. Jeśli licencja zostanie rozwiązana przez którąkolwiek ze Stron z dowolnej przyczyny, to Licencjodawca nie ma prawa do przeniesienia Programu na osobę trzecią. Licencjodawca nie może przenosić części 1) Programu ani 2) praw do Autoryzowanego Używania Programu. Wraz z przeniesieniem Programu Licencjodawca jest zobowiązany do przeniesienia egzemplarza niniejszej Umowy w postaci wydruku, łącznie z Informacjami Licencyjnymi i dokumentem PoE. Licencja Licencjodawcy wygasa natychmiast po dokonaniu takiego przeniesienia.

#### **8. Gwarancje i zastrzeżenia**

##### **8.1 Ograniczona gwarancja**

IBM gwarantuje, że Program używany w określonym środowisku pracy będzie działać zgodnie ze specyfikacjami. Specyfikacje Programu oraz informacje dotyczące określonego środowiska pracy mogą znajdować się w dokumentacji załączonej do Programu (na przykład w pliku read-me) lub w formie innej informacji ogłoszonej przez IBM (na przykład w dokumencie announcement letter). Licencjodawca zgadza się, że taka dokumentacja i inne informacje dotyczące Programu mogą być dostarczane jedynie w języku angielskim, chyba że prawo krajowe stanowi inaczej, bez możliwości wyłączenia go w ramach umowy.

Gwarancja ma zastosowanie jedynie do niezmodyfikowanych fragmentów Programu. IBM nie gwarantuje nieprzerwanego ani wolnego od błędów działania Programu, ani też usunięcia wszystkich jego defektów. Licencjodawca ponosi odpowiedzialność za wyniki używania Programu.

W Okresie Gwarancyjnym IBM zapewnia Licencjobiorcy bezpłatny dostęp do baz danych IBM zawierających informacje na temat znanych defektów Programu, poprawek defektów, ograniczeń i możliwości obejścia tychże defektów. Więcej informacji na ten temat zawiera Podręcznik Wsparcia dla Oprogramowania IBM (IBM Software Support Handbook) pod adresem [www.ibm.com/software/support](http://www.ibm.com/software/support).

W przypadku, gdy w Okresie gwarancyjnym Program nie działa zgodnie z gwarancją, a problemu nie można rozwiązać, korzystając z informacji dostępnych w bazach danych IBM, Licencjobiorca ma prawo zwrócić Program i odnoszący się do niego dokument PoE podmiotowi, od którego nabył Program (IBM lub resellerowi IBM) i otrzymać zwrot zapłaconej kwoty. Licencja Licencjobiorcy wygasa natychmiast po dokonaniu zwrotu Programu. W przypadku pobrania Programu drogą elektroniczną Licencjobiorca powinien skontaktować się z podmiotem, od którego nabył Program, aby dowiedzieć się, w jaki sposób uzyskać zwrot kwoty.

## **8.2 Zastrzeżenia**

**NINIEJSZE GWARANCJE SĄ WYŁĄCZNYMI GWARANCJAMI UDZIELANYMI LICENCJOBIORCY ORAZ ZASTĘPUJĄ WSZELKIE INNE GWARANCJE LUB WARUNKI (W TYM TAKŻE RĘKOJMIĘ), WYRAŹNE LUB DOMNIEMANE, A W SZCZEGÓLNOŚCI DOMNIEMANE GWARANCJE LUB WARUNKI PRZYDATNOŚCI HANDLOWEJ, PRZYDATNOŚCI DO OKREŚLONEGO CELU, ZADOWALAJĄCEJ JAKOŚCI, PRAWA WŁASNOŚCI ORAZ GWARANCJE LUB WARUNKI NIENARUSZANIA PRAW OSÓB TRZECICH. USTAWODAWSTWA NIEKTÓRYCH KRAJÓW NIE DOPUSZCZAJĄ WYŁĄCZENIA WYRAŹNYCH LUB DOMNIEMANYCH GWARANCJI. W ZWIĄZKU Z TYM POWYŻSZE WYŁĄCZENIE MOŻE NIE MIEĆ ZASTOSOWANIA DO LICENCJOBIORCY. W TAKIM PRZYPADKU CZAS TRWANIA TAKICH GWARANCJI JEST OGRANICZONY DO OKRESU GWARANCYJNEGO. PO TYM OKRESIE NIE BĘDĄ OBOWIĄZYWAĆ ŻADNE GWARANCJE. USTAWODAWSTWA NIEKTÓRYCH KRAJÓW NIE DOPUSZCZAJĄ OGRANICZENIA CZASU TRWANIA GWARANCJI DOMNIEMANYCH, W ZWIĄZKU Z TYM POWYŻSZE OGRANICZENIE MOŻE NIE MIEĆ ZASTOSOWANIA DO LICENCJOBIORCY.**

**NA MOCY NINIEJSZYCH GWARANCJI LICENCJOBIORCY PRYZNAWANE SĄ SZCZEGÓLNE PRAWA. LICENCJOBIORCY MOGĄ RÓWNIEŻ PRZYSŁUGIWAĆ INNE PRAWA, W ZALEŻNOŚCI OD OBOWIĄZUJĄCEGO W DANYM KRAJU USTAWODAWSTWA.**

**GWARANCJE OKREŚLONE W PARAGRAFIE 8 (GWARANCJE I ZASTRZEŻENIA) SĄ UDZIELANE WYŁĄCZNIE PRZEZ IBM. ZASTRZEŻENIA OKREŚLONE W PARAGRAFIE 8.2 (ZASTRZEŻENIA) MAJĄ RÓWNIEŻ ZASTOSOWANIE DO DOSTAWCÓW IBM, KTÓRZY DOSTARCZAJĄ KOD OSÓB TRZECICH. DOSTAWCY CI DOSTARCZAJĄ TAKI KOD BEZ UDZIELANIA JAKICHKOLWIEK GWARANCJI I USTALANIA WARUNKÓW (W TYM TAKŻE RĘKOJMI). ZAPISY TEGO AKAPITU NIE UNIEWAŻNIAJĄ OBOWIĄZKÓW IBM WYNIKAJĄCYCH Z GWARANCJI OKREŚLONYCH NINIEJSZĄ UMOWĄ.**

## **9. Dane i bazy danych Licencjobiorcy**

W celu udzielenia Licencjobiorcy pomocy przy określeniu przyczyny problemu z Programem, IBM może zażądać, aby Licencjobiorca 1) zezwolił IBM na zdalny dostęp do swoich systemów lub 2) przesłał do IBM informacje na temat swoich systemów lub dane systemowe. Jednakże IBM nie jest zobowiązany do zapewnienia takiej pomocy, chyba że IBM i Licencjobiorca podpiszą oddzielną umowę, w ramach której IBM wyrazi zgodę na świadczenie na rzecz Licencjobiorcy tego rodzaju wsparcia w zakresie przekraczającym zobowiązania gwarancyjne IBM określone niniejszą Umową. W każdym przypadku IBM wykorzystuje informacje o błędach i problemach w celu udoskonalania swych produktów i usług oraz udzielania pomocy przy ich dostarczaniu w ramach powiązanych z nimi ofert wsparcia. Przy realizacji tych celów IBM może korzystać z pomocy oddziałów IBM i podwykonawców IBM (znajdujących się nie tylko w kraju lokalizacji Licencjobiorcy, ale i poza nim), a Licencjobiorca upoważnia IBM do takiego działania.

Licencjobiorca pozostaje odpowiedzialny za 1) wszelkie dane i zawartość bazy danych, które udostępni IBM, 2) wybór i implementację procedur oraz mechanizmów kontrolnych dotyczących dostępu do danych, ich bezpieczeństwa, szyfrowania, używania i transmisji (w tym wszelkich danych identyfikujących osobę fizyczną) oraz 3) tworzenie i odtwarzanie kopii zapasowych każdej bazy danych i wszelkich gromadzonych danych. Licencjobiorca nie będzie wysyłać ani udostępniać IBM jakichkolwiek informacji identyfikujących osobę fizyczną (w postaci danych lub jakiegokolwiek innej) i będzie odpowiedzialny za uregulowanie uzasadnionych

kosztów i innych obciążeń, które może ponieść IBM w związku z omyłkowym udostępnieniem takich informacji IBM bądź z utratą lub ujawnieniem takich informacji przez IBM, w tym informacji wynikających z roszczeń osób trzecich.

## **10. Ograniczenie odpowiedzialności**

Ograniczenia i zastrzeżenia paragrafu 10 (Ograniczenie odpowiedzialności) mają zastosowanie w pełnym zakresie i nie są zakazane przepisami obowiązującego prawa, bez możliwości wyłączenia takiego prawa w ramach umowy.

### **10.1 Sytuacje, w których IBM może ponosić odpowiedzialność**

W przypadku wystąpienia określonych okoliczności, za które odpowiedzialność ponosi IBM, a w wyniku których Licencjodawca doznał szkody, Licencjodawca będzie uprawniony do uzyskania od IBM odszkodowania. Bez względu na podstawę, na jakiej Licencjodawca jest uprawniony do domagania się odszkodowania od IBM (włączywszy w to naruszenie istotnych postanowień niniejszej Umowy, niedbalstwo, wprowadzenie w błąd lub inne roszczenia z tytułu odpowiedzialności kontraktowej lub deliktowej), całkowita odpowiedzialność IBM z tytułu wszelkich zsumowanych roszczeń wynikających z lub odnoszących się do każdego Programu bądź wynikających z niniejszej Umowy nie przekroczy: 1) kwoty odpowiedzialności za uszczerbek na zdrowiu (łącznie ze śmiercią) oraz za szkody wyrządzone w nieruchomościach lub majątku ruchomym, 2) w przypadku innych rzeczywiście poniesionych szkód – wysokości opłat (jeśli Program podlega opłatom czasowym – wysokości opłat za dwanaście miesięcy) uiszczanych przez Licencjodawcę za Program będący przedmiotem roszczenia.

Ograniczenie to ma również zastosowanie do programistów i dostawców Programów IBM. Wskazany powyżej zakres odpowiedzialności stanowi całość odpowiedzialności ponoszonej łącznie przez IBM oraz programistów i dostawców Programów IBM.

### **10.2 Sytuacje, w których IBM nie ponosi odpowiedzialności**

**W ŻADNYCH OKOLICZNOŚCIACH IBM, ANI TEŻ PROGRAMIŚCI CZY DOSTAWCY PROGRAMÓW IBM, NIE PONOSZĄ ODPOWIEDZIALNOŚCI ZA NASTĘPUJĄCE SZKODY, NAWET JEŚLI ZOSTALI POINFORMOWANI O MOŻLIWOŚCI ICH WYSTĄPIENIA:**

- a. **UTRATĘ LUB USZKODZENIE DANYCH;**
- b. **SZKODY SZCZEGÓLNE, UBOCZNE, WYNIKAJĄCE Z NARUSZENIA DÓBR OSOBISTYCH, POŚREDNIE ORAZ SZKODY, KTÓRYCH NIE MOŻNA BYŁO PRZEWIDZIEĆ PRZY ZAWIERANIU UMOWY, ANI TEŻ**
- c. **UTRACONE ZYSKI, KONTAKTY HANDLOWE, PRZYCHODY, REPUTACJĘ (GOODWILL) ANI PRZEWIDYWANE OSZCZĘDNOŚCI.**

## **11. Weryfikacja zgodności**

Na potrzeby niniejszego paragrafu 11 (Weryfikacja zgodności), przyjmuje się, że termin "Warunki IPLA dla Programu" oznacza 1) niniejszą Umowę oraz odpowiednie poprawki i dokumenty transakcyjne dostarczone przez IBM, a także 2) strategię IBM dotyczącą oprogramowania, dostępną w serwisie WWW IBM Software Policy ([www.ibm.com/software/policies](http://www.ibm.com/software/policies)), a w szczególności strategię dotyczące tworzenia kopii zapasowych, określania cen przy ograniczonej mocy obliczeniowej oraz migracji.

Prawa i obowiązki przedstawione w niniejszym paragrafie 11 obowiązują w okresie licencjonowania Programu na rzecz Licencjodawcy oraz dwa lata po tym okresie.

### **11.1 Proces weryfikacji**

Licencjodawca zgadza się tworzyć, przechowywać oraz dostarczać IBM i rewidentom IBM dokładną pisemną dokumentację, dane wyjściowe narzędzi systemowych oraz inne informacje systemowe wystarczające do zapewnienia możliwości weryfikacji, że korzystanie przez Licencjodawcę ze wszystkich Programów odbywa się zgodnie z Warunkami IPLA dla Programu, a w szczególności ze wszystkimi obowiązującymi warunkami IBM w zakresie licencjonowania i cen. Licencjodawca jest odpowiedzialny za 1) zapewnienie, że nie został przekroczony poziom Autoryzowanego Używania oraz 2) przestrzeganie zgodności z Warunkami IPLA dla Programu.

IBM może zweryfikować, informując o takim zamiarze z odpowiednim wyprzedzeniem, czy Licencjodawca przestrzega Warunków IPLA dla Programu we wszystkich ośrodkach i środowiskach, gdzie Licencjodawca używa Programów do jakiegokolwiek celów zgodnie z Warunkami IPLA dla Programu. Weryfikacja taka może być przeprowadzana na terenie Licencjodawcy, w normalnych godzinach pracy i będzie realizowana w sposób w minimalnym stopniu zakłócający tę pracę. IBM może przy takiej weryfikacji skorzystać z usług niezależnego rewidenta, pod warunkiem, że została z nim podpisana umowa o zachowaniu poufności.

## 11.2 Postanowienia

IBM poinformuje Licencjodawcę na piśmie, jeśli weryfikacja wykaże, że Licencjodawca przekroczył poziom Autoryzowanego Używania lub w inny sposób naruszył Warunki IPLA dla Programu. Licencjodawca wyraża zgodę na natychmiastowe i bezpośrednie uiszczenie na rzecz IBM opłat wyszczególnionych przez IBM na fakturze z tytułu: 1) używania niezgodnego z Warunkami, 2) świadczenia wsparcia w czasie takiego używania lub przez okres dwóch lat, w zależności od tego, który z tych okresów był krótszy oraz 3) dodatkowych opłat i innych zobowiązań określonych w trakcie przeprowadzonej weryfikacji.

## 12. Uwagi osób trzecich

Program może zawierać kod osób trzecich, który będzie licencjonowany na rzecz Licencjodawcy w ramach niniejszej Umowy przez IBM, a nie przez osobę trzecią. Ewentualne Uwagi na temat kodu osób trzecich (Uwagi Osób Trzecich) są dołączane jedynie w celu powiadomienia Licencjodawcy. Uwagi te można znaleźć w pliku NOTICES dołączonym do Programu. Informacje na temat uzyskania kodu źródłowego dla konkretnego kodu osób trzecich można znaleźć w Uwagach Osób Trzecich. Jeśli w Uwagach Osób Trzecich IBM określi kod osób trzecich jako "Modyfikowany Kod Osób Trzecich", to IBM upoważnia Licencjodawcę do 1) modyfikacji Modyfikowanego Kodu Osób Trzecich oraz 2) odtwarzania kodu źródłowego modułów Programu, które są bezpośrednio wykorzystywane przez Modyfikowany Kod Osób Trzecich pod warunkiem, że czynność ta zostanie podjęta jedynie w celu debugowania modyfikacji Licencjodawcy na potrzeby takiego kodu osób trzecich. Ewentualne zobowiązania IBM w zakresie usług i wsparcia dotyczą jedynie Programu niemodyfikowanego.

## 13. Postanowienia ogólne

- a. Postanowienia zawarte w niniejszej Umowie pozostają bez wpływu na uprawnienia przysługujące konsumentom na podstawie bezwzględnie obowiązujących przepisów prawa.
- b. W przypadku Programów, które IBM dostarcza Licencjodawcy w formie materialnej, IBM wypełnia swe obowiązki w zakresie wysyłki i dostawy z chwilą dostarczenia takich Programów do wyznaczonego przez siebie przewoźnika, chyba że Licencjodawca uzgodnił z IBM na piśmie inny tryb postępowania.
- c. W przypadku nieważności lub niewykonalności któregokolwiek z postanowień niniejszej Umowy, pozostałe postanowienia niniejszej Umowy zachowują pełną moc prawną i skuteczność.
- d. Licencjodawca wyraża zgodę na przestrzeganie wszelkich obowiązujących praw i przepisów w zakresie eksportu i importu, w tym przepisów Stanów Zjednoczonych dotyczących embarga i sankcji oraz zakazu eksportu do lub na rzecz określonych użytkowników końcowych.
- e. Licencjodawca upoważnia International Business Machines Corporation oraz przedsiębiorstwa podporządkowane IBM Corp. (ich następców prawnych i cesjonariuszy, wykonawców i Partnerów Handlowych IBM) do przechowywania i używania biznesowych informacji kontaktowych Licencjodawcy, bez względu na miejsce prowadzonej działalności, w związku z produktami i usługami IBM lub w celu utrzymania kontaktów handlowych między Stronami.
- f. Każda ze Stron stworzy drugiej Stronie rozsądne możliwości wypełnienia zobowiązań, zanim zarzuci drugiej Stronie ich niewypełnienie w ramach niniejszej Umowy. Strony podejmą w dobrej wierze próbę rozstrzygnięcia sporów, nieporozumień lub roszczeń powstałych między nimi w związku z Umową.
- g. O ile obowiązujące prawo nie stanowi inaczej bez możliwości wyłączenia takiego prawa w ramach umowy: 1) żadna ze Stron nie podejmie działań prawnych, w jakiegokolwiek formie, związanych z roszczeniem wynikającym z niniejszej Umowy lub pozostającym z nią w związku po okresie dwóch lat od czasu pojawienia się przyczyny podjęcia takich działań; oraz 2) po wygaśnięciu takiego okresu, wszelkie roszczenia przedawniają się i prawa z nimi związane wygasają.
- h. Ani Licencjodawca, ani IBM nie odpowiadają za niedopełnienie jakichkolwiek obowiązków, jeśli przyczyną takiego niedopełnienia leżały poza ich kontrolą.
- i. Niniejsza Umowa nie daje osobom trzecim jakichkolwiek praw ani też podstawy do roszczeń, a IBM nie ponosi odpowiedzialności za jakiegokolwiek roszczenie osób trzecich wobec Licencjodawcy, z wyjątkiem zakresu przewidzianego w paragrafie 10.1 (Sytuacje, w których IBM może ponosić odpowiedzialność)



powyżej, w części dotyczącej uszczerbku na zdrowiu (łącznie ze śmiercią) lub szkód wyrządzonych w nieruchomościach lub w majątku ruchomym, za które IBM ponosi odpowiedzialność prawną wobec osób trzecich.

- j. Przystępując do niniejszej Umowy żadna ze Stron nie korzysta z żadnych ustaleń, które nie zostały określone w Umowie, a w szczególności z żadnych ustaleń w zakresie: 1) wydajności lub działania Programu odbiegających od wyraźnie gwarantowanych w paragrafie 8 (Gwarancje i zastrzeżenia) powyżej; 2) doświadczeń czy rekomendacji osób trzecich lub 3) wyników lub oszczędności, jakie może osiągnąć Licencjodawca.
- k. IBM podpisał umowy z konkretnymi organizacjami (zwanymi "Partnerami Handlowymi IBM") w celu promocji i sprzedaży określonych Programów oraz udzielania dla nich wsparcia. Partnerzy Handlowi IBM działają oddzielnie i niezależnie od IBM. IBM nie ponosi odpowiedzialności za działania lub oświadczenia Partnerów Handlowych IBM ani za ich zobowiązania wobec Licencjodawcy.
- l. Warunki licencji oraz warunki dotyczące zabezpieczenia i ochrony własności intelektualnej określone w innych umowach Licencjodawcy z IBM (na przykład w Umowie IBM z Klientem) nie mają zastosowania do licencji na Program udzielonych na mocy niniejszej Umowy.

## **14. Zasięg geograficzny i obowiązujące ustawodawstwo**

### **14.1 Obowiązujące ustawodawstwo**

Obie Strony przyjmują jako obowiązujące prawo kraju, w którym licencja na Program została nabyta, oraz wyrażają zgodę na stosowanie takiego prawa przy interpretowaniu oraz egzekwowaniu wszelkich praw, obowiązków i zobowiązań Stron, wynikających z niniejszej Umowy lub mających w jakikolwiek sposób z nią związek, bez odwoływania się do zasad kolizji przepisów prawnych.

Konwencja ONZ dotycząca umów o Międzynarodowej Sprzedaży Towarów (United Nations Convention on Contracts for the International Sale of Goods) nie ma zastosowania.

### **14.2 Jurysdykcja**

Wszelkie prawa, obowiązki i zobowiązania podlegają właściwym sądom kraju nabycia licencji na Program przez Licencjodawcę.

## **Część 2 – Warunki specyficzne dla poszczególnych krajów**

W przypadku licencji udzielanych na terenie Polski, poniższe warunki zastępują lub modyfikują warunki określone w Części 1. Wszystkie warunki Części 1, których nie dotyczy niniejsza poprawka, nie ulegają zmianom i pozostają w mocy. W skład Części 2 wchodzi:

- Zmiany krajowe do Części 1, paragraf 14 (Zasięg geograficzny i obowiązujące ustawodawstwo) oraz
- Zmiany krajowe do innych warunków Umowy dotyczące Europy, Bliskiego Wschodu i Afryki.

### **Zmiany krajowe do Części 1, paragraf 14 (Zasięg geograficzny i obowiązujące ustawodawstwo)**

#### **14.1 Obowiązujące ustawodawstwo**

*Fraza "prawo kraju, w którym licencja na Program została nabyta" w pierwszym akapicie paragrafu 14.1 Obowiązujące ustawodawstwo zostaje w przypadku Polski zastąpiona następującym tekstem:*

prawo Austrii;

#### **14.3 Arbitraż**

*Następujący akapit mający zastosowanie w Polsce zostaje dodany jako nowy do paragrafu 14.3 (Arbitraż). Postanowienia paragrafu 14.3 mają znaczenie rozstrzygające nad postanowieniami paragrafu 14.2 (Jurysdykcja) w zakresie, w jakim zezwala na to obowiązujące ustawodawstwo i zasady proceduralne:*

Wszelkie kwestie sporne wynikające z niniejszej Umowy lub związane z jej naruszeniem, wypowiedzeniem lub nieważnością będą rozstrzygane w sposób ostateczny zgodnie z Zasadami Postępowania Arbitrażowego i Ugody Międzynarodowego Centrum Arbitrażu przy Federalnej Izbie Gospodarczej (Rules of Arbitration and Conciliation of the International Arbitral Center of the Federal Economic Chamber) w Wiedniu (Vienna Rules), przez trzech arbitrów, powołanych zgodnie ze wspomnianymi zasadami. Arbitraż będzie miał miejsce w



Wiedniu, w Austrii. Językiem obowiązującym podczas postępowania będzie język angielski. Orzeczenia arbitrów będą ostateczne i wiążące dla obu Stron. Oznacza to, że zgodnie z artykułem 598(2) Austriackiego Kodeksu Postępowania Cywilnego (Austrian Code of Civil Procedure), Strony rezygnują ze stosowania artykułu 595(1) punkt 7 tego Kodeksu. Tym niemniej powyższe warunki w żadnym stopniu nie ograniczają prawa IBM do wszczęcia postępowania przed dowolnym właściwym sądem w kraju instalacji.

## 8. Gwarancje i zastrzeżenia

*Następujący tekst został dodany do paragrafu 8 (Gwarancje i zastrzeżenia):*

W krajach Unii Europejskiej ("UE") klientom przysługują prawa wynikające z obowiązującego ustawodawstwa krajowego, któremu podlega sprzedaż artykułów konsumpcyjnych. Postanowienia zawarte w paragrafie 8, Gwarancje i zastrzeżenia pozostają bez wpływu na te prawa. Ograniczona gwarancja ma zasięg ogólnosiwiatowy.

## 13. Postanowienia ogólne

*Następujący tekst zastępuje punkt 13.e:*

(1) **Definicje**—do punktu 13.e mają zastosowanie następujące definicje dodatkowe:

- (a) **Biznesowe Informacje Kontaktowe**—oznaczają informacje mające związek z działalnością gospodarczą, ujawnione IBM przez Licencjodawcę, w tym imiona i nazwiska, stanowiska, adresy służbowe, numery telefonów oraz adresy e-mail pracowników i wykonawców Licencjodawcy. W przypadku Austrii, Włoch i Szwajcarii Biznesowe Informacje Kontaktowe obejmują również informacje o Licencjodawcy oraz jego wykonawcach posiadających osobowość prawną (na przykład dane na temat przychodów Licencjodawcy i inne informacje o transakcjach).
- (b) **Biznesowy Personel Kontaktowy** oznacza pracowników i wykonawców Licencjodawcy, do których odnoszą się Biznesowe Informacje Kontaktowe.
- (c) **Urząd Ochrony Danych** oznacza organ powołany zgodnie z Ustawodawstwem o ochronie danych i łączności elektronicznej w określonym kraju lub w przypadku krajów spoza Unii Europejskiej, organ odpowiedzialny za nadzór nad ochroną danych osobowych w takim kraju bądź (w obu powyższych przypadkach) każdy następca prawny takiego organu powołany w odpowiedni sposób.
- (d) **Ustawodawstwo o ochronie danych i łączności elektronicznej** oznacza (i) obowiązujące prawo i przepisy krajowe wdrażające wymagania dyrektywy Unii Europejskiej 95/46/WE (w sprawie ochrony osób fizycznych w zakresie przetwarzania danych osobowych i swobodnego przepływu tych danych) oraz dyrektywy 2002/58/WE (dotyczącej przetwarzania danych osobowych i ochrony prywatności w sektorze łączności elektronicznej); lub (ii) w przypadku krajów spoza Unii Europejskiej, prawa i przepisy obowiązujące w takich krajach i odnoszące się do ochrony danych osobowych i przepisów o łączności elektronicznej z wykorzystaniem danych osobowych, w tym (w obu powyższych przypadkach) ich ustawowe nowe wersje i modyfikacje.
- (e) **Grupa IBM** oznacza International Business Machines Corporation z siedzibą w Armonk, Nowy Jork, USA, przedsiębiorstwa podporządkowane International Business Machines Corporation oraz ich odpowiednich Partnerów Handlowych i podwykonawców.

