

# Appendix D to DIR Contract No. DIR-SDD-2108 International Program License Agreement

## Part 1 - General Terms

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BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, OR USING THE PROGRAM YOU AGREE TO THE TERMS OF DIR Contract No. DIR-SDD-2108 AND THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS,

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"Program" is the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, 3) audio-visual content (such as images, text, recordings, or pictures), 4) related licensed materials, and 5) license use documents or keys, and documentation.

A "Proof of Entitlement" ("PoE") is evidence of Your authorization to use a Program at a specified level. That level may be measured, for example, by the number of processors or users. The PoE is also evidence of Your eligibility for warranty, future upgrade prices, if any, and potential special or promotional opportunities.

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

**This Agreement includes Part 1 - General Terms, License Information, and Proof of Entitlement and is the complete agreement between You and IBM regarding the use of the Program. It replaces any prior oral or written communications between You and IBM concerning Your use of the Program. The terms of Part 2 and License Information may replace or modify those of Part 1. To the extent there is a conflict between the terms of DIR Contract No. DIR-SDD-2108 and this Agreement and those of the IBM International Passport Advantage Agreement, the terms of DIR Contract No. DIR-SDD-2108 prevails.**

### 1. Entitlement

#### License

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

IBM grants You a nonexclusive license to use the Program when you lawfully acquire it. Disputes between the parties concerning invoices and payment will not be caused to question the lawfulness of any acquisition.

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

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

You will ensure that anyone who uses the Program (accessed either locally or remotely) does so only for Your authorized use and complies with the terms of DIR Contract No. DIR-SDD-2108 and this Agreement.

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

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

#### Money-back Guarantee

If for any reason You are dissatisfied with the Program and You are the original licensee, You may obtain a refund of the amount You paid for it, if within 30 days after receipt of invoice or Program and PoE whichever is later. You return the Program and its PoE to IBM. The Program delivery shall be defined as when IBM has made the software available for download.