(2) Licencjodawca upoważnia IBM do:

- (a) przetwarzania i używania Biznesowych Informacji Kontaktowych w ramach Grupy IBM w celu obsługi Licencjodawcy, w tym w celu świadczenia usług wsparcia oraz rozszerzania relacji handlowych między Licencjodawcą i Grupą IBM, a w szczególności nawiązywania kontaktów z Biznesowym Personalem Kontaktowym (za pośrednictwem poczty e-mail lub w inny sposób) oraz sprzedaży produktów i usług Grupy IBM (zwanym dalej "Określonym Celem"); oraz
- (b) ujawniania Biznesowych Informacji Kontaktowych innym członkom Grupy IBM jedynie na potrzeby realizacji Określonego Celem.

- (3) IBM wyraża zgodę na przetwarzanie Biznesowych Informacji Kontaktowych zgodnie z Ustawodawstwem o ochronie danych i łączności elektronicznej.
- (4) Licencjobiorca oświadcza, że w zakresie wymaganym Ustawodawstwem o ochronie danych i łączności elektronicznej (a) uzyskał (lub uzyska) zgodę Biznesowego Personelu Kontaktowego na przetwarzanie i używanie przez Grupę IBM Biznesowych Informacji Kontaktowych do realizacji Określonego Celu, oraz że przygotował (lub przygotowuje) powiadomienie dla Biznesowego Personelu Kontaktowego w tej sprawie.
- (5) Licencjobiorca upoważnia IBM do przesyłania Biznesowych Informacji Kontaktowych poza Europejską Strefę Ekonomiczną pod warunkiem, że będzie to realizowane na warunkach zatwierdzonych przez Urząd Ochrony Danych lub zgodnie z Ustawodawstwem o ochronie danych i łączności elektronicznej.

# Contrato Internacional de Licença de Programa

## Parte 1 – Termos Gerais

AO FAZER O DOWNLOAD, INSTALAR, COPIAR, ACESSAR, CLICAR EM UM BOTÃO "ACEITAR" OU UTILIZAR O PROGRAMA DE QUALQUER OUTRA FORMA, O LICENCIADO CONCORDA COM OS TERMOS DESTES CONTRATO. SE UM TERCEIRO ACEITAR ESTES TERMOS EM NOME DO LICENCIADO, O TERCEIRO DECLARA E GARANTE QUE POSSUI TOTAL AUTORIDADE PARA VINCULAR O LICENCIADO A ESTES TERMOS. CASO O CLIENTE NÃO CONCORDE COM ESTES TERMOS,

- NÃO DEVERÁ FAZER DOWNLOAD, INSTALAR, COPIAR, ACESSAR, CLICAR EM UM BOTÃO "ACEITAR" NEM UTILIZAR O PROGRAMA; E
- DEVERÁ RETORNAR IMEDIATAMENTE A MÍDIA NÃO-UTILIZADA, A DOCUMENTAÇÃO E O CERTIFICADO DE TITULARIDADE PARA A PARTE DA QUAL FORAM OBTIDOS PARA TER UM REEMBOLSO DO VALOR PAGO. SE O PROGRAMA FOI TRANSFERIDO POR DOWNLOAD, TODAS AS CÓPIAS DO PROGRAMA DEVERÃO SER DESTRUÍDAS.

### 1. Definições

**"Uso Autorizado"** – o nível especificado no qual o Licenciado está autorizado a executar ou operar o Programa. Tal nível pode ser medido pelo número de usuários, por milhões de unidades de serviço ("MSUs"), por Unidades de Valor do Processador ("PVUs") ou por outro nível de uso especificado pela IBM.

**"IBM"** – International Business Machines Corporation ou uma de suas subsidiárias.

**"Informações sobre Licença" ("LI")** – um documento que fornece informações e quaisquer termos adicionais específicos para um Programa. A LI do Programa está disponível no endereço [www.ibm.com/software/sla](http://www.ibm.com/software/sla). A LI também pode ser encontrada no diretório do Programa, através da utilização de um comando do sistema ou como um folheto incluído com o Programa.

**"Programa"** – os itens a seguir, incluindo o original e todas as cópias integrais ou parciais: 1) instruções e dados legíveis por máquinas; 2) componentes, arquivos e módulos; 3) conteúdo audiovisual (tais como imagens, texto, registros ou ilustrações) e 4) materiais licenciados relacionados (tais como chaves e documentação).

**"Certificado de Titularidade" ("PoE")** – evidência do Uso Autorizado do Licenciado. A PoE também é a evidência da elegibilidade do Licenciado para garantia, futuras atualizações de preços, se houver, e possíveis oportunidades especiais ou promocionais. Se a IBM não fornecer uma PoE ao Licenciado, então a IBM pode aceitar como PoE o recibo de venda original pago ou outro registro de venda da parte (ou a IBM ou seu revendedor) da qual o Licenciado obteve o Programa, contanto que este especifique o nome do Programa e o Uso Autorizado obtido.

**"Período de Garantia"** – um ano, a partir da data em que o Licenciado original tenha recebido a licença.

### 2. Estrutura do Contrato

Este Contrato inclui a **Parte 1 – Termos Gerais**, a **Parte 2 – Termos Exclusivos do País** (se houver algum), a LI e a PoE, e representa o acordo completo entre o Licenciado e a IBM relativo ao uso do Programa. Ele substitui qualquer comunicação prévia verbal ou escrita entre o Licenciado e a IBM relativa ao uso do Programa pelo Licenciado. Os termos da Parte 2 podem substituir ou modificar os termos da Parte 1. Em caso de conflito, a LI prevalece sobre ambas as Partes.

### 3. Concessão de Licença

O Programa é de propriedade da IBM ou de um fornecedor da IBM, é sujeito a direito autoral e é licenciado, não vendido.

A IBM concede ao Licenciado uma licença não-exclusiva para 1) o uso do Programa até o limite do Uso Autorizado especificado na PoE, 2) fazer e instalar cópias de acordo com o nível de Uso Autorizado e 3) fazer uma cópia de "backup", tudo isso desde que

- a. o Licenciado tenha obtido o Programa legalmente e cumpra com os termos deste Contrato;
- b. a cópia de "backup" não seja executada a menos que o Programa do qual foi feito "backup" não possa ser executado;
- c. o Licenciado reproduza todos os avisos de direitos autorais e outras indicações de propriedade em cada cópia total ou parcial do Programa;
- d. o Licenciado garanta que qualquer pessoa que use o Programa (via acesso local ou remoto) 1) o faça apenas em nome do Licenciado e 2) cumpra com todos os termos deste Contrato;
- e. o Licenciado não 1) utilize, copie, modifique ou distribua o Programa, exceto conforme expressamente permitido neste Contrato; 2) reverta a montagem, reverta a compilação, ou de qualquer outra forma, traduza o Programa, exceto conforme expressamente permitido pela lei, sem a possibilidade de renúncia contratual; 3) use nenhum dos componentes, arquivos, módulos, conteúdo audiovisual ou materiais licenciados correlatos do Programa separadamente de tal Programa; ou 4) sublicencie, alugue ou arrende o Programa; e
- f. caso o Licenciado obtiver este Programa como um Programa de Suporte, que o Licenciado use este Programa apenas para suportar o Programa Principal e sujeito a quaisquer limitações na licença para o Programa Principal, ou, caso o Licenciado obtiver este Programa como um Programa Principal, que o Licenciado use todos os Programas de Suporte apenas para suportar este Programa e sujeito a quaisquer limitações neste Contrato. Para os propósitos deste Item "f," um "Programa de Suporte" é um Programa que faz parte de outro Programa IBM ("Programa Principal") e identificado como um Programa de Suporte na LI do Programa Principal. (Para obter uma licença separada para um Programa de Suporte sem estas restrições, o Licenciado deve entrar em contato com a parte da qual obteve o Programa de Suporte).

Esta licença é aplicável a cada cópia do Programa que o Licenciado fizer.

### **3.1 Trocas ("Trade-ups"), Atualizações, Correções e Patches**

#### **3.1.1 Trade-ups**

Se o Programa for substituído por um Programa trade-up, a licença do Programa substituído será imediatamente rescindida.

#### **3.1.2 Atualizações, Correções e Patches**

Quando o Licenciado recebe uma atualização, uma correção ou um patch para um Programa, aceita quaisquer termos adicionais ou diferentes que são aplicáveis a tal atualização, correção ou patch que são especificados em sua LI. Se nenhum termo adicional ou diferente for fornecido, então a atualização, a correção ou o patch estarão exclusivamente sujeitos a este Contrato. Se o Programa for substituído por uma atualização, o Licenciado concorda em interromper imediatamente o uso do Programa substituído.

#### **3.2 Licença de Prazo Fixo**

Se a IBM licenciar o Programa por um prazo fixo, a licença do Licenciado será rescindida ao final do prazo fixo, a menos que o Licenciado e a IBM concordem em renová-la.

#### **3.3 Termo e Rescisão**

Este Contrato permanece em vigor até a sua rescisão.

A IBM pode rescindir a licença do Licenciado caso este falhe em cumprir com os termos deste Contrato.

Se a licença for rescindida por qualquer motivo por qualquer uma das partes, o Licenciado concorda em interromper imediatamente o uso e destruir todas as cópias do Programa. Quaisquer termos deste Contrato que por sua natureza se estendam além do término deste Contrato permanecem em vigor até que sejam cumpridos e aplicam-se aos respectivos sucessores e cessionários de ambas as partes.

## 4. Encargos

Os encargos são baseados no Uso Autorizado obtido, que é especificado na PoE. A IBM não concede créditos ou reembolsos para encargos já devidos ou pagos, salvo se especificado de outra forma neste Contrato.

Se o Licenciado desejar aumentar seu Uso Autorizado, deverá notificar a IBM ou um revendedor IBM autorizado com antecedência e pagar quaisquer encargos aplicáveis.

## 5. Tributos

Se qualquer autoridade impuser ao Programa um tributo, imposto, taxa ou contribuição, excluindo os baseados na renda líquida da IBM, o Licenciado concorda em pagar tais valores, conforme especificado em uma fatura ou fornecer documentos de isenção. O Licenciado é responsável por quaisquer tributos sobre a propriedade pessoal de cada Programa a partir da data que o obtiver. Se qualquer autoridade impuser um tributo, imposto, taxa ou contribuição aduaneira para a importação, exportação, transferência, acesso ou uso do Programa fora do país no qual o Licenciado original recebeu a concessão da licença, o Licenciado concorda que é responsável e pagará qualquer valor imposto.

## 6. Garantia de Reembolso

Se o Licenciado não estiver satisfeito com o Programa por qualquer motivo e for o Licenciado original, este pode rescindir a licença e obter um reembolso do valor pago pelo Programa, desde que devolva o Programa e a PoE para a parte da qual os obteve dentro de 30 dias da data em que a PoE foi emitida. Se a licença for para um prazo fixo que está sujeito a renovação, então o Licenciado poderá obter um reembolso apenas se o Programa e sua PoE forem devolvidos dentro dos primeiros 30 dias do prazo inicial. Se o Licenciado tiver transferido o Programa por download, deverá entrar em contato com a parte da qual o adquiriu para obter instruções sobre como obter o reembolso.

## 7. Transferência do Programa

O Licenciado pode transferir o Programa e todos os seus direitos de licença e obrigações para outra parte apenas se esta parte concordar com os termos deste Contrato. Se a licença for rescindida por qualquer motivo por qualquer uma das partes, o Licenciado está proibido de transferir o Programa para outra parte. O Licenciado não pode transferir uma parte 1) do Programa ou 2) o Uso Autorizado do Programa. Quando o Licenciado transferir o Programa, também deverá transferir uma cópia física deste Contrato, incluindo a LI e a PoE. Imediatamente após a transferência, a licença do Licenciado é rescindida.

## 8. Garantia e Exclusões

### 8.1 Garantia Limitada

Durante um ano após o licenciamento ao Licenciado, a IBM garante que o Programa, quando utilizado em seu ambiente operacional especificado, estará de acordo com suas especificações. As especificações do Programa e as informações do ambiente operacional especificado podem ser encontradas na documentação que acompanha o Programa (tal como um arquivo "leia-me") ou outras informações publicadas pela IBM (tal como uma carta de anúncio). O Licenciado concorda que tal documentação e outro conteúdo do Programa pode ser fornecido apenas no idioma inglês, a menos que exigido de outra forma pela lei local, sem a possibilidade de renúncia ou limitação contratual.

A garantia é aplicável somente à parte não-modificada do Programa. A IBM não garante a operação ininterrupta nem livre de erros do Programa, e também não garante que poderá corrigir todos os defeitos do Programa. O Licenciado é responsável pelos resultados obtidos do uso do Programa.

Durante o Período de Garantia, a IBM fornece ao Licenciado acesso aos bancos de dados IBM contendo informações sobre defeitos conhecidos do Programa, correções de defeitos, restrições e medidas de contorno sem encargos adicionais. Consulte o documento IBM Software Support Handbook para obter informações adicionais no endereço [www.ibm.com/software/support](http://www.ibm.com/software/support).

Se o Programa não funcionar conforme garantido durante o primeiro ano após a aquisição da respectiva licença e a IBM não for capaz de fazê-lo funcionar, o Licenciado poderá devolver o Programa e sua PoE para a parte (seja a IBM ou seu revendedor) da qual os obteve e esta lhe reembolsará o valor pago pelo mesmo. Após retornar o Programa, a licença do Licenciado é rescindida. Se o Licenciado tiver transferido o Programa por download, deverá entrar em contato com a parte da qual o adquiriu para obter instruções sobre como obter o reembolso.

## **8.2 Exclusões**

**ESTAS GARANTIAS SÃO AS ÚNICAS GARANTIAS EXCLUSIVAS DO LICENCIADO E SUBSTITUEM TODAS AS DEMAIS GARANTIAS OU CONDIÇÕES, EXPRESSAS OU IMPLÍCITAS, INCLUINDO, MAS NÃO SE LIMITANDO, ÀS GARANTIAS IMPLÍCITAS OU CONDIÇÕES DE USO, QUALIDADE SATISFATÓRIA, ADEQUAÇÃO A UM FIM ESPECÍFICO, TÍTULO E QUALQUER GARANTIA OU CONDIÇÃO DE NÃO-VIOLAÇÃO. ALGUNS ESTADOS OU JURISDIÇÕES NÃO PERMITEM A EXCLUSÃO DE GARANTIAS EXPRESSAS OU IMPLÍCITAS, PORTANTO, A EXCLUSÃO ACIMA PODE NÃO SE APLICAR AO LICENCIADO. NESTE CASO, TAIS GARANTIAS SÃO LIMITADAS À DURAÇÃO DO PERÍODO DE GARANTIA. NENHUMA GARANTIA É APLICÁVEL APÓS TAL PERÍODO. ALGUNS ESTADOS OU JURISDIÇÕES NÃO PERMITEM LIMITAÇÕES SOBRE QUANTO DURA UMA GARANTIA IMPLÍCITA, PORTANTO A LIMITAÇÃO ACIMA PODE NÃO SE APLICAR AO LICENCIADO.**

**ESTAS GARANTIAS FORNECEM AO LICENCIADO DIREITOS LEGAIS ESPECÍFICOS. O LICENCIADO TAMBÉM PODE TER OUTROS DIREITOS QUE VARIAM DE ESTADO PARA ESTADO OU DE JURISDIÇÃO PARA JURISDIÇÃO.**

**AS GARANTIAS NESTA SEÇÃO 8 (GARANTIA E EXCLUSÕES) SÃO FORNECIDAS EXCLUSIVAMENTE PELA IBM. ENTRETANTO, AS RENÚNCIAS DE RESPONSABILIDADE NESTA SUBSEÇÃO 8.2 (EXCLUSÕES), TAMBÉM SÃO APLICÁVEIS AOS FORNECEDORES DE CÓDIGOS DE TERCEIROS DA IBM. TAIS FORNECEDORES FORNECEM TAL CÓDIGO SEM GARANTIAS OU CONDIÇÕES DE QUALQUER TIPO. ESTE PARÁGRAFO NÃO ANULA AS OBRIGAÇÕES DE GARANTIA DA IBM SOB ESTE CONTRATO.**

## **9. Dados e Bancos de Dados do Licenciado**

Para auxiliar o Licenciado no isolamento da causa de um problema com o Programa, a IBM pode solicitar que o Licenciado 1) permita que a IBM acesse seu sistema remotamente ou 2) envie informações ou dados do seu sistema para a IBM. Entretanto, a IBM não tem a obrigação de fornecer tal assistência, a menos que a IBM e o Licenciado estabeleçam um contrato por escrito e separado sob o qual a IBM concorde em fornecer ao Licenciado tal tipo de suporte, que está além das obrigações de garantia da IBM neste Contrato. Neste caso, a IBM utilizará informações sobre erros e problemas para aprimorar seus produtos e serviços, além de auxiliar com o fornecimento de ofertas de suporte relacionadas. Para estes propósitos, a IBM pode utilizar entidades e subcontratados da IBM (incluindo um ou mais países que não aquele no qual o Licenciado está localizado) e o Licenciado autoriza a IBM a fazê-lo.

O Licenciado permanece responsável por 1) quaisquer dados e pelo conteúdo de qualquer banco de dados que disponibilize para a IBM, 2) pela seleção e implementação de procedimentos e controles relativos ao acesso, à segurança, à criptografia, ao uso e à transmissão de dados (incluindo quaisquer dados pessoalmente identificáveis) e 3) pelo "backup" e pela recuperação de qualquer banco de dados e quaisquer dados armazenados. O Licenciado não enviará ou fornecerá à IBM acesso a quaisquer informações pessoalmente identificáveis, seja no formato de dados ou em qualquer outro formato e será responsável pelas despesas razoáveis e outros valores que a IBM possa incorrer em relação a qualquer uma destas informações erroneamente fornecidas para a IBM ou pela perda ou divulgação de tais informações pela IBM, incluindo aqueles valores decorrentes de qualquer reclamação de terceiros.

## **10. Limitação de Responsabilidade**

Exceto conforme expressamente exigido por lei, sem possibilidade de renúncia contratual, o Licenciado e a IBM concordam que a limitação de responsabilidade desta Seção 10 (Limitação de Responsabilidade) aplica-se a danos resultantes de quaisquer tipos de ações judiciais e

reivindicações. Se qualquer limitação ou exclusão de responsabilidade estabelecida nesta seção for considerada nula ou sem efeito em Juízo em um caso específico, as partes concordam que as disposições desta seção permanecerão aplicáveis para as demais reivindicações sob esta seção.

### **10.1 Itens pelos Quais a IBM Pode Ser Responsável**

Podem ocorrer circunstâncias em que o Licenciado possa reivindicar ressarcimentos por danos causados pela IBM sob este Contrato. Independentemente do fundamento que faculta o Licenciado a reivindicar ressarcimentos por danos causados pela IBM, a responsabilidade total da IBM pela soma de todas as demandas advindas de ou relacionadas a cada Programa ou de outra forma oriunda deste Contrato não excederá o valor de quaisquer 1) danos por lesão corporal (inclusive morte) e danos a bens móveis e imóveis e 2) outros danos reais diretos até o limite dos encargos que o Licenciado pagou pelo Programa que é o objeto da demanda. Na hipótese de encargos de prazo fixo serão considerados os valores relativos aos últimos 12 (doze) meses.

Este limite também se aplica a qualquer desenvolvedor e fornecedor de Programas da IBM. É o máximo pelo qual a IBM e seus desenvolvedores e fornecedores de Programas são coletivamente responsáveis.

### **10.2 Itens Pelos Quais a IBM Não Se Responsabiliza**

EXCETO CONFORME EXPRESSAMENTE EXIGIDO POR LEI, SEM POSSIBILIDADE DE RENÚNCIA CONTRATUAL, A IBM, SEUS DESENVOLVEDORES OU FORNECEDORES DE PROGRAMAS NÃO SERÃO RESPONSÁVEIS, EM QUALQUER CIRCUNSTÂNCIA, POR QUALQUER DAS SEGUINTE HIPÓTESES, AINDA QUE TENHAM SIDO INFORMADOS SOBRE TAIS POSSIBILIDADES:

- a. PERDA DE OU DANOS A DADOS;
- b. DANOS INDIRETOS; OU
- c. LUCROS CESSANTES.

## **11. Verificação de Adequação**

Para os propósitos desta Seção 11 (Verificação de Adequação), "Termos do Programa IPLA" significam 1) este Contrato e os termos de aditamento e os documentos de transação aplicáveis fornecidos pela IBM e 2) políticas de software IBM que podem ser localizados no "Web site" IBM Software Policy ([www.ibm.com/software/policies](http://www.ibm.com/software/policies)), incluindo mas não se limitando a tais políticas relativas a "backup", preços de sub-capacidade e migração.

Os direitos e obrigações estabelecidos nesta Seção 11 permanecem em efeito durante o período em que o Programa está licenciado ao Licenciado e por dois anos após esse período.

### **11.1 Processo de Verificação**

O Licenciado concorda em criar, reter e fornecer à IBM e aos seus auditores registros precisos e por escrito, relatórios de ferramentas de sistema e outras informações de sistema que sejam suficientes para possibilitar a verificação auditável de que o uso de todos os Programas pelo Licenciado esteja adequado com os Termos do Programa IPLA, incluindo, sem limitação, todos os termos aplicáveis de licenciamento e de qualificação de preços da IBM. O Licenciado é responsável por 1) garantir que não excederá seu Uso Autorizado e 2) permanecerá em conformidade com os Termos do Programa IPLA.

Mediante notificação com prazo razoável, a IBM poderá verificar a adequação do Licenciado aos Termos do Programa IPLA em todos os locais e para todos os ambientes no qual o Licenciado usa (para qualquer propósito) Programas sujeito aos Termos do Programa IPLA. Esta verificação será realizada nas instalações do Cliente durante o seu horário comercial e de forma a minimizar o impacto nos negócios do Licenciado. A IBM pode usar um auditor independente para fazer esta verificação, desde que a IBM e o auditor tenham assinado um contrato de confidencialidade.

### **11.2 Resolução**

A IBM notificará o Licenciado por escrito se qualquer uma destas verificações indicar que o Licenciado utilizou qualquer Programa além de seu Uso Autorizado ou de qualquer outra forma, não estiver em conformidade com os Termos do Programa IPLA. O Licenciado concorda em pagar

imediatamente e diretamente à IBM pelos encargos que a IBM especificar em uma fatura por 1) qualquer uso em excesso, 2) suporte para tal uso em excesso para o menor período entre a duração de tal uso em excesso ou dois anos e 3) quaisquer encargos adicionais e outras obrigações, apurados como resultado de tal verificação.

## 12. Aviso de Terceiros

O Programa pode incluir código de terceiros que a IBM, e não o terceiro, licencia para o Licenciado sob este Contrato. Os Avisos, se houver algum, para o código de terceiros ("Avisos de Terceiros") são incluídos apenas para informação do Licenciado. Estes avisos podem ser localizados no(s) arquivo(s) NOTICES do Programa. Informações sobre como obter o código fonte para determinado código de terceiros podem ser encontradas nos Avisos de Terceiros. Se nos Avisos de Terceiros, a IBM identificar o código de terceiros como "Código de Terceiros Modificável," a IBM autoriza o Licenciado a 1) modificar o Código de Terceiros Modificável e 2) reverter a engenharia dos módulos do Programa que estabelecem interface diretamente com o Código de Terceiros Modificável contanto que seja apenas com o propósito de depurar as modificações do Licenciado em tal código de terceiros. As obrigações de serviço e suporte da IBM, se houver, aplicam-se apenas ao Programa não-modificado.

## 13. Geral

- a. Nada neste Contrato afeta quaisquer direitos legais dos consumidores que não sejam passíveis de renúncia ou limitação contratual.
- b. Em relação a Programas que a IBM fornece ao Licenciado por meio de mídia (forma tangível), a IBM terá cumprido suas obrigações de remessa e envio mediante a entrega de tais Programas à transportadora designada pela IBM, salvo se acordado de outra forma por escrito entre o Licenciado e a IBM.
- c. Se qualquer provisão deste Contrato for considerada inválida ou inexecutável, as demais provisões deste Contrato permanecerão totalmente em pleno vigor e efeito.
- d. O Licenciado concorda em cumprir com todas as leis e regulamentos de exportação e importação aplicáveis, incluindo regulamentos de embargo e sanções e proibições dos Estados Unidos relativos à exportação para certos usos finais ou certos usuários.
- e. O Licenciado autoriza a International Business Machines Corporation e suas subsidiárias (e seus sucessores ecessionários, contratados e Parceiros Comerciais IBM) a armazenar e usar informações de contato comercial do Licenciado em qualquer lugar em que conduzam negócios, com relação a produtos e serviços IBM ou na promoção do relacionamento comercial da IBM com o Licenciado.
- f. Cada uma das partes concederá à outra oportunidade razoável para cumprir suas obrigações sob este Contrato antes de reclamar seu cumprimento. As partes tentarão resolver de boa-fé todas as disputas, discordâncias ou demandas entre elas relativas a este Contrato.
- g. Os prazos prescricionais observarão o disposto nos artigos 205 e 206 do Código Civil Brasileiro, Lei nº 10.406 de 10 de janeiro de 2002.
- h. Nenhuma das partes é responsável por falhas no cumprimento de quaisquer obrigações devido a causas fora do seu controle.
- i. Este Contrato não criará quaisquer ações judiciais e reivindicações para qualquer terceiro, nem a IBM será responsável por quaisquer demandas de terceiros contra o Licenciado, exceto conforme permitido na Subseção 10.1 (Itens pelo Quais a IBM Pode Ser Responsável) acima para lesões corporais (incluindo morte) ou danos a bens móveis ou imóveis pelos quais a IBM seja legalmente responsável perante aquele terceiro. Desta forma, o Licenciado não poderá requerer responsabilidades da IBM por danos que o Licenciado vier incorrer em razão de reivindicações de terceiros.
- j. Ao celebrar este Contrato, nenhuma das partes está se baseando em qualquer declaração que não esteja especificada neste Contrato, incluindo, sem se limitar a, qualquer declaração relativa: 1) ao desempenho ou funcionalidade do Programa, que não tenha sido expressamente garantido na Seção 8 (Garantia e Exclusões) acima; 2) às experiências ou recomendações de outras partes; ou 3) a quaisquer resultados ou economias que o Licenciado possa obter.
- k. A IBM assinou contratos com algumas organizações (denominadas "Parceiros Comerciais IBM") para promover, comercializar e prestar suporte a determinados Programas. Os Parceiros Comerciais IBM permanecem independentes e separados da IBM. A IBM não é responsável por ações ou declarações dos Parceiros Comerciais ou por quaisquer obrigações destes com o Licenciado.



- Os termos da licença e da indenização da propriedade intelectual de outros contratos do Licenciado com a IBM (tal como o Contrato de Produtos e Serviços IBM) não se aplicam às licenças do Programa concedidas sob este Contrato.

## **14. Escopo Geográfico e Legislação Aplicável**

### **14.1 Legislação Aplicável**

Ambas as partes concordam com a aplicação das leis do país no qual o Licenciado obteve a licença do Programa para reger, interpretar e executar todos os direitos, deveres e obrigações do Licenciado e da IBM decorrentes de ou relacionados de qualquer maneira ao objeto deste Contrato, não obstante conflitos de princípios legais.

A Convenção das Nações Unidas não se aplica nos Contratos para Venda Internacional de Bens.

### **14.2 Jurisdição**

Todos os direitos, deveres e obrigações estão sujeitos aos tribunais do país no qual o Licenciado obteve a licença do Programa.

## **Parte 2 – Termos Exclusivos do País**

Para licenças concedidas nos países especificados abaixo, os termos a seguir substituem ou modificam os termos citados na Parte 1. Todos os termos na Parte 1 que não são alterados por estes termos de aditamento permanecem inalterados e em vigor. Esta Parte 2 é organizada da seguinte forma:

- Termos de aditamento para a Parte 1, Seção 14 (Legislação Aplicável e Jurisdição) de vários países;
- Termos de aditamento para outros termos do Contrato de países das Américas; e
- Termos de aditamento para outros termos do Contrato de países da Europa, Oriente Médio e África.

### **Termos de aditamento para a Parte 1, Seção 14 (Legislação Aplicável e Jurisdição) de vários países**

#### **14.1 Legislação Aplicável**

*A frase "as leis do país no qual o Licenciado obteve a licença do Programa" no primeiro parágrafo de 14.1 Lei Aplicável é substituída pelas seguintes frases nos países abaixo:*

#### **EUROPA, ORIENTE MÉDIO E ÁFRICA**

- (1) na **Guiné-Bissau**: as leis da França; e
- (2) em **Angola** e em **Moçambique**: as leis da Inglaterra.

#### **14.2 Jurisdição**

*O seguinte parágrafo é relativo à jurisdição e substitui a Subseção 14.2 (Jurisdição) já que é aplicável a tais países identificados abaixo:*

Todos os direitos, deveres e obrigações estão sujeitos aos tribunais do país no qual o Licenciado obteve a licença do Programa, exceto nos países identificados abaixo, nos quais todas as disputas decorrentes ou relacionados a este Contrato, incluindo procedimentos sumários, serão iniciados e estarão sujeitos à jurisdição exclusiva dos seguintes tribunais da jurisdição competente:

#### **AMÉRICAS**

- (1) no **Brasil**: As partes elegem o foro central da cidade do Rio de Janeiro, estado do Rio de Janeiro, para dirimir questões advindas deste Contrato;

#### **EUROPA, ORIENTE MÉDIO E ÁFRICA**

- (2) na **Guiné-Bissau**: o Tribunal Comercial de Paris;

- (3) em **Angola, Moçambique, São Tomé e Príncipe**: os tribunais da Inglaterra;
- (4) em **Portugal**: os tribunais de Lisboa.

## TERMOS DE ADITAMENTO DE PAÍSES DA EMEA (EUROPA, ORIENTE MÉDIO, ÁFRICA)

### ESTADOS MEMBROS DA UNIÃO EUROPEIA

#### 8. Garantia e Exclusões

*O seguinte é incluído na Seção 8 (Garantia e Exclusão):*

Na União Europeia ("EU"), os consumidores possuem direitos legais sob a legislação nacional aplicável que rege a venda de bens de consumo. Tais direitos não são afetados pelas provisões definidas nesta Seção 8 Garantia e Exclusões. O escopo territorial da Garantia Limitada é mundial.

#### 13. Geral

*O seguinte substitui o Item 13.e:*

- (1) **Definições** – Para os propósitos deste Item 13.e, as seguintes definições adicionais são aplicáveis:
  - (a) **Informação de Contacto Comercial** – significa informação de contacto de carácter comercial divulgada pelo Licenciado à IBM, incluindo nomes, títulos profissionais, endereços profissionais, números de telefone e endereços de e-mail dos empregados e subcontratados do Licenciado. Para Áustria, Itália e Suíça, a Informação de Contacto Comercial também inclui informação sobre a Licença e seus subcontratados como pessoas jurídicas (por exemplo, dados da receita da Licença e outra informação transaccional)
  - (b) **Pessoal de Contato Comercial** – funcionários e contratados do Licenciado aos quais as Informações de Contato Comercial se relacionam.
  - (c) **Autoridade de Proteção de Dados** – a autoridade estabelecida pela Legislação de Proteção de Dados e Comunicações de Dados no país aplicável, ou para países não pertencentes à EU, a autoridade responsável pela supervisão de dados pessoais em tal país ou (para qualquer um dos anteriores) qualquer entidade sucessora convenientemente apontada para isso.
  - (d) **Legislação de Proteção de Dados e Comunicações Eletrônicas** – (i) a legislação e os regulamentos locais aplicáveis em vigor que implementam os requisitos da EU Directive 95/46/EC (na proteção de indivíduos com relação ao processamento de dados pessoais na livre movimentação de tais dados) e da EU Directive 2002/58/EC (relativa ao processamento de dados pessoais e a proteção da privacidade no setor de comunicações eletrônicas); ou (ii) para países não pertencentes à EU, a legislação e/ou os regulamentos transmitidos no país aplicável em relação à proteção de dados pessoais e o regulamento das comunicações eletrônicas envolvendo dados pessoais, incluindo (para qualquer um dos anteriores) qualquer substituição ou modificação estatutária.
  - (e) **Grupo IBM** – International Business Machines Corporation de Armonk, Nova York, EUA, suas subsidiárias e seus respectivos Parceiros Comerciais e subcontratados.
- (2) O Licenciado autoriza a IBM:
  - (a) a processar e utilizar Informações de Contato Comercial no Grupo IBM no suporte do Licenciado, incluindo o fornecimento de serviços de suporte e para o propósito do favorecimento do relacionamento de negócios entre o Licenciado e o Grupo IBM, incluindo, sem limitação, entrar em contato com o Pessoal de Contato Comercial (por e-mail ou de qualquer outra forma) e comercializar produtos e serviços do Grupo IBM (o "Propósito Especificado"); e

- (b) divulgar Informações de Contato Comercial para outros membros do Grupo IBM apenas em busca do Propósito Especificado.
- (3) A IBM concorda que todas as Informações de Contato Comercial serão processadas de acordo com a Legislação de Proteção de Dados e Comunicações Eletrônicas e serão utilizadas apenas para o Propósito Especificado.
- (4) Até o limite exigido pela Legislação de Proteção de Dados e Comunicações Eletrônicas, o Licenciado declara que (a) obteve (ou obterá) quaisquer consentimentos do (e que emitiu (ou emitirá) quaisquer avisos para) Pessoal de Contato Comercial conforme necessários para possibilitar que o Grupo IBM processe e utilize as Informações de Contato Comercial para o Propósito Especificado.
- (5) O Licenciado autoriza a IBM a transferir Informações de Contato Comercial fora da Área Econômica Europeia, contanto que a transferência seja feita em termos contratuais aprovados pela Autoridade de Proteção de Dados ou que a transferência seja de qualquer outra forma permitida sob a Legislação de Proteção de Dados e Comunicações Eletrônicas.

# Международное Лицензионное Соглашение в отношении Программ

## Часть 1—Общие Условия

ЗАГРУЖАЯ, УСТАНОВЛИВАЯ, КОПИРУЯ, ОСУЩЕСТВЛЯЯ ДОСТУП, НАЖИМАЯ КНОПКУ "ПРИНИМАЮ" ИЛИ ИНЫМ ОБРАЗОМ ИСПОЛЬЗУЯ ПРОГРАММУ, ЛИЦЕНЗИАТ СОГЛАШАЕТСЯ С УСЛОВИЯМИ НАСТОЯЩЕГО СОГЛАШЕНИЯ. ЕСЛИ ВЫ ПРИНИМАЕТЕ ДАННЫЕ УСЛОВИЯ ОТ ИМЕНИ ЛИЦЕНЗИАТА, ВЫ ЗАЯВЛЯЕТЕ И ГАРАНТИРУЕТЕ, ЧТО ВЫ ИМЕЕТЕ ВСЕ ПОЛНОМОЧИЯ, ЧТОБЫ ОБЯЗАТЬ ЛИЦЕНЗИАТА СОБЛЮДАТЬ ЭТИ УСЛОВИЯ. ЕСЛИ ВЫ НЕ СОГЛАСНЫ С НАСТОЯЩИМИ УСЛОВИЯМИ,

- НЕ ЗАГРУЖАЙТЕ, НЕ УСТАНОВЛИВАЙТЕ, НЕ КОПИРУЙТЕ, НЕ ОСУЩЕСТВЛЯЙТЕ ДОСТУП, НЕ НАЖИМАЙТЕ КНОПКУ "ПРИНИМАЮ" И НЕ ИСПОЛЬЗУЙТЕ ПРОГРАММУ; И
- НЕЗАМЕДЛИТЕЛЬНО ВЕРНИТЕ НЕИСПОЛЬЗОВАННЫЙ НОСИТЕЛЬ, ДОКУМЕНТАЦИЮ И СВИДЕТЕЛЬСТВО О ПРАВАХ СТОРОНЕ, У КОТОРОЙ ВЫ ИХ ПРИОБРЕЛИ, ЧТОБЫ ПОЛУЧИТЬ НАЗАД УПЛАЧЕННУЮ СУММУ. ЕСЛИ ПРОГРАММА БЫЛА ЗАГРУЖЕНА, УНИЧТОЖЬТЕ ВСЕ КОПИИ ПРОГРАММЫ.

### 1. Определения

"Авторизованное Использование"—указанный уровень, при котором Лицензиату разрешено выполнять или запускать Программу. Уровень может измеряться числом пользователей, миллионами единиц обслуживания (MSU), Единицами Мощности Процессора (PVU) или другим показателем уровня использования, заданным IBM.

"IBM"—International Business Machines Corporation или одна из ее дочерних компаний.

"Лицензионная Информация" ("ЛИ")—документ, содержащий информацию и любые дополнительные условия, касающиеся конкретной Программы. ЛИ о Программе доступна на сайте [www.ibm.com/software/sla](http://www.ibm.com/software/sla). ЛИ также можно найти в каталоге Программы, с помощью системной команды или в буклете, предоставляемом вместе с Программой.

"Программа"—нижеперечисленное, включая оригинал и все полные или частичные копии: 1) машиночитаемые инструкции и данные, 2) компоненты, файлы и модули, 3) аудиовизуальное содержимое (например, изображения, текст, аудиозаписи или рисунки) и 4) относящиеся к лицензии материалы (например, ключи и документация).

"Свидетельство о Правах" ("СоП")—свидетельство Авторизованного Использования Программы Лицензиатом. СоП является также подтверждением правомочий Лицензиата на гарантийное обслуживание, предложения цен на последующие обновления, если такие имеются, и на возможные специальные и льготные предложения. Если IBM не предоставляет Лицензиату СоП, тогда в качестве СоП IBM может принять оригинал оплаченной квитанции о продаже или другой подтверждающий продажу документ, полученный от стороны (IBM или ее реселлера), у которой Лицензиат приобрел Программу, при условии что в документе указано название Программы и предоставленный уровень Авторизованного Использования.

"Гарантийный Срок"—один год, начиная с даты предоставления лицензии первоначальному Лицензиату.

### 2. Структура Соглашения

Настоящее Соглашение включает в себя **Часть 1—Общие Условия, Часть 2—Особые Условия для Некоторых Стран** (при наличии), ЛИ и СоП и является полным и исчерпывающим соглашением между Лицензиатом и IBM в отношении использования Программы. Оно заменяет собой любые предшествующие устные или письменные договоренности между Лицензиатом и IBM относительно использования Программы Лицензиатом. Условия Части 2 могут заменять или изменять условия, предусмотренные Частью 1. В случае каких-либо противоречий ЛИ имеет преимущественную силу по отношению к обоим Частям Соглашения.

### 3. Предоставляемая Лицензия

Программа принадлежит IBM или поставщику IBM и защищена авторским правом и предоставляется по лицензии, а не продается.

IBM предоставляет Лицензиату неисключительную лицензию на 1) использование Программы в пределах Авторизованного Исползования, указанного в СоП, 2) создание и установку копий, необходимых для поддержки такого Авторизованного Исползования, и 3) создание резервной копии при условии, что:

- a. Лицензиат получил Программу законным образом и соблюдает условия настоящего Соглашения;
- b. резервная копия выполняется, если невозможно выполнение самой Программы;
- c. Лицензиат воспроизводит все уведомления об авторских правах и другие замечания о правах собственности на каждой полной или частичной копии Программы;
- d. Лицензиат гарантирует, что любое лицо, использующее Программу (посредством локального или дистанционного доступа), 1) делает это только от имени Лицензиата и 2) соблюдает условия настоящего Соглашения;
- e. Лицензиат не может 1) использовать, копировать, модифицировать или распространять Программу за исключением того, как явно разрешено в настоящем Соглашении, 2) осуществлять обратное ассемблирование, обратное компилирование или иное преобразование, либо вскрывать технологию Программы, кроме тех случаев, когда соответствующие действия прямо разрешены действующими законами, без возможности ограничения этих прав в условиях договора; 3) использовать какие-либо компоненты, файлы, модули, аудио-визуальное содержимое или связанные лицензионные материалы отдельно от Программы, 4) сублицензировать, предоставлять Программу на условиях аренды или лизинга; и
- f. если Лицензиат получает Программу в качестве Вспомогательной Программы, Лицензиат использует эту Программу только для поддержки Основной Программы при соблюдении любых ограничений, предусмотренных лицензией на Основную Программу; либо, если Лицензиат получает Программу в качестве Основной Программы, Лицензиат использует все Вспомогательные Программы только для поддержки данной Программы при соблюдении любых ограничений, предусмотренных настоящим Соглашением. В целях данного пункта f "Вспомогательной Программой" называется Программа, являющаяся частью другой Программы IBM ("Основной Программы") и определенная как Вспомогательная Программа в ЛИ Основной Программы. (Чтобы получить отдельную лицензию на Вспомогательную Программу без этих ограничений, Лицензиату следует обратиться к стороне, у которой Лицензиат приобрел Вспомогательную Программу.)

Данная лицензия применяется к каждой копии Программы, создаваемой Лицензиатом.

#### 3.1 Коммерческие обновления, Обновления, Исправления и Изменения

##### 3.1.1 Коммерческие обновления

Если Программа заменяется коммерческим обновлением Программы, то действие лицензии на замененную Программу немедленно прекращается.

##### 3.1.2 Обновления, Исправления и Изменения

Когда Лицензиат получает обновление, исправление или изменение для Программы, Лицензиат принимает любые дополнительные или особые условия, применимые в отношении такого обновления, исправления или изменения и указанные в его ЛИ. При отсутствии дополнительных или особых условий использование обновления, исправления или изменения регулируется только условиями настоящего Соглашения. Если Программа заменяется обновлением, то Лицензиат обязуется немедленно прекратить использование замененной Программы.

#### 3.2 Лицензии с Фиксированным Сроком Действия

Если IBM лицензирует Программу на фиксированный срок, действие лицензии Лицензиата прекращается по истечении этого фиксированного срока, если только Лицензиат и IBM не согласятся продлить его.

### **3.3 Срок действия и Прекращение действия**

Настоящее Соглашение действует до прекращения действия.

IBM может прекратить действие лицензии Лицензиата, если Лицензиат не соблюдает условия настоящего Соглашения.

Если лицензионное соглашение расторгается по любой причине любой из сторон, Лицензиат соглашается немедленно прекратить использование всех копий Программы Лицензиата и немедленно уничтожить все копии Программы Лицензиата. Любые положения настоящего Соглашения, которые по своему характеру остаются в силе после его расторжения, действуют до тех пор, пока не будут исполнены, и применяются ко всем соответствующим наследникам и правопреемникам обеих сторон.

### **4. Платежи**

Платежи основываются на приобретенном уровне Авторизованного Использования, который указан в СоП. IBM не предоставляет кредита или возврата уже уплаченных сумм или сумм, срок уплаты которых уже наступил, за исключением того, как указано где-либо в настоящем Соглашении.

Если Лицензиат хочет повысить уровень Авторизованного Использования, Лицензиат должен заранее уведомить об этом IBM или авторизованного реселлера IBM и внести все применимые платежи.

### **5. Налоги**

Если какая-либо государственная структура введет на Программу какой-либо налог, сбор или пошлину, за исключением тех, которые основываются на чистом доходе IBM, тогда Лицензиат обязуется выплатить эту сумму, как указано в счете, или предоставить документы, подтверждающие освобождение от уплаты. Лицензиат несет ответственность за выплату любых налогов на личное движимое имущество, которыми облагается Программа, начиная с даты ее получения Лицензиатом. Если какая-либо государственная структура введет на Программу таможенные пошлины, налоги, сборы или отчисления за импорт или экспорт, передачу, доступ к или использование Программы за пределами той страны, в которой первоначальному Лицензиату была предоставлена лицензия, то Лицензиат принимает на себя ответственность за них и оплатит любую наложенную сумму.

### **6. Гарантия возврата Оплаты**

Если Лицензиат не удовлетворен Программой по какой-либо причине и является первоначальным Лицензиатом, Лицензиат может прекратить действие лицензии и получить возмещение суммы, уплаченной за Программу Лицензиатом, при условии что Лицензиат в течение 30 дней с даты выдачи СоП Лицензиату вернет Программу и СоП стороне, у которой Лицензиат их приобрел. Если лицензия выдана на фиксированный срок, который может быть продлен, тогда Лицензиат может получить возмещение уплаченной суммы, только если Программа и СоП возвращены в течение первых 30 дней первоначального срока действия. Если Лицензиат загрузил Программу, Лицензиат должен обратиться к стороне, у которой Лицензиат приобрел Программу, за разъяснениями, как получить возмещение.

### **7. Передача Программы**

Лицензиат может передать Программу и все лицензионные права и обязательства Лицензиата другой стороне, только если такая сторона согласна с условиями настоящего Соглашения. Если действие лицензии прекращено по любой причине любой из сторон, Лицензиату запрещается передавать Программу другой стороне. Лицензиату запрещается передавать часть 1) Программы или 2) уровня Авторизованного Использования Программы. При передаче Программы Лицензиат также обязан передать печатную копию настоящего Соглашения, включая ЛИ и СоП. Действие лицензии Лицензиата прекращается сразу после передачи Программы.

## 8. Гарантия и Исключения

### 8.1 Ограниченная Гарантия

IBM гарантирует, что при использовании в предусмотренной операционной среде Программа будет соответствовать своим спецификациям. Спецификации Программы и информацию о предусмотренной операционной среде можно найти в прилагаемой к Программе документации (например, в файле `readme`) или в иных материалах, которые публикует IBM (например, в письме-объявлении). Лицензиат согласен с тем, что такая документация и другое содержимое Программы может предоставляться только на английском языке, если местное законодательство не устанавливает иные требования, не допускающие освобождение от обязательств по договору или их ограничение.

Гарантия применяется только к неизменной части Программы. IBM не гарантирует непрерывной или безошибочной работы Программы, или что IBM исправит все дефекты Программы. Лицензиат отвечает за результаты, полученные от использования Программы.

В течение Гарантийного Срока IBM без дополнительной платы предоставляет Лицензиату доступ к базам данных IBM, содержащим сведения об известных дефектах Программы, исправлениях дефектов, ограничениях и обходных путях. Дополнительную информацию можно найти в справочнике по поддержке программного обеспечения IBM Software Support Handbook по адресу [www.ibm.com/software/support](http://www.ibm.com/software/support).

Если Программа не функционирует как гарантировано в течение Гарантийного Срока и проблема не может быть решена с помощью информации, доступной в базах данных IBM, Лицензиат может вернуть Программу и ее СоП той стороне (или IBM, или ее реселлеру), у которой Лицензиат ее приобрел, и получить возмещение в размере суммы, уплаченной Лицензиатом за Программу. После возврата Программы действие лицензии Лицензиата прекращается. Если Лицензиат загрузил Программу, Лицензиат должен обратиться к стороне, у которой Лицензиат приобрел Программу, за разъяснениями, как получить возмещение.

### 8.2 Исключения

**ЭТИ ГАРАНТИИ ЯВЛЯЮТСЯ ИСКЛЮЧИТЕЛЬНЫМИ ГАРАНТИЯМИ ЛИЦЕНЗИАТА И ЗАМЕНЯЮТ СОБОЙ ВСЕ ИНЫЕ ГАРАНТИИ ИЛИ УСЛОВИЯ, ЯВНО ВЫРАЖЕННЫЕ ИЛИ ПОДРАЗУМЕВАЕМЫЕ, ВКЛЮЧАЯ, НО НЕ ОГРАНИЧИВАЯСЬ ЭТИМ, ПОДРАЗУМЕВАЕМЫЕ ГАРАНТИИ ИЛИ УСЛОВИЯ ТОВАРОПРИГОДНОСТИ, УДОВЛЕТВОРИТЕЛЬНОГО КАЧЕСТВА, СООТВЕТСТВИЯ ОПРЕДЕЛЕННОЙ ЦЕЛИ, ПРАВА СОБСТВЕННОСТИ И ЛЮБУЮ ГАРАНТИЮ ИЛИ УСЛОВИЕ НЕНАРУШЕНИЯ ПРАВ. НЕКОТОРЫЕ ГОСУДАРСТВА ИЛИ ЮРИСДИКЦИИ НЕ РАЗРЕШАЮТ ОТКАЗ ОТ ЯВНО ВЫРАЖЕННЫХ ИЛИ ПОДРАЗУМЕВАЕМЫХ ГАРАНТИЙ; ПОЭТОМУ ПРИВЕДЕННОЕ ВЫШЕ ИСКЛЮЧЕНИЕ МОЖЕТ НЕ ПРИМЕНЯТЬСЯ К ЛИЦЕНЗИАТУ. В ЭТОМ СЛУЧАЕ ДЕЙСТВИЕ ТАКИХ ГАРАНТИЙ ОГРАНИЧЕНО ГАРАНТИЙНЫМ СРОКОМ. ПО ИСТЕЧЕНИИ ЭТОГО СРОКА НИКАКИЕ ГАРАНТИИ НЕ ПРИМЕНИМЫ. НЕКОТОРЫЕ ГОСУДАРСТВА ИЛИ ЮРИСДИКЦИИ НЕ ДОПУСКАЮТ ОГРАНИЧЕНИЕ СРОКА ДЕЙСТВИЯ ПОДРАЗУМЕВАЕМЫХ ГАРАНТИЙ; ПОЭТОМУ ПРИВЕДЕННОЕ ВЫШЕ ИСКЛЮЧЕНИЕ МОЖЕТ НЕ ПРИМЕНЯТЬСЯ К ЛИЦЕНЗИАТУ.**

**ДАННЫЕ ГАРАНТИИ ДАЮТ ЛИЦЕНЗИАТУ ОПРЕДЕЛЕННЫЕ ЮРИДИЧЕСКИЕ ПРАВА. ЛИЦЕНЗИАТ МОЖЕТ ТАКЖЕ ИМЕТЬ ДРУГИЕ ПРАВА, КОТОРЫЕ МОГУТ РАЗЛИЧАТЬСЯ ОТ СТРАНЫ К СТРАНЕ ИЛИ ОТ ЮРИСДИКЦИИ К ЮРИСДИКЦИИ.**

**ГАРАНТИИ, ОПИСАННЫЕ В РАЗДЕЛЕ 8 (ГАРАНТИЯ И ИСКЛЮЧЕНИЯ), ПРЕДОСТАВЛЯЮТСЯ ИСКЛЮЧИТЕЛЬНО IBM. ЗАЯВЛЕНИЯ ОБ ОТКАЗЕ ОТ ГАРАНТИЙ, ПРИВЕДЕННЫЕ В ДАННОМ ПОДРАЗДЕЛЕ 8.2 (ИСКЛЮЧЕНИЯ), ПРИМЕНЯЮТСЯ ТАКЖЕ К ПОСТАВЩИКАМ IBM, ПРЕДОСТАВЛЯЮЩИМ ПРОГРАММНЫЙ КОД ТРЕТЬИХ СТОРОН. ЭТИ ПОСТАВЩИКИ ПРЕДОСТАВЛЯЮТ ТАКОЙ КОД БЕЗ КАКИХ-ЛИБО ГАРАНТИЙ И УСЛОВИЙ. НАСТОЯЩИЙ АБЗАЦ НЕ ОТМЕНЯЕТ ГАРАНТИЙНЫХ ОБЯЗАТЕЛЬСТВ IBM ПО НАСТОЯЩЕМУ СОГЛАШЕНИЮ.**

## 9. Данные и Базы данных Лицензиата

Чтобы помочь Лицензиату определить причину проблемы, связанной с Программой, IBM может запросить, чтобы Лицензиат 1) предоставил IBM удаленный доступ к системе Лицензиата или 2) отправил в IBM информацию о Лицензиате или системные данные. Однако IBM не обязана предоставлять подобную помощь, если IBM и Лицензиат не заключили отдельное письменное соглашение, по которому IBM согласна предоставлять Лицензиату такой вид поддержки, который выходит за пределы гарантийных обязательств IBM по настоящему Соглашению. В любом случае IBM использует информацию об ошибках и проблемах для улучшения ее продуктов и услуг и для содействия предоставлению соответствующих предложений поддержки. Для этих целей IBM может использовать юридических лиц IBM и субподрядчиков IBM (в том числе, в одной или нескольких странах, отличных от страны, в которой находится Лицензиат), и Лицензиат разрешает IBM действовать таким образом.

Лицензиат остается ответственным за 1) любые данные и содержимое баз данных, доступ к которым Лицензиат предоставляет IBM, 2) выбор и внедрение процедур и средств управления, касающихся доступа, безопасности, шифрования, использования и передачи данных (включая любые персональные данные) и 3) резервное копирование и восстановление любых баз данных и сохраненных данных. Лицензиат не будет отправлять и предоставлять IBM доступ к любой персональной информации (в виде данных или в иной форме) и будет нести ответственность за разумные расходы и иные суммы, которые IBM может понести в связи с ошибочной передачей IBM такой информации, утратой или разглашением IBM подобной информации, включая расходы, возникающие из любых претензий третьих сторон.

## 10. Ограничение Ответственности

Ограничения и исключения, изложенные в данном Разделе 10 (Ограничение Ответственности), применяются в полном объеме, в котором они не запрещены применимым законодательством без возможности освобождения от обязательств по договору.

### 10.1 То, за Что IBM Может Нести Ответственность

Могут возникнуть обстоятельства, когда из-за неисполнения обязательств со стороны IBM или по иной причине наступления ответственности Лицензиат имеет право на возмещение убытков со стороны IBM. Независимо от того, на каком основании Лицензиат имеет право требовать возмещения убытков со стороны IBM (включая существенное нарушение, небрежность, введение в заблуждение или иное договорное нарушение либо деликтное правонарушение), совокупная ответственность IBM по всем претензиям в целом, возникшим из или связанным с каждой Программой или иным образом возникающим на основании настоящего Соглашения, не будет превышать сумму любых 1) компенсаций за нанесение телесных повреждений (включая смерть) и ущерб, причиненный недвижимому и материальному движимому имуществу, и 2) других фактических прямых убытков в размере, не превышающем суммы, уплаченной Лицензиатом за Программу, являющуюся объектом претензии (если Программа предоставлена по лицензии с фиксированным сроком — не превышающем суммы оплаты за 12 месяцев).

Данное ограничение также применяется ко всем разработчикам и поставщикам Программы IBM. Это максимум, за который IBM и ее разработчики Программы и поставщики все вместе несут ответственность.

### 10.2 То, за Что IBM Не Несет Ответственности

**НИ ПРИ КАКИХ ОБСТОЯТЕЛЬСТВАХ IBM, ЕЕ РАЗРАБОТЧИКИ ПРОГРАММЫ ИЛИ ПОСТАВЩИКИ НЕ НЕСУТ ОТВЕТСТВЕННОСТИ ЗА ЛЮБОЕ ИЗ НИЖЕСЛЕДУЮЩЕГО, ДАЖЕ ЕСЛИ ОНИ БЫЛИ ПРОИНФОРМИРОВАНЫ О ВОЗМОЖНОСТИ ТАКОВОГО:**

- a. **ПОТЕРЯ ИЛИ ПОВРЕЖДЕНИЕ ДАННЫХ;**
- b. **ОСОБЫЕ, НЕПРЕДВИДЕННЫЕ ИЛИ НЕПРЯМЫЕ УБЫТКИ ИЛИ ЛЮБЫЕ КОСВЕННЫЕ ЭКОНОМИЧЕСКИЕ УБЫТКИ;**
- c. **УПУЩЕННЫЕ ДОХОДЫ, ВОЗМОЖНОСТЬ ПРОВЕДЕНИЯ ДЕЛОВОЙ АКТИВНОСТИ, ПРИБЫЛЬ, РЕПУТАЦИЯ ИЛИ ОЖИДАЕМЫЕ СБЕРЕЖЕНИЯ.**



## 11. Проверка Соблюдения условий

В целях данного Раздела 11 (Проверка Соблюдения условий) термин "Условия Международного Лицензионного Соглашения в отношении Программ (IPLA Program Terms)" означает 1) настоящее Соглашение и применимые дополнения и документы о транзакции, предоставленные IBM, и 2) политики IBM в отношении программного обеспечения, которые можно найти на Web-сайте IBM Software Policy ([www.ibm.com/softwarepolicies](http://www.ibm.com/softwarepolicies)), включая, но не ограничиваясь ими, политики, касающиеся резервного копирования, ценообразования на основе неполных мощностей и миграции.

Права и обязанности, изложенные в Разделе 11, остаются в силе в течение периода действия лицензии на Программу для Лицензиата и в течение двух лет после его окончания.

### 11.1 Процесс Проверки

Лицензиат согласен создавать, сохранять и предоставлять IBM и ее аудиторам точные письменные записи, выходные данные системных средств и другую информацию о системе, которые достаточны для подтверждения того, что Лицензиат использует все Программы в соответствии с IPLA Program Terms, включая, без ограничения, все применимые условия лицензирования и ценообразования IBM. Лицензиат несет ответственность за 1) непревышение уровня Авторизованного Использования и 2) соблюдение IPLA Program Terms.

После разумного уведомления IBM может проверить соблюдение Лицензиатом IPLA Program Terms во всех офисах и во всех средах, в которых Лицензиат использует (в любых целях) Программы, на которые распространяются IPLA Program Terms. Такая проверка будет проводиться способом, который уменьшает помехи для деятельности Лицензиата, и может проходить в помещениях Лицензиата в обычные рабочие часы. IBM может использовать независимого аудитора для помощи в проведении проверки, при условии что у IBM есть письменное соглашение о конфиденциальности с таким аудитором.

### 11.2 Разрешение споров

Если в ходе любой подобной проверки будет установлено, что Лицензиат использовал какую-либо Программу с превышением уровня Авторизованного Использования или иным образом не соблюдает IPLA Program Terms, IBM направит Лицензиату письменное уведомление. Лицензиат согласен немедленно выплатить непосредственно IBM сумму, указанную IBM в счете, за 1) любое такое использование сверх установленных пределов, 2) дополнительную поддержку для такого использования сверх установленных пределов за меньший из следующих периодов: период такого использования или два года, и 3) любые дополнительные расходы и другие обязательства, выявленные в результате такой проверки.

## 12. Уведомления Третьих Сторон

Программа может содержать программный код третьей стороны, который IBM, а не третья сторона, лицензирует Лицензиату по настоящему Соглашению. Уведомления, если таковые есть, о программном коде, предоставленном третьей стороной ("Уведомления Третьих Сторон"), приводятся только для сведения Лицензиата. Эти уведомления можно найти в файле (файлах) NOTICES для Программы. Информацию о том, как получить исходный код для того или иного программного кода третьей стороны, можно найти в Уведомлениях Третьих Сторон. Если в Уведомлениях Третьих Сторон IBM определяет программный код, предоставленный третьей стороной, как "Изменяемый Программный код Третьей Стороны", то IBM предоставляет Лицензиату права на 1) изменение Изменяемого Программного кода Третьей Стороны и 2) обратное преобразование модулей Программы, которые непосредственно взаимодействуют с Изменяемым Программным кодом Третьей Стороны, при условии что это делается только с целью отладки изменений, внесенных Лицензиатом в такой программный код третьей стороны. Обязательства IBM по обслуживанию и поддержке, если таковые есть, применяются только к неизменной Программе.

## 13. Общие условия

- a. Ничто в настоящем Соглашении не затрагивает каких-либо установленных законом прав потребителей, которые не могут быть отклонены или ограничены по договору.

- b. Для Программ, предоставляемых IBM Лицензиату на носителях, обязательства IBM по поставке считаются выполненными в момент доставки таких Программ транспортной компанией, назначенной IBM, если иное не согласовано в письменном виде между Лицензиатом и IBM.
- c. Если какое-либо условие настоящего Соглашения будет признано недействительным или лишенным исковой силы, остальные положения настоящего Соглашения продолжают действовать в полном объеме.
- d. Лицензиат согласен соблюдать все применимые законы и правила экспорта и импорта, включая законодательные акты США об эмбарго, санкциях и запрете на экспорт для определенных конечных пользователей или для использования в определенных целях.
- e. Лицензиат предоставляет компании International Business Machines Corporation и ее дочерним компаниям (а также их наследникам и правопреемникам, подрядчикам и Бизнес-Партнерам IBM) право на хранение контактной информации Лицензиата и ее использование в любом месте ведения деловой активности, в связи с продуктами и услугами IBM или для дальнейшей поддержки деловых отношений IBM с Лицензиатом.
- f. Каждая сторона предоставляет другой стороне разумную возможность выполнить свои обязательства до того, как заявит о невыполнении другой стороной ее обязательств по настоящему Соглашению. Стороны будут пытаться добросовестно разрешать все споры, разногласия или претензии между сторонами, относящиеся к настоящему Соглашению.
- g. Если иное не предусмотрено применимым законодательством, без возможности отказа от прав по договору или их ограничения, то: 1) ни одна из сторон не будет возбуждать судебные иски в любой форме и по любой претензии, связанной с настоящим Соглашением, позднее чем через два года после возникновения основания для иска, и 2) по истечении данного срока любые подобные претензии и связанные с ними права утрачивают силу.
- h. Ни Лицензиат, ни IBM не несут ответственности за невыполнение каких-либо обязательств по причинам, на которые они не могут повлиять.
- i. Настоящее Соглашение не создает каких-либо прав или оснований для иска каких-либо третьих лиц, и IBM не несет ответственности за какие-либо претензии третьих лиц к Лицензиату, за исключением того, что разрешено в Подразделе 10.1 (То, за Что IBM Может Нести Ответственность) выше в связи с нанесением телесных повреждений (включая смерть) или повреждением недвижимого или материального движимого имущества, за которые IBM несет юридическую ответственность перед такой третьей стороной.
- j. Закрывая настоящее Соглашение, ни одна из сторон не полагается на любые заявления, не указанные в данном Соглашении, включая, но не ограничиваясь ими, заявления относительно: 1) производительности или функционирования Программы, кроме того, как это прямо гарантировано выше в Разделе 8 (Гарантия и Исключения), 2) мнений и рекомендаций других сторон; или 3) каких-либо результатов и экономической выгоды, которых может достичь Лицензиат.
- k. IBM подписала соглашения с некоторыми организациями (именуемыми "Бизнес-Партнерами IBM") о продвижении на рынке, продаже и поддержке определенных Программ. Бизнес-Партнеры IBM остаются самостоятельными и независимыми от IBM компаниями. IBM не несет ответственности за действия или заявления Бизнес-Партнеров IBM или обязательства, которые они имеют перед Лицензиатом.
- l. Условия о возмещениях, касающиеся лицензий или интеллектуальной собственности, других соглашений Лицензиата с IBM (например, Соглашения IBM с Заказчиком), не применяются к лицензиям на Программы, предоставляемым в соответствии с настоящим Соглашением.

## **14. Географические Рамки и Регулирующее Законодательство**

### **14.1 Регулирующее Законодательство**

Обе стороны соглашаются на применение законов страны, в которой Лицензиат приобрел лицензию на Программу, чтобы регулировать, интерпретировать и придавать исковую защиту всем правам, обязанностям и обязательствам Лицензиата и IBM, возникающим вследствие или в какой-либо связи с предметом настоящего Соглашения, безотносительно к нормам коллизионного права.

Конвенция Организации Объединенных Наций о договорах международной купли-продажи товаров не применяется.

### **14.2 Юрисдикция**

Все права, обязанности и обязательства подлежат рассмотрению судами страны, в которой Лицензиат приобрел лицензию на Программу.

## Часть 2—Особые Условия для Некоторых Стран

Для лицензий, предоставленных в перечисленных ниже странах, следующие условия заменяют или изменяют соответствующие условия в Части 1. Все условия в Части 1, которые не изменяются этими поправками, остаются в силе без изменений. Часть 2 имеет следующую структуру:

- поправки для нескольких стран к Части 1, Разделу "Регулирующее Законодательство и Юрисдикция"; и
- поправки для стран Европы, Ближнего и Среднего Востока и Африки к другим условиям Соглашения.

### Поправки для нескольких стран к Части 1, Разделу 14 ("Регулирующее Законодательство и Юрисдикция")

#### 14.1 Регулирующее Законодательство

*Фраза "законов страны, в которой Лицензиат приобрел лицензию на Программу" в первом абзаце подраздела 14.1 ("Регулирующее Законодательство") заменяется в перечисленных ниже странах следующими фразами:*

#### ЕВРОПА, БЛИЖНИЙ И СРЕДНИЙ ВОСТОК И АФРИКА

в Беларуси, Казахстане, Кыргызстане и России: законов Австрии;

#### 14.3 Арбитраж

*Следующий абзац добавляется в качестве нового Подраздела 14.3 ("Арбитраж") в той степени, в которой он применяется в перечисленных ниже странах. Положения данного подраздела 14.3 имеют преимущественную силу перед положениями подраздела 14.2 ("Юрисдикция") в той мере, в которой это допускается применимым законодательством и процессуальными нормами:*

#### ЕВРОПА, БЛИЖНИЙ И СРЕДНИЙ ВОСТОК И АФРИКА

В Беларуси, Казахстане, Кыргызстане и России:

Все споры, возникающие из настоящего Соглашения или связанные с его нарушением, прекращением действия или признанием недействительным, подлежат окончательному урегулированию в соответствии с Правилами Арбитража и Урегулирования Международного Арбитражного Центра Федеральной Экономической Палаты в Вене (Венские Правила) тремя арбитрами, назначенными в соответствии с данными правилами. Арбитражное разбирательство будет проводиться в Вене (Австрия), и официальным языком разбирательства будет английский. Решение арбитров является окончательным и обязательным для обеих сторон. Поэтому, в соответствии с параграфом 598 (2) Австрийского Гражданско-процессуального кодекса, стороны в явно выраженной форме отказываются от применения параграфа 595 (1), пункта 7 Кодекса. IBM может, однако, возбудить разбирательство в компетентном суде в стране установки.

### ПОПРАВКИ ДЛЯ СТРАН ЕВРОПЫ, БЛИЖНЕГО И СРЕДНЕГО ВОСТОКА И АФРИКИ (ЕМЕА)

### ЛЮБАЯ ЕВРОПЕЙСКАЯ СТРАНА, ПРИНЯВШАЯ ЗАКОНЫ О КОНФИДЕНЦИАЛЬНОСТИ И ЗАЩИТЕ ДАННЫХ, АНАЛОГИЧНЫЕ МОДЕЛИ ЕВРОПЕЙСКОГО СОЮЗА.

#### 13. Общие условия

*Пункт 13.е заменяется следующим:*

(1) **Определения**—в Пункте 13.е используются следующие дополнительные определения:

- (а) **Деловая Контактная Информация**—деловая контактная информация, которую Лицензиат раскрывает IBM, включающая имена, должности, служебные адреса, номера телефонов и адреса электронной почты сотрудников и подрядчиков Лицензиата. В Австрии, Италии и Швейцарии Деловая Контактная Информация также включает информацию о

Лицензиате и его подрядчиках как о юридических лицах (например, данные о доходах Лицензиата и другую информацию о транзакциях).

- (b) **Деловые Контактные Лица**—сотрудники и подрядчики Лицензиата, к которым относится Деловая Контактная Информация.
  - (c) **Государственный орган по защите Данных**—орган управления, созданный в соответствии с Законодательством о защите Данных и Электронных Средствах связи в соответствующей стране, или, для стран, не входящих в ЕС,—орган, осуществляющий надзор за защитой персональных данных в этой стране; или (для всех вышеупомянутых) любая надлежащим образом уполномоченная организация, являющаяся их правопреемником.
  - (d) **Законодательство о защите Данных и Электронных Средствах связи**—(i) применимое местное законодательство и действующие нормативные акты, вводящие в действие Директиву ЕС 95/46/ЕС (о защите прав физических лиц при обработке персональных данных и свободной передаче таких данных) и Директиву ЕС 2002/58/ЕС (в отношении обработки персональных данных и защиты конфиденциальности в сфере электронных средств связи), или (ii) для стран, не входящих в ЕС,—принятые в данной стране законы и/или нормативные акты, касающиеся защиты персональных данных и законодательного регулирования в сфере электронных средств связи с использованием персональных данных, включая (для всех вышеупомянутых) любые заменяющие их нормативные акты и поправки к ним.
  - (e) **IBM Group**—International Business Machines Corporation, штаб-квартира которой находится в Армонке, штат Нью-Йорк (США), ее дочерние компании и их соответствующие Бизнес-Партнеры и субподрядчики.
- (2) Лицензиат предоставляет IBM право:
- (a) обрабатывать и использовать Деловую Контактную Информацию в пределах IBM Group для целей поддержки Лицензиата, включая предоставление услуг поддержки, и для целей продолжения деловых отношений между Лицензиатом и IBM Group, включая, без ограничений, обращение к Деловым Контактным Лицам (по электронной почте или иным способом) и маркетинг продуктов и услуг IBM Group ("Указанная Цель"); и
  - (b) раскрывать Деловую Контактную Информацию другим участникам IBM Group только для Указанной Цели.
- (3) IBM соглашается обрабатывать всю Деловую Контактную Информацию в соответствии с Законодательством о защите Данных и Электронных Средствах связи и использовать ее только для Указанной Цели.
- (4) В объеме, требуемом Законодательством о защите Данных и Электронных Средствах связи, Лицензиат заявляет, что (а) получил (или получит) любые согласия от (и направил (или направит) любые уведомления) Деловых Контактных Лиц, как то необходимо для того, чтобы разрешить IBM Group обрабатывать и использовать Деловую Контактную Информацию для Указанной Цели.
- (5) Лицензиат предоставляет IBM право передавать Деловую Контактную Информацию за пределы Европейской Экономической Зоны при условии, что передача будет выполняться с соблюдением договорных условий, одобренных Государственным органом по защите Данных, или в иных случаях, когда передача разрешена в соответствии с Законодательством о защите Данных и Электронных Средствах связи.

# Mednarodna programska licenčna pogodba

## 1. del – splošne določbe

**STEM, KO IMETNIK LICENCE PRENESE, NAMESTI, PREKOPIRA, DOSTOPI DO, KLIKNE GUMB »SPREJMEM« ALI KAKO DRUGAČE UPORABI PROGRAM, SOGLAŠA Z DOLOČBAMI TE POGODBE. ČE SPREJMETE TE DOLOČBE V IMENU IMETNIKA LICENCE, ODGOVARJATE IN JAMČITE, DA IMATE VSA POOBLASTILA ZA POVEZAVO IMETNIKA LICENCE S TEMI DOLOČBAMI. ČE S TEMI DOLOČBAMI NE SOGLAŠATE,**

- **PROGRAMA NE PRENESITE, NE NAMESTITE, NE PREKOPIRAJTE, NE DOSTOPITE DO NJEGA, NE KLIKNETE GUMBA »SPREJMEM« ALI GA NE UPORABITE IN**
- **NEMUDOMA VRNITE NEUPORABLJEN MEDIJ, DOKUMENTACIJO IN DOKAZILO O UPRAVIČENOSTI STRANKI, KI VAM JIH JE POSLALA, TA PA VAM BO POVRNILA PLAČAN ZNESEK. ČE STE PROGRAM PRENESLI, UNIČITE VSE NJEGOVE KOPIJE.**

### 1. Definicije

»**Pooblaščen uporaba**« – podana raven, s katero lahko imetnik licence uporablja ali izvaja program. Ta raven je lahko merjena s številom uporabnikov, z milijoni storitvenih enot (»MSU-ji«), enotami vrednosti procesorja (»PVU-ji«) ali drugimi ravnmi uporabe, ki jih poda IBM.

»**IBM**« – International Business Machines Corporation ali ena od njegovih podružnic.

»**Podatki o licenciranju**« (»**LI**«) – dokument, ki podaja informacije in kakršnekoli dodatne pogoje, specifične za program. Podatke o licenciranju programa si lahko ogledate na naslovu [www.ibm.com/software/sla](http://www.ibm.com/software/sla), najdete pa jih lahko tudi v imeniku programa, jih prikažete z vnosom sistemskega ukaza ali si jih ogledate v knjižici, ki je priložena programu.

»**Program**« – naslednje, vključno z izvirnikom in vsemi celotnimi ali delnimi kopijami: 1) strojno čitljiva navodila in podatki, 2) komponente, datoteke in moduli, 3) avdiovizualna vsebina (kot so slike, besedilo, posnetki ali slike) in 4) s tem povezano licenčno gradivo (kot so ključi in dokumentacija).

»**Potrdilo o upravičenosti**« – dokazilo o pooblaščen uporabi imetnika licence. Potrdilo o upravičenosti dokazuje tudi kvalifikacijo imetnika licence za garancijo, cene bodočih posodobitev (če obstajajo) in potencialne posebne ali promocijske priložnosti. Če IBM imetniku licence ne posreduje potrdila o upravičenosti, lahko IBM namesto njega sprejme izvirno potrdilo o plačilu ali kakšen drug zapis o prodaji pri stranki (IBM ali njegov preprodajalec), pri kateri je imetnik licence pridobil program, in sicer pod pogojem, da podaja ime programa in pridobljeno pooblaščen uporabo.

»**Garancijski rok**« – eno leto, ki začne teči na datum, na katerega je izvirnemu imetniku licence odobrena licenca.

### 2. Struktura pogodbe

Ta pogodba je sestavljena iz **1. dela – splošne določbe**, iz **2. dela – pogoji, značilni za posamezne države** (če obstajajo), podatkov o licenciranju in potrdila o upravičenosti. To je celotna pogodba med imetnikom licence in IBM-om v zvezi z uporabo programa. Kot takšna nadomešča vse predhodne ustne ali pisne komunikacije med imetnikom licence in IBM-om v zvezi z njegovo uporabo programa. Določbe iz 2. dela lahko nadomestijo ali spremenijo tiste iz 1. dela. V primeru, da pride do navzkrižja, imajo prednost pred obema deloma podatki o licenciranju.

### 3. Odobritev pogodbe

Lastnik programa je IBM ali IBM-ov dobavitelj. Program se ne prodaja, pač pa se zanj podeljujejo avtorske pravice in licenca.

IBM dodeli imetniku licence neizključno licenco za 1) uporabo programa v skladu s pooblaščen uporabo, določeno v potrdilu o upravičenosti, 2) izdelavo in namestitve kopij, ki bodo v podporo pri takšni pooblaščen uporabi in 3) izdelavo varnostne kopije, vendar pod pogojem, da

- a. je imetnik licence pridobil program na zakonit način in zadovoljuje določbe te pogodbe;

- b. se varnostna kopija uporabi samo, če ni mogoče zagnati varnostno prekopiranega programa;
- c. imetnik licence opremi vsako kopijo ali delno kopijo programa z vsemi obvestili in drugimi oznakami o avtorskih pravicah, ki dokazujejo lastništvo;
- d. imetnik licence zagotovi, da vsak uporabnik, ki dostopi do programa (lokalno ali na daljavo) 1) to naredi samo v imenu imetnika licence in 2) pri tem upošteva določbe te pogodbe;
- e. imetnik licence program 1) uporablja, kopira, spreminja ali distribuira izključno v skladu z določbami te pogodbe; 2) v programu ne uporabi vzratnega prevajanja, vzratnega inženirstva ali ga kako drugače prevede, razen kot izrecno dopušča zakon brez možnosti odpovedi pogodbe; 3) ne uporabi komponent, datotek, modulov, avdiovizualne vsebine ali s tem povezanega licenčnega gradiva ločeno od programa; ali 4) programa ne podlicencira, daje v najem ali v zakup; in
- f. če pridobi imetnik licence ta program kot podporni program, ga bo uporabljal izključno kot podporo glavnemu programu in je predmet vseh omejitev iz licence za glavni program; ali, če pridobi imetnik licence ta program kot glavni program, bo uporabil vse podporne programe samo kot podporo temu programu in zanj veljajo vse omejitve iz te pogodbe. Za namen te točke »f« je »podporni program« tisti program, ki je del drugega IBM-ovega programa (»glavni program«) in je v podatkih o licenciranju glavnega programa določen kot podporni program. (Če želi imetnik licence pridobiti ločeno licenco za podporni program brez teh omejitev, se mora obrniti na stranko, pri kateri je pridobil podporni program.)

Ta licenca velja za vsako kopijo programa, ki jo izdelata imetnik licence.

### **3.1 Zamenjave, posodobitve in popravki**

#### **3.1.1 Zamenjave**

Če zamenjate program s programom iz zamenjave, licenca za zamenjan program nemudoma preneha veljati.

#### **3.1.2 Posodobitve in popravki**

Če prejme imetnik licence posodobitev ali popravek za program, sprejme vse dodatne ali drugačne določbe, ki veljajo za takšno posodobitev ali popravek, in so podane v podatkih o licenciranju. Če niso podane nobene dodatne ali drugačne določbe, za posodobitev ali popravek velja izključno ta pogodba. Če imetnik licence zamenja program s posodobitvijo, soglaša, da bo nemudoma prenehal uporabljati zamenjan program.

### **3.2 Licence za določeno dobo**

Če dodeli IBM licenco za program za določeno dobo, licenca imetnika licence preneha veljati ob koncu te dobe, razen v primeru, če se imetnik licence in IBM dogovorita, da jo bosta podaljšala.

### **3.3 Doba in prenehanje veljavnosti**

Ta pogodba ostane v veljavi, dokler se je ne odpove.

IBM lahko odpove licenco imetnika licence, če ta ne upošteva določb te pogodbe.

Če katerakoli stranka zaradi kakršnegakoli razloga odpove licenco, imetnik licence soglaša, da bo nemudoma prenehal uporabljati vse kopije programa in jih bo uničil. Vse določbe te pogodbe, ki zaradi svoje narave ostanejo v veljavi tudi po izteku te pogodbe, ostanejo v veljavi do svoje izpolnitve, in veljajo za ustrezne naslednike in pooblaščenca obeh pogodbenih strank.

### **4. Bremitve**

Bremitve temeljijo na pridobljeni pooblaščenosti uporabi, določeni v potrdilu o upravičenosti. IBM ne daje nobenih posojil ali povračil za že zapadle ali plačane bremenitve, razen če je to določeno kje drugje v tej pogodbi.

Če želi imetnik licence povečati svojo pooblaščenost uporabo, mora o tem vnaprej obvestiti IBM ali pooblaščenega IBM-ovega prodajalca in plačati vse ustrezne bremenitve.

### **5. Davki**

Če ustrezná služba za program določi takso, davek, pristojbino ali prispevek, kar ne vključuje tistih, ki temeljijo na IBM-ovem čistem dohodku, imetnik licence soglaša, da bo plačal ta znesek, podan na računu, ali pa posredoval dokumente o oprostitvi. Imetnik licence je odgovoren za vse davke na osebno lastnino za program od datuma njegove pridobitve. Če ustrezná služba določi carinsko takso, davek, dajatev ali pristojbino za uvoz ali

izvoz, prenos, dostop do ali uporabo programa izven države, v kateri je bila zanj imetniku licence dodeljena licenca, se imetnik licence strinja, da je odgovoren za kakršenkoli zaračunan znesek in ga bo tudi plačal.

## **6. Garancija za vračilo denarja**

Če imetnik licence iz kakršnegakoli vzroka ni zadovoljen s programom in je izvirni imetnik licence, lahko odpove licenco in si priskrbi povračilo zneska, ki ga je plačal za program, vendar pod pogojem, da imetnik licence vrne program in potrdilo o upravičenosti stranki, pri kateri ju je pridobil, v roku 30 dni od datuma izdaje potrdila o upravičenosti za imetnika licence. Če gre za licenco za določeno dobo, ki je predmet podaljšanja, si lahko imetnik licence priskrbi denarno vračilo samo, če vrne program in njegovo potrdilo o upravičenosti v prvih 30 dneh začetne dobe. Če je imetnik licence prenesel program, naj se za navodila o denarnem vračilu obrne na stranko, pri kateri ga je pridobil.

## **7. Prenos programa**

Imetnik licence lahko prenese program in vse njegove pravice in dolžnosti na drugo stranko samo, če ta stranka soglaša z določbami te pogodbe. Če katerakoli stran zaradi kakršnegakoli vzroka prekine licenco, imetnik licence ne sme prenesti programa na drugo stranko. Imetnik licence ne sme prenesti dela 1) programa ali 2) pooblaščen uporabe programa. Če imetnik licence prenese program, mora prenesti tudi natisnjeno različico te pogodbe, vključno s podatki o licenciranju in potrdilom o upravičenosti. Licenca imetnika licence preneha veljati nemudoma po prenosu.

## **8. Garancija in izključitve**

### **8.1 Omejena garancija**

IBM jamči, da program pri uporabi v določenem operacijskem okolju ustreza njegovim specifikacijam. Specifikacije programa in informacije o določenem operacijskem okolju boste našli v dokumentaciji, ki ste jo dobili s programom (kot je na primer datoteka Preberi) ali v drugih informacijah, ki jih je objavil IBM (kot je na primer najava). Imetnik licence soglaša, da so lahko takšna dokumentacija in druga vsebina programa posredovani samo v angleškem jeziku, razen če drugače zahteva zakon brez možnosti pogodbene odpovedi ali omejitev.

Garancija velja samo za nespremenjeni del programa. IBM ne jamči neprekinjenega ali brezhibnega delovanja programa ali da bo IBM odpravil vse okvare v programu. Za rezultate pri uporabi programa je odgovoren imetnik licence sam.

V času garancijskega roka nudi IBM imetniku licence brezplačen dostop do IBM-ovih baz podatkov, ki vsebujejo informacije o znanih okvarah programa, popravkih okvar, omejitvah in zaobitjih. Za nadaljnje informacije preglejte priročnik za podporo IBM-ovi programski opreml na naslovu [www.ibm.com/software/support](http://www.ibm.com/software/support).

Če program v času garancijskega roka ne deluje v skladu z jamstvi in težave ni mogoče razrešiti z informacijami, ki so na voljo v IBM-ovih bazah podatkov, lahko imetnik licence vrne program in njegovo potrdilo o upravičenosti stranki (IBM-u ali njegovemu prodajalcu), pri kateri ga je pridobil in si priskrbi povračilo za plačan znesek. Po vrnitvi programa licenca imetnika licence preneha veljati. Če je imetnik licence prenesel program, naj se za navodila o denarnem vračilu obrne na stranko, pri kateri ga je pridobil.

### **8.2 Izključitve**

**TE GARANCIJE SO IZKLJUČNE GARANCIJE IMETNIKA LICENCE IN NADOMEŠČAJO VSE DRUGE GARANCIJE ALI POGOJE, PA NAJ BODO IZRECNII ALI NAKAZANI, KAR VKLJUČUJE TUDI (VENDAR NI OMEJENO NA) ZAKONSKE GARANCIJE ALI POGOJE PRIMERNOSTI ZA PRODAJO, ZADOLŽLJIVO KAKOVOST, USTREZNOST ZA DOLOČEN NAMEN, NASLOV IN KAKRŠNOKOLI GARANCIJO ALI POGOJ NEKRŠENJA. NEKATERE DRŽAVE ALI SODNE PRISTOJNOSTI NE DOVOLJUJEJO IZKLJUČITVE IZRECNIIH ALI NAKAZANIH GARANCIJ, ZATO ZGORNJA OMEJITEV ZA VAS LAHKO NE VELJA. V TEM PRIMERU SO TAKŠNE GARANCIJE OMEJENE NA TRAJANJE GARANCIJSKEGA ROKA. PO IZTEKU TEGA ROKA NE VELJA VEČ NOBENA GARANCIJA. NEKATERE DRŽAVE ALI SODNE PRISTOJNOSTI NE DOVOLJUJEJO OMEJITVE V TRAJANJU ZAKONSKE GARANCIJE, ZATO ZGORNJA OMEJITEV ZA IMETNIKA LICENCE LAHKO NE VELJA.**



**TE GARANCIJE DAJEJO IMETNIKU LICENCE POSEBNE ZAKONSKE PRAVICE. IMETNIKU LICENCE LAHKO PRIPADAJO TUDI DRUGE PRAVICE, KI SE OD DRŽAVE DO DRŽAVE IN SODNE PRISTOJNOSTI DO SODNE PRISTOJNOSTI RAZLIKUJEJO.**

**GARANCIJE V TEM 8. RAZDELKU (GARANCIJA IN IZKLJUČITVE) DOLOČA IZKLJUČNO IBM. TODA IZKLJUČITVE IZ TEGA PODRAZDELKA 8.2 (IZKLJUČITVE) VELJAJO TUDI ZA IBM-OVE DOBAVITELJE KODE DRUGIH PROIZVAJALCEV. TI DOBAVITELJI NUDIJO TAKŠNO KODO BREZ GARANCIJ ALI POGOJEV KAKRŠNEKOLI VRSTE. TA ODSTAVEK NE RAZVELJAVLJA IBM-OVIH GARANCIJSKIH DOLŽNOSTI, KI IZHAJAJO IZ TE POGODBE.**

## **9. Podatki in baze podatkov imetnika licence**

Dabi imetniku licence pomagali pri osamitvi vzroka težave v programu, lahko IBM od njega zahteva, da 1) omogoči IBM-u oddaljen dostop do svojega sistema ali 2) IBM-u pošlje podatke o licenciranju ali sistemske podatke. Vendar pa IBM ni dolžan nuditi takšne pomoči, če IBM in imetnik licence ne podpišeta ločene pisne pogodbe, v skladu s katero IBM soglaša, da bo nudil imetniku licence to vrsto podpore, ki presega IBM-ove garancijske obveznosti iz te pogodbe. V vsakem primeru bo IBM uporabil informacije o napakah in težavah za izboljšanje svojih izdelkov in storitev in kot pomoč pri nudenju s tem povezanih ponudb za podporo. V ta namen lahko IBM vključi IBM-ove pravne osebe in podpodbodbenike (kar vključuje tudi tiste v eni ali več državah, v katerih se ne nahaja imetnik licence), imetnik licence pa daje IBM-u v ta namen pooblastilo.

Imetnik licence ostaja odgovoren za 1) vse podatke in vsebino vseh baz podatkov, ki jih imetnik licence omogoči za IBM, 2) izbiro in uvedbo postopkov in nadzora v zvezi z dostopanjem, zaščito, šifriranjem, uporabljanjem in prenašanjem podatkov (vključno z vsemi osebnimi podatki) in 3) varnostno kopiranje in obnavljanje vseh baz podatkov in shranjenih podatkov. Imetnik licence IBM-u ne bo poslal ali priskrbel dostopa do osebnih informacij, ki so lahko v podatkovni ali kakršnikoli drugi obliki, in bo odgovoren za sprejemljive stroške in druge zneske, ki jih lahko naloži IBM v zvezi s takšnimi informacijami, ki so po nesreči posredovane IBM-u, ali za izgubo ali razkritje takšnih informacij s strani IBM-a, vključno s tistimi, do katerih pride zaradi zahtevkov katerihkoli tretjih strani.

## **10. Omejitev odgovornosti**

Omejitve in izključitve iz tega razdelka 10 (Omejitev odgovornosti) veljajo v celoti, če jih ne prepoveduje veljavni zakon brez možnosti pogodbene odpovedi.

### **10.1 Primeri, za katere je IBM lahko odgovoren**

Zaradi napake IBM-a ali zaradi kakšne druge obveznosti lahko pride do okoliščin, v katerih je imetnik licence od IBM-a upravičen terjati odškodnino. Ne glede na osnovo, na kateri je imetnik licence upravičen do odškodnine od IBM-a (vključno s temeljno kršitvijo, malomarnostjo, napačno predstavitvijo dejstev ali kakšnim drugim pogodbenim ali kazenskim zahtevkom), je IBM-ova celotna odgovornost za vse zahtevke, ki so vloženi skupaj v povezavi z vsakim programom ali kako drugače izhajajo iz te pogodbe, omejena na znesek kakršnekoli 1) odškodnine za telesne poškodbe (vključno s smrtjo) in škode v nepremičninah ali v osebnih premočninah in 2) drugo dejansko neposredno škodo do zneska (če je program predmet bremenitev za določeno dobo, do dvanajstmesečne bremenitve), ki ga je imetnik licence plačal za program, ki je predmet zahtevka.

Ta omejitev velja tudi za vse IBM-ove razvijalce in dobavitelje programa, in predstavlja maksimum, za katerega so IBM in razvijalci in dobavitelji programa kolektivno odgovorni.

### **10.2 Primeri, za katere IBM ni odgovoren**

**IBM IN NJEGOVI RAZVIJALCI ALI DOBAVITELJI PROGRAMA POD NOBENIMI POGOJI NE ODGOVARJAJO ZA NASLEDNJE PRIMERE, TUDI ČE SO OBVEŠČENI O MOŽNOSTI, DA DO NJIH PRIDE:**

- a. **IZGUBO ALI POŠKODBO PODATKOV;**
- b. **POSEBNO, NAKLJUČNO, KAZENSKO ALI POSLEDIČNO ŠKODO ALI KAKRŠNOKOLI EKONOMSKO POSLEDIČNO ŠKODO; ALI**
- c. **IZGUBLJENE DOBIČKE, POSLOVANJE, DOHODKE, DOBRO IME ALI PRIČAKOVANE PRIHRANKE.**



## 11. Preverjanje skladnosti

Za namen tega razdelka 11 (Preverjanje skladnosti) pomenijo »Določbe programa IPLA« 1) to pogodbo in ustrezne dodatke in transakcijske dokumente, ki jih priskrbi IBM in 2) IBM-ova načela za programsko opremo, ki se lahko najdejo na spletnem mestu IBM-ovih načel za programsko opremo ([www.ibm.com/software/policies](http://www.ibm.com/software/policies)), kar vključuje, vendar ni omejeno na tista načela, ki se nanašajo na varnostno kopiranje, določanje cen za podkapaciteto in selitev.

Pravice in obveznosti iz tega razdelka 11 ostanejo v veljavi v obdobju, v katerem je program licenciran za imetnika licence in še dve leti zatem.

### 11.1 Postopek preverjanja

Imetnik licence soglaša, da bo izdelal, ohranil in IBM-u in njegovim revizorjem omogočil vpogled v natančne zabeležene zapise, izhodne podatke sistemskih orodij in druge sistemske informacije, ki zadostujejo za preverjanje, ali imetnik licence uporablja vse programe v skladu z določbami programa IPLA, kar vključuje, vendar ni omejeno na vse kvalifikacijske določbe za IBM-ovo ustrezno licenciranje in določanje cen. Dolžnost imetnika licence je 1) zagotoviti, da ne preseže svoje pooblaščne uporabe in 2) delovati v skladu z določbami programa IPLA.

Na podlagi ustreznega predhodnega obvestila lahko IBM preveri, ali imetnik licence upošteva določbe programa IPLA na vseh lokacijah in v vseh okoljih, kjer imetnik licence uporablja (za kakršenkoli namen) programe, ki so predmet določb programa IPLA. Pri takšnem preverjanju bomo poskušali čim manj motiti poslovanje imetnika licence in ga lahko opravimo na lokaciji imetnika licence med običajnimi poslovnimi urami. IBM lahko kot pomoč pri preverjanju vključi neodvisnega revizorja, pod pogojem, da je IBM z njim podpisal pogodbo o zaupnosti.

### 11.2 Razrešitev

IBM bo imetnika licence v pisni obliki obvestil, če takšno preverjanje pokaže, da je imetnik licence pri uporabi kateregakoli programa presegel pooblaščno uporabo ali če kako drugače ne zadovoljuje določb programa IPLA. Imetnik licence soglaša, da bo IBM-u nemudoma in neposredno plačal bremenitve, ki jih IBM poda na računu za 1) takšno preseženo uporabo, 2) podporo za takšno preseženo uporabo za trajanje takšne presežene uporabe ali za dve leti (kar je krajše) in 3) vse dodatne stroške in druge obveznosti, ki so ugotovljene kot rezultat takšnega preverjanja.

## 12. Obvestila za druge proizvajalce

Program lahko vključuje kodo drugega proizvajalca, za katero dodeli v tej pogodbi licenco IBM in ne drug proizvajalec. Opombe (če obstajajo) za kodo drugega proizvajalca ("Obvestila za druge proizvajalce") so vključena zgolj kot informacija za imetnika licence. Ta obvestila boste našli v datoteki (datotekah) OPOMBE programa. Informacije o tem, kako pridobiti izvorno kodo za kodo določenih drugih proizvajalcev, boste našli v razdelku Obvestila za druge proizvajalce. Če IBM v razdelku Obvestila za druge proizvajalce identificira kodo drugega proizvajalca kot »kodo drugega proizvajalca z možnostjo spreminjanja«, daje IBM imetniku licence pooblastilo za 1) spreminjanje kode drugega proizvajalca z možnostjo spreminjanja in 2) vzratno inženirstvo v modulih programa, ki so v neposrednem stiku s kodo drugega proizvajalca z možnostjo spreminjanja, pod pogojem, da gre izključno za namen razhroščevanja (debugging) popravkov imetnika licence v takšni kodi drugega proizvajalca. IBM-ove servisne in podporne obveznosti (če obstajajo) veljajo samo za nespremenjen program.

## 13. Splošno

- Noben del te pogodbe ne vpliva na nobene zakonite pravice potrošnikov, ki jih ni mogoče odpovedati ali omejiti s pogodbo.
- Za programe, ki jih IBM posreduje imetniku licence v materialni obliki, bo IBM izpolnil svoje obveznosti glede dobave in dostave ob dostavi takšnih programov špediterju, ki ga imenuje IBM, razen če se IBM in imetnik licence v pisni obliki ne dogovorita drugače.
- Če se za katero določbo iz te pogodbe ugotovi, da ni veljavna ali da je ni mogoče uveljaviti, preostale določbe iz te pogodbe ostanejo v polni veljavi.
- Imetnik licence soglaša, da bo upošteval vse lokalne zakone in predpise v zvezi z izvažanjem in uvažanjem, vključno s predpisi in prepovedmi v povezavi z embargom in sankcijami o izvozu za določene končne uporabe ali za določene uporabnike.

- e. Imetnik licence pooblašča družbo International Business Machines Corporation in njene podružnice (in njene naslednike in pooblaščenke, pogodbenike in IBM-ove poslovne partnerje) za shranjevanje in uporabo poslovnih kontaktnih informacij imetnika licence tam, kjer poslujejo, v povezavi z IBM-ovimi izdelki in storitvami ali pri pospeševanju IBM-ovega odnosa z imetnikom licence.
- f. Vsaka stran bo drugi strani omogočila sprejemljivo priložnost za zadovoljitev določb, preden bo začela trditi, da druga ne zadovoljuje svojih obveznosti iz te pogodbe. Strani bosta poskusili v dobri veri razrešiti vse spore, nesoglasja ali druge zahteve med stranmi v povezavi s to pogodbo.
- g. Razen če drugače ne zahteva lokalni zakon brez možnosti pogodbene odpovedi ali omejitve: 1) nobena stranka ne bo sprožila pravnega postopka, ne glede na njegovo obliko, za katerokoli zahtevo, nastalo v povezavo s to pogodbo, več kot dve leti po nastanku vzroka za zahtevo; in 2) po izteku tega časovnega obdobja vsi takšni zahtevki in druge ustrezne pravice, povezane z zahtevkom, zastarajo.
- h. Niti imetnik licence niti IBM nista odgovorna za neizpolnitev katerekoli obveznosti zaradi vzrokov, ki jih ni mogoče nadzorovati.
- i. Ta pogodba ne daje osnove za nobene pravice ali zahtevke katerikoli tretjih strank, niti ni IBM odgovoren za nobene zahtevke tretjih strank proti imetniku licence, razen kot dovoljuje zgornji podrazdelek 10.1 (Primeri, za katere je IBM lahko odgovoren) za telesne poškodbe (vključno s smrtjo) ali škodo na nepremičninah ali v osebnih premoženjih, za katere je IBM zakonsko odgovoren tej tretji stranki.
- j. S podpisom te pogodbe se nobena pogodbeni stranka ne zanaša na nobeno predstavljeno dejstvo, ki ni določeno v tej pogodbi, kar vključuje, vendar ni omejeno na nobeno predstavljeno dejstvo, ki se nanaša na: 1) zmogljivost ali delovanje programa, razen kot je izrecno zajamčeno v razdelku 8 (Garancija in izključitve) zgoraj; 2) izkušnje ali priporočila drugih strank; ali 3) kakršnekoli rezultate ali prihranke, ki jih lahko pridobi imetnik licence.
- k. IBM je z določenimi organizacijami (imenovanimi "IBM-ovi poslovni partnerji") podpisal pogodbe za promoviranje, trženje in podpiranje določenih programov. IBM-ovi poslovni partnerji so neodvisni in ločeni od IBM-a. IBM ni odgovoren za dejanja ali izjave IBM-ovih poslovnih partnerjev ali za obveznosti, ki jih imajo do imetnika licence.
- l. Določbe v zvezi z odškodnino za licenco in intelektualno lastnino iz drugih pogodb, ki jih je imetnik licence podpisal z IBM-om (kot je na primer IBM-ova pogodba za stranke), ne veljajo za programske licence, dodeljene s to pogodbo.

## **14. Geografsko področje in zakonodaja**

### **14.1 Zakonodaja**

Obe pogodbeni stranki soglašata, da bodo zakoni države, v kateri je imetnik licence pridobil licenco za program, uporabljeni za upravljanje, interpretiranje in uveljavljanje vseh ustreznih pravic, dolžnosti in obveznosti imetnika licence in IBM-a, nastalih na osnovi predmeta te pogodbe ali v povezavi z njim, ne glede na navzkrižje zakonskih načel.

Konvencija Združenih narodov v zvezi s pogodbami za mednarodno prodajo blaga ne velja.

### **4.2 Sodna pristojnost**

Vse pravice, dolžnosti in obveznosti bodo obravnavala sodišča v državi, v kateri imetnik licence pridobi licenco za program.

## **2. del – pogoji, značilni za posamezne države**

Za licence, dodeljene v Sloveniji, naslednji pogoji nadomestijo ali spremenijo omenjene pogoje iz 1. dela. Vsi pogoji iz 1. dela, ki jih ta dopolnila ne spremenijo, ostanejo nespremenjeni in v veljavi.

### **DOPOLNILA ZA DRŽAVE EMEA (EVROPA, SREDNJI VZHOD, AFRIKA)**

#### **DRŽAVE ČLANICE EVROPSKE UNIJE**

### **8. Garancija in izključitve**

*razdelku (Garancija in izključitve) je dodano naslednje:*

V Evropski uniji ("EU") za porabnike veljajo zakonske pravice iz ustreznih lokalne zakonodaje, ki je v uporabi za prodajo potrošniških dobrin. Na te pravice ne vplivajo določbe iz 8. razdelka z naslovom Garancija in izključitve. Omejena garancija velja po vsem svetu.

### 13. Splošno

*Naslednje nadomešča točko 13. e:*

- (1) **Definicije**—Za namene te točke 13. e veljajo naslednje dodatne definicije:
- (a) **Poslovne kontaktne informacije**—s podjetjem povezane kontaktne informacije, ki jih IBM-u razkrije imetnik licence, vključno z imeni, naslovi delovnih mest, poslovnimi naslovi, telefonskimi številkami in elektronskimi naslovi uslužbencev in pogodbenikov imetnika licence. Za Avstrijo, Italijo in Švico vključujejo poslovne kontaktne informacije tudi informacije o imetniku licence in njegovih pogodbenikih kot pravnih osebah (kot so na primer podatki o dohodkih imetnika licence in druge transakcijske informacije).
  - (b) **Osebe poslovnega stika**—uslužbenci in pogodbeniki imetnika licence, s katerimi so povezane poslovne kontaktne informacije.
  - (c) **Služba za zaščito podatkov**—služba, osnovana na osnovi zakonodaje za zaščito podatkov in elektronske komunikacije v ustrezni državi, za države, ki niso v Evropski uniji pa služba, ki je odgovorna za nadzorovanje zaščite osebnih podatkov v tej državi ali (za karkoli od zgoraj omenjenega) katerakoli njena ustrezno imenovana nasledna enota.
  - (d) **Zakonodaja za zaščito podatkov in elektronske komunikacije**—(i) ustrezna lokalna zakonodaja in predpisi, ki so v veljavi z namenom izvajanja zahtev smernice EU 95/46/EC (za zaščito posameznikov pri obdelavi osebnih podatkov in pri prostem prenašanju takšnih podatkov) in smernice EU 2002/58/EC (glede obdelave osebnih podatkov in zaščite zasebnosti v sektorju elektronskih komunikacij); ali (ii) za države, ki niso v Evropski uniji zakonodaja in/ali predpisi, ki so v veljavi v ustrezni državi za zaščito osebnih podatkov in reguliranje elektronskih komunikacij, ki vključujejo osebne podatke, kar vključuje (za karkoli od zgoraj omenjenega) kakršnokoli njihovo ustavno zamenjavo ali popravek.
  - (e) **IBM-ova skupina**—International Business Machines Corporation iz Armonka, New York, ZDA, njegove podružnice ter ustrezni poslovni partnerji in podpogodbeniki.
- (2) Imetnik licence pooblašča IBM za:
- (a) obdelavo in uporabo poslovnih kontaktnih informacij znotraj IBM-ove skupine za nudenje podpore imetniku licence, kar vključuje tudi nudenje podpornih storitev, in za izboljšanje poslovnega odnosa med imetnikom licence in IBM-ovo skupno, kar brez omejitve vključuje tudi stik z osebjem za poslovni stik (po elektronski pošti ali v kakšni drugi obliki), in trženje izdelkov in storitev IBM-ove skupine ("določen namen"); in
  - (b) razkritje poslovnih kontaktnih informacij drugim članom iz IBM-ove skupine izključno za "določen namen".
- (3) IBM soglaša, da bodo vse poslovne kontaktne informacije obdelane v skladu z zakonodajo o zaščiti podatkov in elektronske komunikacije in bodo uporabljene izključno za "določen namen".
- (4) Do mere, ki jo zahteva zakonodaja za zaščito podatkov in elektronske komunikacije, imetnik licence izjavlja, da (a) je pridobil (ali bo pridobil) privolitve osebja zstika (ali je izdal ali bo izdal obvestila zanje), potrebne, da bi IBM-ovi skupini omogočil obdelavo in uporabo poslovnih kontaktnih informacij za "določen namen".
- (5) Imetnik licence pooblašča IBM za prenos poslovnih kontaktnih informacij izven evropskega tržnega prostora, pod pogojem, da je prenos izveden v skladu s pogodbenimi pogoji, ki jih odobri služba za zaščito podatkov, ali da je kako drugače dovoljen z zakonodajo za zaščito podatkov in elektronske komunikacije.

# Acuerdo Internacional de Programas bajo Licencia

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- d. el Licenciatario se asegure de que cualquier persona que utilice el Programa (tanto si accede localmente o de forma remota): 1) lo hace únicamente en nombre del Licenciatario, y 2) cumple los términos de este Acuerdo;
- e. el Licenciatario no podrá 1) utilizar, copiar, modificar ni distribuir el Programa excepto del modo permitido expresamente en este Acuerdo; 2) desensamblar, descompilar, traducir de otro modo o realizar técnicas de ingeniería inversa en el Programa, excepto en la medida permitida expresamente por ley sin posibilidad de renuncia contractual; 3) utilizar cualquiera de los componentes, archivos, módulos, contenido audiovisual del Programa, o materiales bajo licencia relacionados, de forma separada de dicho Programa; o 4) sublicenciar, alquilar o arrendar el Programa; y
- f. si el Licenciatario obtiene este Programa como un Programa de Soporte, el Licenciatario utilizará el Programa únicamente como soporte del Programa Principal y sujeto a cualquier limitación de la licencia del Programa Principal, o, si el Licenciatario obtiene este Programa como Programa Principal, el Licenciatario utilizará todos los Programas de Soporte únicamente como soporte de este Programa y sujetos a cualquier limitación establecida en este Acuerdo. A los efectos de este apartado "f," un "Programa de Soporte" es un Programa que forma parte de otro Programa de IBM ("Programa Principal") y se identifica como Programa de Soporte en la LI del Programa Principal. Para obtener una licencia independiente para un Programa de Soporte sin estas restricciones, el Licenciatario debe ponerse en contacto con la parte a la cual adquirió el Programa de Soporte.

Esta licencia se aplica a cada copia del Programa que realice el Licenciatario.

#### 3.1 Actualizaciones, Mejoras, Correcciones y Parches

##### 3.1.1 Actualizaciones

Si se sustituye el Programa por una actualización, la licencia del Programa sustituido se rescindirá inmediatamente.

##### 3.1.2 Mejoras, Correcciones y Parches

En el caso en que el Licenciatario reciba una mejora, corrección o parche para un Programa, el Licenciatario acepta cualquier término adicional o diferente que sea aplicable a dicha mejora, corrección o parche que esté especificada en su LI. Si no se proporcionan términos adicionales o diferentes, la mejora, corrección o parche estará sujeto únicamente a este Acuerdo. Si el Programa se sustituye por una mejora, el Licenciatario acuerda interrumpir inmediatamente el uso del Programa sustituido.

##### 3.2 Licencias a Plazo Fijo

Si IBM otorga el Programa bajo licencia durante un plazo determinado, la licencia del Licenciatario terminará al final del plazo determinado, a menos que el Licenciatario e IBM acuerden su renovación.

##### 3.3 Vigencia y Terminación

Los términos de este Acuerdo son efectivos hasta su terminación.

IBM puede terminar la licencia del Licenciario en caso que éste incumpla los términos de este Acuerdo.

En el caso en que cualquiera de las partes termine la licencia por cualquier causa, el Licenciario acuerda interrumpir el uso inmediatamente y destruir todas sus copias del Programa. Cualquier término de este Acuerdo que por su carácter tenga una vigencia superior a la terminación del Acuerdo permanecerá en vigor hasta su cumplimiento y se aplicará a los sucesores y cesionarios respectivos de ambas partes.

#### **4. Cargos**

Los Cargos se basan en el Uso Autorizado obtenido, que se especifica en el PoE. IBM no concede créditos ni realiza reembolsos de los cargos ya vencidos o pagados, excepto si se especifica lo contrario en este Acuerdo.

Si el Licenciario desea aumentar su Uso Autorizado, el Licenciario deberá notificarlo con antelación a IBM o a un distribuidor autorizado de IBM y pagar cualquier cargo aplicable.

#### **5. Impuestos**

Si cualquier autoridad impone una tasa, impuesto, gravamen o cargo al Programa, con exclusión de aquellos impuestos relativos al beneficio neto empresarial de IBM, el Licenciario acuerda pagar las cantidades correspondientes a dichos conceptos, tal y como se especifique en una factura, o presentará la documentación justificante de estar exento de los mismos. El Licenciario es responsable de cualquier impuesto que grave la propiedad del Programa desde la fecha en la que el Licenciario obtuvo el Programa. Si cualquier autoridad impone una tasa, impuesto, gravamen o cargo por la importación o exportación, traspaso, acceso o uso del Programa fuera del país en el que se otorgó la licencia al Licenciario, el Licenciario acuerda ser responsable de, y pagar, cualquier cantidad impuesta.

#### **6. Garantía de Devolución**

Si el Licenciario no está satisfecho con el Programa por cualquier motivo y es el Licenciario original, el Licenciario puede terminar la licencia y obtener el reembolso del importe que ha pagado por el Programa, siempre y cuando el Licenciario devuelva el Programa y el PoE a la parte a la cual adquirió el Programa dentro del plazo de 30 días tras la fecha en la que se emitió el PoE para el Licenciario. Si la licencia es de plazo fijo y está sujeta a renovación, el Licenciario podrá obtener un reembolso únicamente si devuelve el Programa y su PoE dentro de los primeros 30 días del plazo inicial. Si el Licenciario descargó el Programa, el Licenciario deberá ponerse en contacto con la parte a la cual adquirió el Programa para recibir instrucciones sobre cómo obtener el reembolso.

#### **7. Transferencia del Programa**

El Licenciario puede transferir el Programa y todos sus derechos de licencia y obligaciones a cualquier tercero únicamente si dicha parte acepta los términos de este Acuerdo. Si cualquiera de las partes termina la licencia por cualquier motivo, se prohíbe que el Licenciario transfiera el Programa a un tercero. El Licenciario no transferirá una parte: 1) del Programa, o 2) del Uso Autorizado del Programa. Cuando el Licenciario transfiera el Programa, deberá transferir también una copia impresa de este Acuerdo, incluyendo la LI y el PoE. Después de la transferencia, se considera terminada la licencia del Licenciario.

#### **8. Garantía y Exclusiones**

##### **8.1 Limitación de Garantía**

IBM garantiza que cuando el Programa sea utilizado en el entorno operativo especificado cumplirá con sus especificaciones. Las especificaciones del Programa y la información sobre el entorno operativo especificado, pueden encontrarse en la documentación que se adjunta al Programa (como el archivo "léame") o en otra información publicada por IBM (como en una carta de anuncio). El Licenciario acepta que dicha documentación y otros contenidos del Programa pueden proporcionarse sólo en inglés, a menos que la legislación local requiera lo contrario sin posibilidad de renuncia contractual o limitación.

La garantía se aplica únicamente a la parte no modificada del Programa. IBM no garantiza el funcionamiento ininterrumpido o libre de errores de un Programa, ni que IBM corregirá todos los defectos del Programa. El Licenciatarario es responsable de los resultados obtenidos a partir del uso del Programa.

Durante el Periodo de Garantía, IBM proporciona acceso al Licenciatarario a las bases de datos de IBM que contienen información sobre los defectos conocidos del Programa, las correcciones de dichos defectos, restricciones y circunvalaciones (bypass) sin cargo adicional. Para más información, consulte el manual de soporte de software de IBM (IBM Software Support Handbook) en [www.ibm.com/software/support](http://www.ibm.com/software/support).

Si el Programa no funciona conforme a lo garantizado durante el Periodo de Garantía y no puede resolverse el problema con la información disponible en las bases de datos de IBM, el Licenciatarario podrá devolver el Programa y su PoE a la parte (ya sea IBM o su distribuidor) a la cual adquirió el Programa y recibir un reembolso del importe pagado por el Licenciatarario. Tras la devolución del Programa, finaliza la licencia del Licenciatarario. Si el Licenciatarario descargó el Programa, el Licenciatarario deberá ponerse en contacto con la parte a la cual adquirió el Programa para recibir instrucciones sobre cómo obtener el reembolso.

## **8.2 Exclusiones**

**ESTAS GARANTÍAS SON LAS GARANTÍAS EXCLUSIVAS DEL LICENCIATARIO Y SUSTITUYEN A CUALQUIER OTRA GARANTÍA O CONDICIÓN, EXPLÍCITA O IMPLÍCITA, INCLUIDAS PERO SIN LIMITARSE A, LAS GARANTÍAS O CONDICIONES IMPLÍCITAS DE COMERCIALIZACIÓN, CALIDAD SATISFACTORIA, IDONEIDAD PARA UNA FINALIDAD CONCRETA, TITULARIDAD Y CUALQUIER GARANTÍA O CONDICIÓN DE NO INFRACCIÓN DE LOS DERECHOS DE TERCEROS. LA EXCLUSIÓN DE GARANTÍAS EXPLÍCITAS O IMPLÍCITAS PUEDE NO ESTAR PERMITIDA POR ALGUNOS ESTADOS O JURISDICCIONES Y, POR TANTO, PUEDE QUE DICHA EXCLUSIÓN NO SEA APLICABLE AL LICENCIATARIO. EN TAL CASO, LA DURACIÓN DE DICHAS GARANTÍAS SE LIMITA AL PERIODO DE GARANTÍA. NO SE APLICARÁN GARANTÍAS DESPUÉS DE DICHO PERIODO. ALGUNOS ESTADOS O JURISDICCIONES NO PERMITEN LIMITACIONES EN CUANTO A LA DURACIÓN DE UNA GARANTÍA IMPLÍCITA, POR LO PUEDE QUE LA LIMITACIÓN ANTERIOR NO SEA APLICABLE AL LICENCIATARIO.**

**ESTAS GARANTÍAS OTORGAN UNOS DERECHOS LEGALES ESPECÍFICOS AL LICENCIATARIO. EL LICENCIATARIO PUEDE CONTAR ASIMISMO CON OTROS DERECHOS QUE VARÍAN SEGÚN EL ESTADO O LA JURISDICCIÓN.**

**LAS GARANTÍAS INCLUIDAS EN LA CLÁUSULA 8 "GARANTÍA Y EXCLUSIONES" SON OTORGADAS EXCLUSIVAMENTE POR IBM. NO OBSTANTE, LAS EXENCIONES DE RESPONSABILIDAD EXPUESTAS EN ESTA CLÁUSULA 8.2 "EXCLUSIONES", SE APLICAN TAMBIÉN A LOS PROVEEDORES DE IBM DEL CÓDIGO DE TERCEROS. DICHOS PROVEEDORES PROPORCIONAN EL CÓDIGO SIN GARANTÍAS NI CONDICIONES DE NINGUNA CLASE. ESTE PÁRRAFO NO ANULA LAS OBLIGACIONES DE GARANTÍA DE IBM ESTABLECIDAS EN ESTE ACUERDO.**

## **9. Datos y Bases de Datos del Licenciatarario**

Para ayudar al Licenciatarario a aislar el origen de un problema con el Programa, IBM podrá solicitar que el Licenciatarario: 1) permita que IBM acceda de forma remota al sistema del Licenciatarario, o 2) envíe información sobre el Licenciatarario o datos del sistema a IBM. No obstante, IBM no está obligada a proporcionar dicha asistencia a menos que las Partes tengan un acuerdo, independiente y por escrito, mediante el cual IBM proporcione al Licenciatarario dicho tipo de soporte que no está incluido en las obligaciones de garantía de IBM en este Acuerdo. En cualquier caso, IBM utilizará la información sobre errores y problemas para mejorar sus productos y servicios así como para prestar asistencia con su oferta de servicios de mantenimiento relacionados. Con esa finalidad, IBM podrá utilizar a subcontratistas y Empresas IBM (incluyendo en uno o más países distintos del país en el que se encuentra el Licenciatarario) y el Licenciatarario autoriza a IBM para ello.

El Licenciatarario permanecerá responsable de: 1) los datos y contenidos de cualquier base de datos que el Licenciatarario ponga a disposición de IBM, 2) la selección y la implementación de los



procedimientos y controles relacionados con el acceso, seguridad, encriptación, uso y transmisión de los datos (incluyendo cualquier dato personal que pueda identificarse), y 3) las copias de seguridad y la recuperación de cualquier base de datos y de cualquier dato almacenado. El Licenciatario no enviará a IBM ni le permitirá acceso a datos personales y permanecerá responsable por cualquier coste razonable u otras cantidades que IBM tenga que hacer frente en relación a cualquier información equivocadamente suministrada a IBM, o a la pérdida o revelación de la misma por IBM, incluso las originadas de reclamaciones de terceros.

## **10. Limitación de Responsabilidad**

Las limitaciones y exclusiones de esta Cláusula 10 "Limitación de Responsabilidad" se aplicarán en la medida en que no las prohíba la legislación aplicable sin la posibilidad de una renuncia contractual.

### **10.1 Aspectos por los que IBM Puede Ser Responsable**

Pueden surgir circunstancias en las cuales, debido a un incumplimiento de IBM de sus obligaciones contractuales u otra responsabilidad, el Licenciatario tuviera derecho a reclamar daños a IBM. Independientemente de las razones por las que el Licenciatario tenga derecho a reclamar daños a IBM (incluyendo un incumplimiento, negligencia, falsedad u otra reclamación contractual o extracontractual), la responsabilidad de IBM por todas las reclamaciones que surjan de, en relación con, cada Programa o que de otra manera surjan en relación con este Acuerdo estará limitada únicamente a: 1) los daños físicos a las personas (incluyendo la muerte) y daños a las propiedades, y 2) otros daños directos probados hasta el importe de los cargos (si el Programa está sujeto a cargos de plazo determinado, hasta el importe de los cargos de doce meses) que ha pagado el Licenciatario por el Programa que sea objeto de la reclamación.

Este límite se aplica también a cualquier proveedor o desarrollador de Programas de IBM. Es la cantidad máxima por la que IBM y sus proveedores y desarrolladores de Programas serán responsables colectivamente.

### **10.2 Aspectos por los que IBM No Es Responsable**

**BAJO NINGUNA CIRCUNSTANCIA, IBM, SUS PROVEEDORES O DESARROLLADORES DE PROGRAMAS SERÁN RESPONSABLES, AUNQUE HUBIESEN SIDO INFORMADOS DE SU POSIBILIDAD, DE:**

- a. **LA PÉRDIDA DE, O DAÑO A LOS DATOS;**
- b. **DAÑOS ESPECIALES, INCIDENTALES, PUNITIVOS, INDIRECTOS O CUALQUIER DAÑO ECONÓMICO CONSECUCENCIAL; O**
- c. **PÉRDIDA DE BENEFICIOS, NEGOCIOS, INGRESOS, PLUSVALÍAS O ECONOMÍAS PREVISTAS.**

## **11. Verificación**

A los efectos de esta Cláusula 11 "Verificación", "Términos del Programa IPLA" significa: 1) este Acuerdo así como los Anexos aplicables y los documentos transaccionales proporcionados por IBM, y 2) las políticas de software de IBM que pueden encontrarse en el sitio web sobre Políticas de Software de IBM ([www.ibm.com/softwarepolicies](http://www.ibm.com/softwarepolicies)), incluyendo pero sin limitarse a las políticas relativas a las copias de seguridad, condiciones para los precios de subcapacidad y migración.

Los derechos y obligaciones establecidos en esta Cláusula 11 permanecerán vigentes mientras el Licenciatario tenga una licencia en vigor para el Programa y durante los dos años siguientes.

### **11.1 Proceso de Verificación**

El Licenciatario acuerda crear, conservar y proporcionar a IBM y a sus auditores registros escritos precisos, salidas de las herramientas del sistema y otra información sobre el sistema suficiente para verificar que el uso de todos los Programas por parte del Licenciatario se realiza conforme a los Términos del Programa IPLA, incluyendo, sin limitarse, todos los términos IBM sobre licencias y de calificación de precios aplicables. El Licenciatario es responsable de: 1) asegurar que no excede su Uso Autorizado, y 2) actuar de conformidad con los Términos del Programa IPLA.



Prevía notificación con antelación suficiente, IBM podrá verificar el cumplimiento por parte del Licenciatario de los Términos del Programa IPLA en todas las ubicaciones y para todos los entornos en los que el Licenciatario utilice, con cualquier finalidad, los Programas sujetos a los Términos del Programa IPLA. Dicha verificación se realizará de manera que se minimice la interferencia en la operativa de negocio del Licenciatario, en las instalaciones del Licenciatario, y durante su horario habitual de trabajo. IBM podrá utilizar a un auditor independiente para ayudar en la verificación, siempre que IBM tenga suscrito, por escrito y con anterioridad, un acuerdo de confidencialidad con dicho auditor.

## 11.2 Resolución

IBM notificará al Licenciatario, por escrito, si conforme a dicha verificación el Licenciatario ha utilizado cualquier Programa sobrepasando su Uso Autorizado o no ha cumplido de otro modo con los Términos del Programa IPLA. El Licenciatario acuerda pagar, a la mayor brevedad posible, directamente a IBM los cargos que IBM especifique en una factura por: 1) cualquier uso en exceso, 2) el soporte por dicho uso en exceso durante el periodo que se ha realizado dicho uso en exceso o por dos años, lo que sea menor, y 3) cualquier cargo adicional y cualquier otra responsabilidad que el Cliente esté obligado a pagar como resultado de dicha verificación.

## 12. Avisos de Terceros

El Programa puede incluir código de terceros que IBM, no el tercero, otorga bajo licencia al Licenciatario en virtud de este Acuerdo. Los avisos, si los hubiera, para el código de terceros, ("Avisos de Terceros") se incluyen únicamente para información del Licenciatario. Estos avisos pueden encontrarse en los archivos de avisos del Programa. Se puede encontrar información sobre cómo obtener un código fuente para determinados códigos de terceros en los Avisos de Terceros. Si en los Avisos de Terceros, IBM identifica el código de terceros como "Código de Terceros Modificable", IBM autoriza al Licenciatario a: 1) modificar el Código de Terceros Modificable, y 2) realizar técnicas de ingeniería inversa a los módulos del Programa que se conectan con el Código de Terceros Modificable, siempre y cuando su única finalidad sea depurar las modificaciones realizadas por el Licenciatario a dicho código de terceros. Las obligaciones de servicio y soporte de IBM, si las hubiera, se aplican únicamente al Programa sin modificar.

## 13. General

- a. Nada de lo dispuesto en este Acuerdo afectará a los derechos de los consumidores establecidos por ley que no puedan ser cancelados o limitados por contrato.
- b. En relación con los Programas que IBM proporciona al Licenciatario de forma tangible, IBM cumple sus obligaciones de envío y entrega en el momento en que se entreguen dichos Programas al transportista designado por IBM, salvo que las partes lo acuerden, por escrito, de otro modo.
- c. Si cualquier disposición de este Acuerdo se declara inválida o no exigible, las disposiciones restantes de este Acuerdo permanecerán en vigor.
- d. El Licenciatario acuerda cumplir todas las leyes y normas aplicables sobre exportaciones e importaciones, incluyendo las normativas sobre sanciones y embargo de EE.UU. y las prohibiciones de exportaciones para ciertos usos o a determinados usuarios finales.
- e. El Licenciatario autoriza a International Business Machines Corporation y sus filiales (así como a sus sucesores y cesionarios, contratistas e IBM Business Partners) para almacenar y utilizar la información de contacto del Licenciatario, en cualquier lugar en el que desarrollen su actividad empresarial, en relación a los productos y servicios de IBM, o como consecuencia de la relación empresarial de IBM con el Licenciatario.
- f. Cada parte dará a la otra la oportunidad razonable de cumplir sus obligaciones en virtud del presente Acuerdo antes de reclamar a la otra por un incumplimiento de sus obligaciones contractuales. Las partes intentarán resolver de buena fe cualesquiera controversias, desacuerdos o reclamaciones relacionadas con este Acuerdo.
- g. Salvo que se establezca de otra manera en la legislación aplicable, sin posibilidad de renuncia contractual o limitación: 1) ninguna de las partes interpondrá acción legal alguna, independientemente de la forma, relacionada con este Acuerdo transcurridos más de dos años desde que se produjo su causa; y 2) transcurrido dicho periodo de tiempo, cualquier acción legal que surgiera en relación con el Acuerdo, así como todos los respectivos derechos relacionados con dicha acción, prescribirán.

- h. Ninguna de las partes será responsable del incumplimiento de cualquier obligación debido a causas fuera de control.
- i. Este Acuerdo no creará derecho alguno o causa de demanda para ningún tercero, ni IBM será responsable de las reclamaciones al Cliente de terceros, salvo por lo especificado en la Cláusula 10.1 "Aspectos por los que IBM Puede Ser Responsable" en relación con daños a las personas (incluyendo muerte) y a las propiedades de las que IBM sea legalmente responsable frente a dichos terceros.
- j. Al aceptar los términos de este Acuerdo, ambas partes acuerdan que no se están basando en ninguna manifestación que no esté incluida en este Acuerdo, incluyendo pero sin limitarse a cualquier manifestación en relación con: 1) el rendimiento o funcionamiento del Programa, distinto del expresamente garantizado en la Cláusula 8 "Garantía y Exclusiones"; 2) las experiencias o recomendaciones de otras partes; o 3) cualquier resultado o ahorro que el Licenciario pudiera obtener.
- k. IBM tiene firmados acuerdos con determinadas organizaciones (denominadas "IBM Business Partners") para promocionar, comercializar y dar soporte a ciertos Programas. Los IBM Business Partners permanecerán independientes y son distintos de IBM. IBM no se hace responsable de las acciones o declaraciones de los IBM Business Partners ni de las obligaciones que éstos hayan contraído con el Licenciario.
- l. Los términos de indemnización de propiedad intelectual y de licencia de otros acuerdos del Licenciario con IBM (como las Condiciones Generales de IBM) no son de aplicación a las licencias de Programas concedidas en virtud de este Acuerdo.

## 14. Ámbito Geográfico y Legislación Aplicable

### 14.1 Legislación Aplicable

Ambas partes aceptan la aplicación de las leyes del país en el que el Licenciario haya obtenido la licencia del Programa a fin de regir, interpretar y asegurar el cumplimiento de los derechos, deberes y obligaciones del Licenciario y de IBM, respectivamente, que puedan surgir en virtud de, o que estén de cualquier manera relacionados con este Acuerdo, a pesar de cualquier posible conflicto de ley.

No se aplican los términos de la Convención de las Naciones Unidas sobre los Contratos de Compraventa Internacional de Bienes.

### 14.2 Jurisdicción

Todos los derechos, deberes y obligaciones están sujetos a los tribunales del país en el que el Licenciario haya obtenido la licencia del Programa.

## Parte 2 – Condiciones Exclusivas para cada País

Para las licencias otorgadas en los países especificados a continuación, los siguientes términos sustituyen o modifican los términos incluidos en la Parte 1. Todos los términos de la Parte 1 que no sean modificados por estas enmiendas permanecerán sin cambios y en vigor. Esta Parte 2 se estructura del siguiente modo:

- Enmiendas para varios países de la Parte 1, Cláusula 14 "Legislación Aplicable y Jurisdicción";
- Enmiendas de otros términos del Acuerdo para los países de América y
- Enmiendas de otros términos del Acuerdo para los países de Europa, Oriente Medio y África.

### Enmiendas para varios países de la Parte 1, Cláusula 14 "Legislación Aplicable y Jurisdicción"

#### 14.1 Legislación Aplicable

*La frase "las leyes del país en el que el Licenciario haya obtenido la licencia del Programa" en el primer párrafo de la Cláusula 14.1 "Legislación Aplicable" se sustituye por las frases siguientes en los países que figuran a continuación:*

#### AMÉRICA

- (1) en México: las leyes federales de la República de México;

- (2) en **Venezuela**: las leyes de la República Bolivariana de Venezuela;

## **14.2 Jurisdicción**

*El siguiente párrafo pertenece al apartado de jurisdicción y sustituye a la Cláusula 14.2 "Jurisdicción" tal y como se aplica a los países identificados a continuación:*

Todos los derechos, deberes y obligaciones están sometidos a los tribunales del país en el que el Licenciario haya obtenido la licencia del Programa excepto en los países identificados a continuación, en los que todas las disputas que surjan o se relacionen con este Acuerdo, incluyendo los procedimientos sumarios, se presentarán ante y se someterán a la jurisdicción exclusiva de los siguientes tribunales competentes:

### **AMÉRICA**

- (1) en **Argentina**: el Tribunal de Comercio Ordinario de la ciudad de Buenos Aires,
- (2) en **Chile**: el Juzgado de lo Civil de Santiago;
- (3) en **Ecuador**: los jueces de lo civil de Quito para los procesos sumarios o ejecutivos (según sea el caso);
- (4) en **México**: los tribunales ubicados en Ciudad de México, Distrito Federal;
- (5) en **Perú**: los jueces y tribunales del distrito judicial de Lima, Cercado;
- (6) en **Uruguay**: los tribunales de la ciudad de Montevideo; y
- (7) en **Venezuela**: los tribunales del área metropolitana de la ciudad de Caracas.

### **EUROPA, ORIENTE MEDIO Y ÁFRICA**

- (8) en **España**: los tribunales de Madrid.

## **ENMIENDAS PARA LOS PAÍSES DE AMÉRICA**

### **PERÚ**

#### **10. Limitación de Responsabilidad**

*Se añade lo siguiente al final de la Cláusula 10 "Limitación de Responsabilidad":*

Salvo que la legislación lo requiera expresamente sin posibilidad de renuncia contractual, el Licenciario e IBM tienen la intención de que la limitación de responsabilidad expuesta en esta cláusula "Limitación de Responsabilidad" se aplique a los daños causados por todo tipo de reclamaciones y causa de acción. En el caso que un tribunal competente declare no exigible cualquier limitación o exclusión de responsabilidad de esta cláusula con respecto a una reclamación o derecho de iniciar acciones legales concreto, las partes tienen la intención de que se aplique a todas las demás reclamaciones y derechos de iniciar acciones legales hasta el grado máximo que permita la legislación aplicable.

#### **10.1 Aspectos por los que IBM Puede Ser Responsable**

*Se añade lo siguiente al final de la Cláusula 10.1:*

De conformidad con el Artículo 1328 del Código Civil de Perú, las limitaciones y exclusiones especificadas en este apartado no se aplicarán a los daños causados por conducta indebida intencionada ("dolo") o negligencia grave ("culpa inexcusable") por parte de IBM.

ESTADOS MIEMBROS DE LA UNIÓN EUROPEA

8. Garantía y Exclusiones

*Se añade lo siguiente a la Cláusula 8 "Garantía y Exclusiones":*

En la Unión Europea ("EU"), los consumidores tienen derechos legales en virtud de la legislación nacional aplicable que rija la venta de bienes de consumo. Tales derechos no se ven afectados por las disposiciones expuestas en esta Cláusula 8 "Garantía y Exclusiones". El ámbito territorial de la Garantía Limitada es todo el mundo.

13. General

*Lo siguiente sustituye a la Cláusula 13.e:*

- (1) **Definiciones** – A los efectos de esta Cláusula 13.e, se aplicarán las siguientes definiciones adicionales:
  - (a) **Información Comercial de Contacto** – se entenderá como los datos de contacto relacionados al negocio, revelados a IBM por el Licenciatario, incluyendo nombres, puestos de trabajo, dirección profesional, números de teléfono y direcciones de correo electrónico de los empleados y contratistas del Licenciatario. Para Austria, Italia y Suiza, la Información Comercial de Contacto incluye también información sobre el Licenciatario y sus contratistas como entidades legales (por ejemplo, datos sobre los ingresos del Licenciatario y otra información transaccional)
  - (b) **Personal Comercial de Contacto** – se entenderá como los empleados y contratistas del Licenciatario a los cuales se proporciona la Información Comercial de Contacto.
  - (c) **Autoridad de Protección de Datos** – se entenderá como la autoridad establecida por la Legislación de Protección de Datos y Comunicaciones Electrónicas en el país aplicable o, para los países que no formen parte de la UE, la autoridad responsable de supervisar la protección de los datos personales en dichos países o (para cualquiera de los anteriores) cualquier entidad debidamente designada para ello con posterioridad.
  - (d) **Legislación de Protección de Datos y Comunicaciones Electrónicas** – es: (i) la legislación nacional específica relacionada a la Directiva 46/95/CE, del Parlamento Europeo y del Consejo, de 24 de octubre de 1995, relativa a la protección de las personas físicas en lo que respecta al tratamiento de datos personales y a la libre circulación de estos datos, y Directiva 58/2002/CE, del Parlamento Europeo y del Consejo, de 12 de julio de 2002, relativa al tratamiento de los datos personales y a la protección de la intimidad en el sector de las comunicaciones electrónicas (Directiva sobre la privacidad y las comunicaciones electrónicas); o (ii) para los países que no pertenezcan a la UE, significará la legislación específica relevante aplicable en el respectivo país relacionada con el uso y protección de datos de carácter personal y la intimidad en las comunicaciones electrónicas, incluyendo (para cualquiera de los anteriores) cualquier normativa posterior que las sustituya o modifique.
  - (e) **Grupo IBM** – International Business Machines Corporation, ubicada en Armonk, Nueva York, EE.UU., sus subsidiarias así como sus respectivos Business Partners y subcontratistas.
- (2) El Licenciatario autoriza a IBM para:
  - (a) procesar y utilizar la Información Comercial de Contacto dentro del Grupo IBM en beneficio del Licenciatario, incluyendo la prestación de servicios de soporte y con el fin de gestionar la relación empresarial entre el Licenciatario y el Grupo IBM, incluyendo,

sin limitarse, a contactar con el Personal Comercial de Contacto (por correo electrónico o por otra vía) así como el marketing de productos y servicios del Grupo IBM (la "Finalidad Específica"); y

- (b) revelar la Información Comercial de Contacto a otros miembros del Grupo IBM únicamente a los efectos de la Finalidad Específica.
- (3) IBM acuerda que toda Información Comercial de Contacto se procesará de conformidad con la Legislación de Protección de Datos y Comunicaciones Electrónicas y se utilizará únicamente para la Finalidad Específica.
- (4) El Licenciatario declara que, antes de proporcionar a IBM la Información Comercial de Contacto, ha obtenido o deberá obtener, cuando así lo requiera la Legislación de Protección de Datos y Comunicaciones Electrónicas, el consentimiento del Personal Comercial de Contacto, asimismo confirma que ha enviado o enviará las notificaciones pertinentes a dicho Personal Comercial de Contacto, de manera que el Grupo IBM esté facultado para procesar o usar la Información Comercial de Contacto para contactar con ellos para la Finalidad Especificada.
- (5) El Licenciatario consiente que IBM transfiera la Información Comercial de Contacto fuera del Espacio Económico Europeo, siempre y cuando dicha transferencia se realice bajo los términos contractuales aprobados por la Autoridad de Protección de Datos o por otra parte que la Legislación de Protección de Datos y Comunicaciones Electrónicas permita la transferencia.

# Uluslararası Program Lisans Sözleşmesi

## Bölüm 1 – Genel Koşullar

LİSANS ALAN TARAF, BU PROGRAMI YÜKLEYEREK, KURARAK, KOPYALAYARAK, "KABUL EDİYORUM" DÜĞMESİNİ TIKLATARAK YA DA BU PROGRAMI HERHANGİ BİR BAŞKA ŞEKİLDE KULLANARAK VEYA BU PROGRAMA ERİŞEREK, BU SÖZLEŞMENİN KOŞULLARINI KABUL ETMİŞ SAYILIR. BU KOŞULLARI, LİSANS ALAN TARAF ADINA KABUL EDİYORSANIZ, LİSANS ALAN TARAFIN SÖZ KONUSU KOŞULLARA UYACAĞINI TAAHHÜT EDECEK TAM YETKİYE SAHİP OLDUĞUNUZU BEYAN VE GARANTİ EDERSİNİZ. BU KOŞULLARI KABUL ETMİYORSANIZ;

- BU PROGRAMI YÜKLEMİYİNİZ, KURMAYINIZ, KOPYALAMAYINIZ, "KABUL EDİYORUM" DÜĞMESİNİ TIKLATMAYINIZ, KULLANMAYINIZ YA DA BU PROGRAMA ERİŞMEYİNİZ; VE
- ÖDEDİĞİNİZ TUTARIN GERİ ÖDENMESİ İÇİN KULLANILMAMIŞ ORTAMI, BELGELERİ VE YETKİ BELGESİNİ PROGRAMI ALDIĞINIZ TARAFADAN DERHAL İADE EDİNİZ. PROGRAMI YÜKLEYEREK EDİNDİYSENİZ, PROGRAMIN TÜM KOPYALARINI İMHA EDİNİZ.

### 1. Tanımlar

"Yetkili Kullanım" – Lisans Alan Tarafın, Programı yürütmeye veya çalıştırmaya yetkili olduğu belirtilen seviye. Bu seviye, kullanıcı sayısı, milyon cinsinden hizmet birimi ("MSU"), İşlemci Değer Birimi ("PVU") veya IBM tarafından belirlenen herhangi bir diğer kullanım seviyesi esas alınarak ölçülebilir.

"IBM" – International Business Machines Corporation veya bağlı kuruluşlarından biri.

"Lisans Bilgileri" ("LI") – Belirli bir Programa özgü bilgileri ve ek koşulları içeren belge. Programlara ilişkin Lisans Bilgileri belgelerine şu Web adresinden ulaşılabilir: [www.ibm.com/software/sla](http://www.ibm.com/software/sla). Lisans Bilgileri (LI) belgesi aynı zamanda, bir sistem komutu kullanılarak erişilen Program dizininde bulunabilir ya da Programla birlikte bir kitapçık biçiminde gönderilebilir.

"Program" – orijinalleri ve onun tüm kısmı veya tam kopyaları da dahil olmak üzere, aşağıdakiler anlamındadır: 1) makine tarafından okunabilir komutlar ve veriler, 2) bileşenler, dosyalar ve modüller, 3) işitsel-görsel içerik (örneğin, görüntüler, metinler, kayıtlar ya da resimler) ve 4) ilişkili lisanslı malzemeler (örneğin, anahtarlar ve belgeler).

"Yetki Belgesi" ("PoE") – Lisans Alan Tarafın Kullanım Yetkisine sahip olduğuna ilişkin kanıt. Yetki Belgesi (PoE) aynı zamanda, Lisans Alan Tarafın, garantiden, varsa, gelecekteki güncelleme ücretlerinden ve olası özel olanaklar ya da promosyon olanaklarından yararlanmaya hak kazandığını da gösterir. IBM, Lisans Alan Tarafa bir Yetki Belgesi (PoE) sağlamazsa, üzerinde Programın adının ve Yetkili Kullanım düzeyinin belirtilmesi koşuluyla, Programın alındığı tarafın verdiği (IBM ya da yetkili satıcısı) orijinal satış makbuzu ya da diğer satış kayıtları IBM tarafından Yetki Belgesi olarak kabul edilebilir.

"Garanti Süresi" – orijinal Lisans Alan Tarafa lisansın verildiği tarihten itibaren geçerli olmak üzere bir (1) yıl.

### 2. Sözleşmenin Yapısı

Bu Sözleşme, **Bölüm 1 – Genel Koşullar**, **Bölüm 2 – Ülkeye Özgü Koşullar** (eğer varsa) adlı bölümleri, Lisans Bilgileri belgesini ve Yetki Belgesini içerir ve bu Programın kullanımına ilişkin Lisans Alan Tarafa IBM arasındaki sözleşmenin tamamını oluşturur. Bu Sözleşme, Lisans Alan Tarafın Programı kullanmasıyla ilgili olarak IBM ile arasında daha önce gerçekleştirilen her türlü sözlü ve yazılı iletişimin yerine geçer. Bölüm 2’de yer alan koşullar, Bölüm 1’de yer alan koşulların yerine geçebilir veya onları değiştirebilir. İki Bölümün koşulları arasında herhangi bir çelişki olması durumunda, Lisans Bilgileri belgesi her iki Bölümün koşullarından daha öncelikli olarak uygulanır.

### 3. Lisans Verilmesi

Bu Programın sahibi IBM ya da bir IBM sağlayıcısıdır. Bu Program telif hakkına tabidir ve lisanslanır, satılmaz.

IBM, Lisans Alan Tarafa, aşağıda belirtilen koşullarla 1) Programı Yetki Belgesinde belirtilen düzeye kadar Yetkili olarak Kullanması, 2) bu tür Bir Yetkili Kullanımı desteklemek için Program kopyalarını çıkarması ve kurması, ve 3) bir yedekleme kopyası çıkarması için münhasır olmayan bir lisans verir:

- a. Lisans Alan Tarafın Programı yasalara uygun olarak edinmiş olması ve bu Sözleşmesinin koşullarına uygun davranması gerekir;
- b. yedekleme kopyasını, yalnızca yedeklenen Program çalıştırılmaz olduğunda çalıştırması gerekir;
- c. Lisans Alan Tarafın tüm telif hakkı bildirimlerini ve mülkiyete ilişkin diğer tüm açıklamaları Programın her kopyasına veya kısmi kopyasına kopyalayarak eklemesi gerekir;
- d. Lisans Alan Taraf, bu Programı kullanan herkesin (yerel olarak veya uzaktan erişim ile), 1) bu Programı yalnızca Lisans Alan Taraf adına kullanacağını ve 2) bu Sözleşmenin koşullarına uymasını sağlayacağını kabul etmiş sayılır;
- e. Lisans Alan Taraf, 1) Programı bu Sözleşmede açıkça izin verilenden başka bir biçimde kullanamaz, kopyalayamaz, değiştiremez ya da dağıtamaz; 2) geçerli yasalardan sözleşme ile değiştirilmesine olanak tanımayarak açıkça izin verdiği durumlar dışında, Programı ters düzenleyemez, ters derleyemez veya başka yöntemlerle çevirisini yapamaz; 3) Programın hiçbir bileşenini, dosyasını, modülünü, sesli ve görüntülü içeriğini veya ilişkili lisanslı malzemeleri programdan ayrı olarak kullanamaz; veya 4) Programı alt lisanslayamaz, kiralayamaz ya da Program için finansal kiralama yapamaz; ve
- f. Lisans Alan Taraf, Programı Destekleyici Program (Supporting Program) olarak edinirse, bu Programı yalnızca Asıl Programı (Principal Program) desteklemek üzere ve Asıl Programın lisansında yer alan tüm sınırlamalara tabi olarak kullanır. Lisans Alan Taraf, bu Programı Asıl Program olarak edinirse, tüm Destekleyici Programları yalnızca bu Programı desteklemek üzere ve bu Sözleşmede yer alan tüm sınırlamalara tabi olarak kullanır. Bu maddenin ("f"), amaçları açısından, "Destekleyici Program" başka bir IBM Programının ("Asıl Program") bir bölümüdür ve Asıl Programın Lisans Bilgileri (LI) belgesinde Destekleyici Program olarak belirtilir. (Bir Destekleyici Programı herhangi bir sınırlamaya tabi olmadan kullanmak üzere destekleyici Program için ayrı bir Lisans almak için Lisans Alan Tarafın, Destekleyici Programı edindiği tarafa başvurmaması gerekir.)

Bu lisans, Lisans Alan Tarafın çıkardığı tüm Program kopyaları için geçerlidir.

### **3.1 Geçiş Amaçlı Büyütmeler, Güncellemeler, Düzeltmeler ve Yamalar**

#### **3.1.1 Geçiş Amaçlı Büyütmeler**

Bu Program, bir Geçiş Amaçlı Büyütme Programıyla değiştirilirse, değiştirilen Programın lisansı derhal sona erer.

#### **3.1.2 Güncellemeler, Düzeltmeler ve Yamalar**

Programla ilgili olarak bir güncelleme, düzeltme veya yama alan Lisans Alan Taraf, bu tür güncelleme, düzeltme veya yamaların Lisans Bilgileri belgelerinde belirtilen ve bu güncelleme, düzeltme veya yamalar için geçerli olan tüm ek veya farklı koşulları kabul eder. Herhangi bir ek veya farklı koşul sağlanmadıysa, ilgili güncelleme, düzeltme veya yama için yalnızca bu Sözleşmenin koşulları geçerli olur. Lisans Alan Tarafın, elindeki Program Programın herhangi bir güncellemesi ile değiştirildiyse, değiştirilen Programı kullanmaya derhal son verecektir.

#### **3.2 Sabit Süre Lisansları**

IBM, Programı sabit bir süre için lisansladıysa, Lisans Alan Taraf ve IBM söz konusu sabit süreyi yenilemeye karar vermedikleri sürece, Lisans Alan Tarafın lisansı bu sabit sürenin sonunda sona erer.

#### **3.3 Süre ve Sona Erdirme**

Bu Sözleşme sona erdirilinceye kadar geçerlidir.

Lisans Alan Tarafın bu Sözleşmenin koşullarına uygun davranmaması durumunda, IBM, Lisans Alan Tarafın lisansını sona erdirebilir.

Lisans, taraflardan herhangi biri tarafından herhangi bir nedenle sona erdirildiyse, Lisans Alan Taraf derhal programı kullanmaya son verir ve Programın kendisinde bulunan tüm kopyalarını imha eder. Nitelikleri gereği Sözleşmenin sona erdirilmesi ile sona ermeyen Sözleşme hükümleri yerine getirilinceye kadar yürürlükte kalır ve tarafların haleflerini ve devralanlarını bağlar.

#### 4. Ücretler

Ücretler, Yetki Belgesinde belirtilen, edinilen Yetkili Kullanım düzeyine bağlıdır. IBM, bu Sözleşmenin başka bir yerinde belirtilenler dışında, muaccel olmuş ya da ödenmiş ücretler için Lisans Alan Tarafa bir kredi vermez ya da geri ödeme yapmaz.

Yetkili Kullanım düzeyini artırmak isteyen Lisans Alan Taraf, bu durumu önceden IBM'e veya bir IBM yetkili satıcısına bildirmeli ve geçerli tüm ücretleri ödemelidir.

#### 5. Vergiler

Herhangi bir yetkili makam, Programla ilgili olarak, IBM'in net gelirine dayananlar hariç olmak üzere bir vergi, resim, harç veya başkaca mali yükün ödenmesini zorunlu kılsa, Lisans Alan Taraf, bu tutarı bir faturada belirtildiği şekilde ödemeyi veya bunlardan muafsa, muaf olduğuna ilişkin belgeyi IBM'e sağlamayı kabul eder. Lisans Alan Taraf, Programla ilgili olarak, Programı edindiği tarihten sonraki tüm kişisel mülkiyet vergilerinden kendisi sorumlu olur. Orijinal Lisans Alan Tarafın lisans aldığı ülkeye yapılan ithalat nedeniyle veya orijinal Lisans Alan Tarafın lisans aldığı ülkeden yapılan ihracat veya devir ya da Programın orijinal Lisans Alan Tarafın lisans aldığı ülke dışında kullanımı veya Programa orijinal Lisans Alan Tarafın lisans aldığı ülke dışından erişilmesi nedeniyle herhangi bir yetkili makam, bir özel vergi, resim, harç veya başkaca mali yükün ödenmesini zorunlu kılsa, Lisans Alan Taraf söz konusu özel vergi, resim, harç veya başkaca mali yükleri ödemekten sorumlu olduğunu ve bunları ödeyeceğini kabul eder.

#### 6. Para İadesi Garantisi

Lisans Alan Taraf, herhangi bir nedenle Programdan memnun kalmazsa ve orijinal Lisans Alan Tarafsa, Programı ve Yetki Belgesini, Yetki Belgesinin kendisine gönderildiği tarihten itibaren otuz (30) gün içinde Programı edindiği tarafa iade etmesi koşuluyla, lisansı sona erdirebilir ve Program için ödediği ücreti geri alabilir. Lisans, yenilemeye tabi olan bir sabit süreli lisans ise, Lisans Alan Taraf, ancak ilk sabit sürenin başlamasından sonraki otuz (30) gün içinde Programı ve Yetki Belgesini (PoE) iade ederse, Program için ödediği ücreti geri alabilir. Lisans Alan Taraf, Programı bir yerden yüklediye, parasının iade edilmesine ilişkin yönergeler için Programı edindiği tarafla bağlantı kurmalıdır.

#### 7. Programın Devri

Lisans Alan Taraf, Programı ve tüm lisans hakları ve yükümlülüklerini, yalnızca devralan tarafın bu Sözleşmenin koşullarını kabul etmesi koşuluyla başka bir tarafa devredebilir. Lisans, taraflardan herhangi biri tarafından herhangi bir nedenle sona erdirilirse, Lisans Alan Tarafın Programı üçüncü bir tarafa devretmesi yasaktır. Lisans Alan Taraf, 1) Programın veya 2) Programa ilişkin Yetkili Kullanımının bir kısmını devredemez. Lisans Alan Taraf Programı devrederse, Lisans Bilgileri belgesi ve Yetki Belgesi de dahil olmak üzere, bu Sözleşmenin basılı bir kopyasını da devretmelidir. Devir işlemi tamamlandıktan hemen sonra, Lisans Alan Tarafın lisansı sona erer.

#### 8. Garantiler ve Hariç Tutma

##### 8.1 Sınırlı Garanti

IBM, tanımlanmış işletim ortamında kullanıldığında, Programın belirtilmelerine uygun şekilde çalışacağını garanti eder. Programın belirtilmeleri ve tanımlanmış işletim ortamı bilgileri Programla birlikte gönderilen (READ-ME dosyası gibi) belgelerde veya IBM tarafından yayınlanan (duyuru mektubu gibi) diğer bilgilere bulunabilir. Yerel yasaların, sözleşme ile değiştirilmesine veya sınırlandırılmasına olanak tanımayarak aksini belirttiği durumlar dışında, Lisans Alan Taraf, bu tür belgelerin ve diğer Programa ilişkin içeriğin yalnızca İngilizce olarak sağlanabileceğini kabul eder.

Garanti, Programın yalnızca değiştirilmemiş kısımları için geçerlidir. IBM Programın kesintisiz ya da hatasız çalışacağını ya da IBM'in Programda oluşan tüm hataları düzelteceğini garanti etmez. Bu Programın kullanımı sonucunda elde edilen sonuçlardan Lisans Alan Taraf sorumlu olur.

Garanti Süresi Boyunca IBM, Lisans Alan Tarafın, bilinen Program hataları, hata düzeltmeleri, sınırlamalar ve sorun atlatma gibi konularda bilgiler içeren IBM veritabanlarına ek ücret ödmeden erişmesini sağlar. Daha fazla bilgi edinmek için aşağıda adresi verilen IBM Software Support Handbook (IBM Yazılım Desteği Elkitabı) adlı belgeye bakınız: [www.ibm.com/software/support](http://www.ibm.com/software/support).



Eğer Program, Garanti Süresi içinde garanti edildiği gibi çalışmazsa ve sorun IBM'in veritabanında bulunan bilgilerle çözülemezse, Lisans Alan Taraf Programı ve Yetki Belgesini, Programı edindiğiniz tarafa (IBM ya da yetkili satıcısına) iade edebilir ve program için ödemiş olduğu ücreti geri alabilir. Programı iade ettikten sonra, Lisans Alan Tarafın lisansı sona erer. Lisans Alan Taraf, Programı bir yerden yüklediyse, parasının iade edilmesine ilişkin yönergeler için Programı edindiği tarafla bağlantı kurmalıdır.

## 8.2 Hariç Tutma

**BU GARANTİLER LİSANS ALAN TARAFA MÜNHASIR GARANTİLER OLUP TİCARİLİĞE, YETERLİ KALİTEYE VE BELİRLİ BİR AMACA UYGUNLUĞA VE MÜLKİYETE DAİR ZİMNİ GARANTİ VEYA KOŞULLAR İLE HAK İHLALİ YAPILMAYACAĞINA DAİR GARANTİ VEYA KOŞULLAR DA DAHİL OLMAK, ANCAK TÜMÜ BUNLARLA SINIRLI OLMAMAK ÜZERE, AÇIK VEYA ZİMNİ, DİĞER TÜM GARANTİ VEYA KOŞULLARIN YERİNE GEÇER. BAZI ÜLKELER YA DA HUKUK DÜZENLERİ, AÇIK YA DA ZİMNİ GARANTİLERİN HARİÇ TUTULMASINA İZİN VERMEZ, BU DURUMDA YUKARIDA HARİÇ TUTULAN GARANTİLER LİSANS ALAN TARAF İÇİN GEÇERLİ OLMAYABİLİR. BÖYLE BİR DURUMDA, BU TÜR GARANTİLER GARANTİ SÜRESİYLE SINIRLIDIR. BU SÜRE DOLDUKTAN SONRA HİÇBİR GARANTİ GEÇERLİ DEĞİLDİR. BAZI ÜLKELER YA DA HUKUK DÜZENLERİ, ZİMNİ BİR GARANTİNİN NE KADAR SÜRECEĞİNE İLİŞKİN SINIRLAMALARA İZİN VERMEZ, BU DURUMDA YUKARIDAKİ SINIRLAMALAR LİSANS ALAN TARAF İÇİN GEÇERLİ OLMAYABİLİR.**

**BU GARANTİLER, LİSANS ALAN TARAFA BELİRLİ YASAL HAKLAR KAZANDIRIR. LİSANS ALAN TARAF, AYNIZAMANDA ÜLKELERE YA DA HUKUK DÜZENLERİNE GÖRE DEĞİŞEN BAŞKA HAKLARA DA SAHİP OLABİLİR.**

**(GARANTİLER VE HARİÇ TUTMA) BAŞLIKLİ BU 8. BÖLÜMDE YER ALAN GARANTİLER, YALNIZCA IBM TARAFINDAN SAĞLANIR. ANCAK 8.2 NUMARALI (HARİÇ TUTMA) BAŞLIKLİ BU ALT BÖLÜMDE YER ALAN SORUMLULUĞUN REDDİ İLE İLGİLİ HÜKÜMLER, IBM'İN ÜÇÜNCÜ KİŞİ KODU SAĞLAYICILARI İÇİN DE GEÇERLİDİR. BU SAĞLAYICILAR, BU TÜR BİR KODU HİÇBİR GARANTİ VERMEKSİZİN VEYA KOŞUL ÖNE SÜRMEKSİZİN SAĞLARLAR. BU PARAGRAF, IBM'İN İŞBU SÖZLEŞME KAPSAMINDAKİ GARANTİ YÜKÜMLÜLÜKLERİNİ GEÇERSİZ KILMAZ.**

## 9. Lisans Alan Tarafın Verileri ve Veritabanları

IBM, Lisans Alan tarafa, bu Programla ilgili olarak ortaya çıkan bir sorunun nedenini belirlemesinde yardımcı olmak için Lisans Alan Taraf, 1) Lisans Alan Tarafın sistemine uzaktan erişmesi amacıyla IBM'e izin vermesini ya da 2) Lisans Alan Tarafın bilgilerini veya sistem verilerini IBM'e göndermesini talep edebilir. Ancak, IBM'in işbu Sözleşmeyle üstlendiği garanti yükümlülüklerinin kapsamı dışında kalan bir desteği Lisans Alan Taraf sağlaması için IBM ile Lisans Alan Taraf arasında ayrı bir yazılı sözleşmenin imzalanması ve bu sözleşmeyle IBM'in Lisans Alan Taraf bu tür bir desteği vermeyi kabul etmiş olması gerekir. Aksi durumda, IBM Lisans Alan Taraf bu tür bir desteği sağlamakla yükümlü olmaz. Her durumda, IBM, ürün ve hizmetlerini geliştirmek amacıyla hata ve sorunlara ilişkin bilgileri kullanır ve ilgili destek olanaklarının sağlanmasına yardımcı olur. IBM bu amaçla, (Lisans Alan Tarafın yerleşik olduğu ülke dışındaki bir veya birden çok ülkede faaliyet gösterenler de dahil olmak üzere) IBM tüzel kişiliklerini ve altyüklenicilerini kullanabilir ve Lisans Alan taraf da bu şekilde davranması için IBM'e yetki verir.

Lisans Alan Taraf, 1) IBM'e sağladığı tüm verilerden ve tüm veritabanı içeriklerinden, 2) (kişisel olarak tanımlanabilen veriler de dahil olmak üzere) verilere erişilmesi, verilerin güvenliği, şifrelenmesi, kullanımı ve aktarımıyla ilgili yordamların ve denetimlerin seçimi ve uygulanmasından ve 3) tüm veritabanlarının ve depolanmış olan tüm verilerin yedeklenmesinden ve kurtarılmasından sorumludur. Lisans Alan Taraf, hiçbir veriyi veya herhangi bir diğer biçimdeki kişisel olarak tanımlanabilen hiçbir bilgiyi IBM'e göndermeyecek veya sağlamayacaktır ve IBM'e yanlışlıkla sağlanan bu tür tüm bilgilerle ya da üçüncü kişi iddialarından kaynaklananlar da dahil olmak üzere, bu türlü bilgilerin IBM tarafından kaybedilmesiyle veya açıklanmasıyla ilişkili olarak IBM'in ödemek zorunda kalabileceği tüm makul masraflardan ve diğer tutarlardan Lisans Alan Taraf sorumlu olacaktır.

## 10. Sorumlulukların Sınırı

10 numaralı (Sorumlulukların Sınırı) bu bölümde yer alan tüm sınırlamalar ve hariç tutmalar, geçerli yasalar tarafından sözleşmeyle değiştirilmesine olanak tanınamayarak yasaklanmadığı sürece, tümüyle geçerlidir.

## 10.1 IBM'in Sorumlu Olabileceği Maddeler

IBM'in bir kusurundan veya sorumluluklarını yerine getirmemesinden kaynaklanan ve Lisans Alan Tarafın zararlarını IBM'den talep etmeye hak kazandığı durumlar olabilir. Lisans Alan tarafın, zararını IBM'den talep etmesine olanak sağlayan yasal dayanak (Sözleşmenin esasa ilişkin ihlali, ihmali, yanlış beyan, diğer ahdî iddialar veya haksız fiil iddiaları dahil olmak üzere) her ne olursa olsun, IBM'in her bir Programdan kaynaklanan veya her bir Programla ilişkili veya başka bir şekilde bu Sözleşmeden kaynaklanan tüm iddialar karşısındaki bütün sorumluluğu aşağıda belirtilenlerin tutarını aşmayacaktır: 1) ölüm dahil cismanî zarar ile taşınmaz ve taşınabilir kişisel mallara verilen zararlar; ve 2) Lisans Alan Tarafın iddiaya konu olan Programa ilişkin ödediği ücreti aşmamak koşuluyla (eğer, Program sabit süreli lisans ücretine tabiyse, en çok on iki (12) aylık ücrete kadar olmak koşuluyla) herhangi diğer gerçek doğrudan zararlar.

Bu sınırlama, ayrıca IBM'in Program geliştiricileri ve sağlayıcıları için de geçerlidir. Bu tutar, IBM ve Programgeliştiricilerinin ve sağlayıcılarının toplu olarak sorumlu oldukları azamî tutardır.

## 10.2 IBM'in Sorumlu Olmadığı Maddeler

**OLASILIKLARI ÖNCEDEN BİLDİRİLMİŞ OLSA BİLE, IBM, IBM'İN PROGRAM GELİŞTİRİCİLERİ VEYA SAĞLAYICILARI AŞAĞIDAKİLERİN HİÇBİRİNDEN HİÇBİR KOŞUL ALTINDA SORUMLU OLMAZLAR:**

- a. VERİLERDEKİ KAYIP VEYA HASARDAN;
- b. ÖZEL, ARIZİ, CEZAİ VEYA DOLAYLI ZARARLARDAN VEYA SONUÇTA ORTAYA ÇIKAN EKONOMİK ZARARLARDAN; VEYA
- c. KAR KAYBI, İŞ KAYBI, GELİR KAYBI, İTİBAR KAYBI VEYA BEKLENEN TASARRUFUN KAYBINDAN.

## 11. Uygunluk Doğrulaması

11 numaralı (Uygunluk Doğrulaması) bu bölümün amaçları açısından, "UPLS Program Koşulları", 1) bu Sözleşme ve IBM tarafından sağlanan geçerli değişiklik ve işlem belgeleri, ve 2) yedekleme, alt kapasite fiyatlandırması ve geçiş ile ilgili ilkeler de dahil olmak, ancak tümü bunlarla sınırlı olmamak üzere, IBM Software Policy (IBM Yazılım İlkesi) Web sitesinde bulunabilecek ([www.ibm.com/software/policies](http://www.ibm.com/software/policies)) IBM yazılım ilkeleri anlamına gelir.

11 numaralı işbu bölümde belirtilen haklar ve yükümlülükler, Programın Lisans Alan Tarafa lisanslandığı dönem boyunca ve bu süreyi takip eden iki (2) yıl boyunca, geçerliliğini sürdürmeye devam eder.

### 11.1 Doğrulama Süreci

Lisans Alan Taraf, tüm Programları kullanımının IBM'in hak kazanmaya ilişkin geçerli tüm lisans ve fiyatlandırma koşulları da dahil olmak, ancak tümü bunlarla sınırlı olmamak kaydıyla, UPLS Program Koşullarına uygun olup olmadığının belirlenmesi amacıyla IBM ve denetçileri için, doğru tutulmuş yazılı kayıtları, sistem araçları çıktılarını ve diğer sistem bilgilerini yaratmayı, bunları saklamayı ve sağlamayı kabul eder. 1) Yetkili Kullanımına ilişkin sınırları aşmadığını ve 2) UPLS Program Koşullarına uygun olduğunu kanıtlamak Lisans Alan Tarafın sorumluluğudur.

Makul bir süre önceden bildirerek, IBM, Lisans Alan Tarafın Programları (herhangi bir amaçla) kullandığı tüm yerlerde ve tüm ortamlarda UPLS Program Koşullarına uygun davranıp davranmadığını doğrulayabilir. Bu tür bir doğrulama işlemi, Lisans Alan Tarafın işine en az engel olacak şekilde ve normal iş saatleri içinde Lisans Alan Tarafın tesislerinde yapılacaktır. IBM'in, bu tür bir denetçiyle yazılı bir gizlilik sözleşmesi yapmış olması koşuluyla, IBM bu tür bir doğrulama işleminde yardımcı olacak bağımsız bir denetçi kullanabilir.

### 11.2 Karar

Bu tür bir doğrulamanın sonunda, Lisans Alan Tarafın herhangi bir Programı Yetkili Kullanımını aşacak şekilde kullandığının ya da UPLS Program Koşullarına uygun davranmadığının belirlenmesi durumunda, IBM, Lisans Alan Tarafa bu durumu yazılı olarak bildirecektir. Lisans Alan Taraf, doğrudan IBM'e IBM'in bir faturada belirttiği 1) bu tür yetkiyi aşan tüm kullanımlara, 2) hangisi daha kısaysa, bu tür yetkiyi aşan kullanım süresi veya iki yıl için verilen desteğe, ve 3) bu tür bir doğrulamanın sonucunda belirlenen tüm ek ücretlere ve diğer yükümlülüklerle ilişkin ücretleri derhal ödemeyi kabul eder.

## 12. Üçüncü Kişi Bildirimleri

Bu Program, Lisans Alan Tarafa bu Sözleşme kapsamında üçüncü kişi tarafından değil IBM tarafından lisanslanan üçüncü kişi kodunu içerebilir. Eğer varsa, üçüncü kişi koduna ilişkin Bildirimler ("Üçüncü Kişi Bildirimleri"), Programa yalnızca Lisans Alan Tarafa bilgi vermek üzere eklenmiştir. Bu bildirimler, Programın NOTICES dosyasında/dosyalarında bulunabilir. Bazı üçüncü kişi kodlarına ilişkin kaynak kodunun nasıl edinilebileceğine ilişkin bilgi, Üçüncü Kişi Bildirimlerinde bulunabilir. IBM, Üçüncü Kişi Bildirimlerinde üçüncü kişi kodunu "Değiştirilebilir Üçüncü Kişi Kodu" olarak tanımlarsa, Lisans Alan Tarafa 1) Değiştirilebilir Üçüncü Kişi Kodunu değiştirme ve 2) yalnızca, Lisans Alan Tarafın bu tür bir üçüncü kişi kodunda yaptığı değişikliklerde hata ayıklama amacıyla olmak koşuluyla, Değiştirilebilir Üçüncü Kişi Koduyla doğrudan arabirim oluşturan Program modüllerini ters düzenleme yetkisini verir. IBM'in hizmet ve destek yükümlülükleri, eğer varsa, yalnızca değiştirilmemiş Program için geçerlidir.

## 13. Genel Koşullar

- a. Bu Sözleşmenin hiçbir koşulu, tüketicilerin sözleşme yoluyla vazgeçilemeyen veya sınırlandırılmayan yasal haklarını etkilemez.
- b. IBM'in Lisans Alan Tarafa somut bir ürün olarak sağladığı Programlar için, Lisans Alan Taraf ile IBM arasında yazılı olarak aksi kararlaştırılmadıkça, IBM, bu Programları kendisi tarafından belirlenen taşıyıcıya teslim edildikten sonra ortaya çıkan teslimata ve sevkiyata ilişkin yükümlülüklerini yerine getirir.
- c. Bu Sözleşmenin herhangi bir hükmü geçersiz ya da uygulanamaz olduğunda, Sözleşmenin geri kalan hükümleri tam olarak yürürlükte kalmaya ve geçerli olmaya devam eder.
- d. Lisans Alan Taraf, belirli son kullanım türleri ve belirli kullanıcılara yönelik ABD ambargosu ve yaptırımları da dahil olmak üzere, tüm geçerli ihracat ve ithalat yasa ve düzenlemelerine uygun davranmayı kabul eder.
- e. Lisans Alan Taraf, International Business Machines Corporation ve bağlı kuruluşlarına (ve bunların haleflerine ve devralanlarına, yüklenicilerine ve IBM Çözüm Ortaklarına) Lisans Alan Tarafın IBM ürün ve hizmetleriyle ilgili veya IBM ile iş ilişkisini geliştirmek amacıyla iletişim bilgilerini iş yaptıkları herhangi bir yerde depolama ve kullanma izni verir.
- f. Taraflardan her biri, diğer tarafın bu Sözleşmeyle ilgili yükümlülüklerini yerine getirmediği iddiasında bulunmadan önce, diğer tarafa ilgili yükümlülüğü yerine getirmesi için gereken makul fırsatı tanımayı kabul eder. Taraflar, bu Sözleşmeyle ilgili olarak ortaya çıkabilecek tüm ihtilafları, anlaşmazlıkları veya iddiaları iyi niyetle çözmeye çalışacaklardır.
- g. Geçerli yasalardan sözleşmeyle değiştirilmesine veya sınırlandırılmasına olanak tanımayarak aksini belirttiği durumlar dışında: 1) taraflardan hiçbiri, bu Sözleşmeden kaynaklanan veya bu Sözleşmeyle ilgili olarak yasal işlem gerektiren bir durumun üzerinden iki yıldan fazla bir süre geçtikten sonra hangi biçimde olursa olsun, yasal bir işlemde bulunamaz; ve 2) bu sürenin sona ermesiyle birlikte, bu tür tüm iddialar ve bu iddialarla ilgili tüm haklar zamanaşımına uğrar.
- h. Taraflardan hiçbiri, elinde olmayan nedenlerden ötürü yükümlülüklerini yerine getirememekten sorumlu tutulamaz.
- i. Bu Sözleşme herhangi bir üçüncü kişi için bir dava hakkı ya da bir dava nedeni yaratmaz ve ayrıca IBM, yukarıda yer alan 10.1 numaralı (IBM'in Sorumlu Olabileceği Maddeler) başlıklı bölümde izin verilenler dışında, IBM'in ilgili üçüncü kişiye karşı yasal olarak sorumlu olduğu (ölüm dahil) cismani zarar veya taşınmaz ve taşınabilir kişisel mallara verilen zarar dışında, üçüncü bir kişi tarafından Lisans Alan tarafa yöneltilen herhangi bir iddiaya karşı sorumluluk üstlenmez.
- j. Bu Sözleşmeyi imzalayarak, Taraflardan hiçbiri: 1) bu Programa ilişkin yukarıdaki Garantiler ve Hariç Tutma başlıklı Bölüm 8'de açıkça garanti edilenler dışındaki performans veya işlevler; 2) diğer tarafların deneyimleri veya önerileri; veya 3) Lisans Alan Tarafın elde edebileceği tüm sonuçlar veya tasarruflar da dahil olmak, ancak tümü bunlarla sınırlı olmamak üzere bu Sözleşmede belirtilmemiş olan hiçbir beyana itibar etmeyecektir.
- k. IBM, belirli kuruluşlarla ("IBM Çözüm Ortakları" olarak adlandırılır) belirli Programları tanıtmak, pazarlamak ve desteklemek üzere sözleşmeler imzalamıştır. IBM Çözüm Ortakları, IBM'den ayrı ve bağımsız kuruluşlardır. IBM, IBM Çözüm Ortaklarının eylemlerinden veya bildirimlerinden ya da Lisans Alan Tarafa karşı yükümlülüklerinden sorumlu değildir.
- l. Lisans Alan Tarafın IBM ile yaptığı diğer sözleşmelere (örneğin, IBM Müşteri Sözleşmesi) ilişkin lisans ve fikri mülkiyete ilişkin tazminat koşulları bu Sözleşme kapsamında sağlanan Program lisansları için geçerli olmaz.

## 14. Coğrafi Kapsam ve Geçerli Yasa

### 14.1 Geçerli Yasa

Taraflar, kanunların ihtilafı prensibine bakılmaksızın, bu Sözleşmenin konusundan doğan veya bir biçimde bu Sözleşmenin konusu ile ilgili olan haklar, görevler ve yükümlülüklerin, Lisans Alan Tarafın lisansı edindiği ülkenin yasalarına tabi olup, yine bunların yorumlanması ve uygulanmasında bu yasaların geçerli olduğunu kabul ederler.

Birleşmiş Milletler'in Uluslararası Mal Satışlarına ilişkin Sözleşme Bildirgesi geçerli değildir.

### 14.2 Yetkili Mahkeme

Tarafların tüm hak, görev ve yükümlülükleri, Lisans Alan tarafın Program lisansını edindiği ülkenin mahkemelerine tabidir.

## Bölüm 2 – Ülkeye Özgü Koşullar

Aşağıda belirtilen ülkelerde verilen lisanslara ilişkin olarak aşağıda belirtilen koşullar Bölüm 1'de atıfta bulunulan koşulların yerine geçer veya onları değiştirir. Bölüm 1'de yer alan ve bu değişiklik eki tarafından değiştirilmeyen tüm koşullar değişmeksizin yürürlükte kalmaya devam eder. Bölüm 2 aşağıda belirtilen şekilde düzenlenmiştir:

- Bölüm 1, Madde 14 (Geçerli Yasa ve Yetkili Mahkeme) için Ülkeye özgü değişiklikler; ve
- Diğer Sözleşme hükümlerine ilişkin Avrupa, Orta Doğu ve Afrika ülkelerine özgü değişiklikler.

### Bölüm 1, Madde 14 (Geçerli Yasa ve Yetkili Mahkeme) için ülkeye özgü değişiklikler;

#### 14.2 Yetkili Mahkeme

*Aşağıdaki paragraf yetkili mahkeme ile ilgilidir ve aşağıda belirtilen ülkeler için geçerli olduğundan bu ülkelerle ilgili Altbölüm 14.2 (Yetkili Mahkeme) içinde yer alan koşulları değiştirir:*

Tarafların tüm hak, görev ve yükümlülükleri, Lisans Alan tarafın Program lisansını edindiği ülkenin mahkemelerine tabidir. Ancak, aşağıda belirtilen ülkeler için, seri yargılama usulü de dahil olmak üzere, bu Sözleşmeden doğan veya bu Sözleşmenin yürütülmesiyle ilgili tüm anlaşmazlıklar, aşağıda belirtilen ve yetkili mahkeme olan mahkemelere tabi olacak ve bu mahkemelerde çözümlenecektir:

### AVRUPA, ORTA DOĞU VE AFRİKA

**Türkiye’de:** Türkiye Cumhuriyeti’nin İstanbul Merkez Mahkemelerinde ya da İcra Dairelerinde çözümlenecektir.

### AVRUPA, ORTA DOĞU, AFRİKA (EMEA) ÜLKELERİNE İLİŞKİN DEĞİŞİKLİKLER

#### AVRUPA BİRLİĞİ (AB) ÜLKELERİ

### 8. Garanti ve Hariç Tutmalar

*Aşağıdaki paragraf, 8 (Garanti ve Hariç Tutmalar) numaralı bölüme eklenmiştir:*

Avrupa Birliği'nde ("AB") tüketicilerin, tüketim mallarının satışına ilişkin geçerli ulusal mevzuat kapsamında yasal hakları bulunmaktadır. Bu haklar, 8 numaralı bölümde (Garanti ve Hariç Tutmalar) yer alan hükümlerden etkilenmez. Sınırlı Garantiye ilişkin madde, coğrafi olarak bütün dünyayı kapsar.

### AB ÜYESİ ÜLKELER VE TÜRKİYE

### 13. Genel Koşullar

*Aşağıdaki paragraf Madde 13.e'nin yerine geçer:*

- (1) **Tanımlar**—Madde 13.e'nin amacı açısından aşağıdaki ek tanımlar geçerli olur:

- (a) **İş İletişim Bilgileri**—Lisans Alan Taraf çalışanlarına ve yüklenicilerine ilişkin adlar, görevler, iş adresleri, telefon numaraları ve e-posta adresleri de dahil olmak üzere Lisans Alan Taraf tarafından IBM'e açıklanan işle ilgili iletişim bilgileri. Avusturya, İtalya ve İsviçre için İş İletişim Bilgileri, tüzel kişilikler olan Müşteri ve Müşterinin yüklenicilerine ilişkin bilgileri (örneğin, Müşterinin gelir verileri ve diğer işlem bilgileri) de içerir.
  - (b) **İletişim Sorumluları**—İş İletişim Bilgileriyle ilgili olan Lisans Alan Taraf çalışanları ve yükleniciler.
  - (c) **Veri Koruma Yetkilisi**—İlgili ülkede geçerli Veri Koruma ve Elektronik İletişim Mevzuatı tarafından belirlenen yetkili veya AB ülkeleri dışındaki ülkeler için, ilgili ülkedeki kişisel verilerin korunması için danışmanlıktan sorumlu yetkili veya (yukarıda belirtilenlerin herhangi biri için) usulüne uygun olarak bu tür yetkililerin halefi olarak atanan yetkili.
  - (d) **Veri Koruma & Elektronik İletişim Mevzuatı**—(i) 95/46/EC kodlu AB Yönergesinin (kişisel verilerin işlenmesiyle ve bu tür verilerin serbest dolaşımıyla ilgili olarak kişilerin korunmasını amaçlar) ve 2002/58/EC kodlu AB Yönergesinin (elektronik iletişim sektöründe kişisel verilerin işlenmesiyle ve korunmasıyla ilgilidir) koşullarını uygulamak üzere yürürlükte olan yasal mevzuat ve düzenlemeler; ya da (ii) AB ülkeleri dışındaki ülkeler için, (yukarıda belirtilenlerden herhangi biri için) yasal mevzuat ve/veya düzenlemelerde yapılan herhangi bir yasal değişiklik de dahil olmak üzere, ilgili ülkede, kişisel verilerin korunmasıyla ve kişisel verilerle ilgili elektronik iletişimin düzenlenmesiyle ilgili yürürlükte olan yasal mevzuat ve/veya düzenlemeler.
  - (e) **IBM Grubu**—International Business Machines Corporation, Armonk, New York, ABD, bağlı şirketleri ve bunların ilgili Çözüm Ortakları ve altyüklenicileri.
- (2) Lisans Alan Taraf, IBM'e aşağıda belirtilenlere ilişkin yetki verir:
- (a) Destek hizmetlerinin sağlanması da dahil olmak üzere, Lisans Alan Tarafı desteklemek amacıyla İletişim Sorumluları ile bağlantı kurulması (e-posta veya başka yollarla) ve IBM Grubu ürünleri ve hizmetlerinin pazarlanması amacı da dahil olmak, ancak tümü bunlarla sınırlı olmamak üzere, Lisans Alan Taraf ile IBM Grubu arasındaki iş ilişkisinin geliştirilmesini sağlanması amacıyla ("Belirlenen Amaç") IBM Grubu içinde İşle İlgili İletişim Bilgilerinin işlenmesi ve kullanılması; ve
  - (b) İş İletişim Bilgilerinin, yalnızca Belirlenen Amaçla ilgili olarak IBM Grubunun diğer üyelerine açıklanması.
- (3) IBM, İşle İlgili İletişim Bilgilerinin, Veri Koruma & Elektronik İletişim Mevzuatına uygun olarak işleneceğini ve yalnızca Belirlenen amaç için kullanılacağını kabul eder.
- (4) Veri Koruma & Elektronik İletişim Mevzuatının gerektirdiği ölçüde Lisans Alan Taraf, IBM Grubuna İşle İlgili İletişim Bilgilerinin Belirlenen Amaç için işlenmesini ve kullanılmasını sağlamak amacıyla İletişim Sorumlularından gereken tüm izinleri aldığını (ve alacağını) ve tüm bildirimleri İletişim Sorumlularına gönderdiğini (veya göndereceğini) beyan eder.
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A.22 - HSQLDB V1.7  
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A.41 - Regexp V1.2  
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B.17 - zlib 1.2.7

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888        8   88800088P'      `8888'
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The Program includes portions of the software components, listed immediately below

- \* Thrust
- \* CUDA Runtime

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### Preface

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## NVIDIA CUDA Toolkit

### Description

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### Default Install Location of CUDA Toolkit

Windows platform:

%ProgramFiles%\NVIDIA GPU Computing Toolkit\CUDA\v#.#

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/usr/local/cuda-#.#

Mac platform:

/Developer/NVIDIA/CUDA-#.#

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### Description

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%ProgramData%\NVIDIA Corporation\CUDA Samples\v#.#

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/usr/local/cuda-#.#/samples

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## Description

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Component : CUDA FFT Library

Windows : cufft.dll  
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Component : CUDA BLAS Library

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Component : NVIDIA Optimizing Compiler Library

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Component : NVIDIA Common Device Math Functions Library

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Component : NVIDIA Internal Library

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Those provisions in this Agreement, which by their nature need to survive the termination or expiration of this Agreement, shall survive termination or expiration of the Agreement, including but not limited to Section 4.2, Section 4.3, Section 4.4, Section 4.5, Section 4.7, and Section 4.8.

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D. pugixml

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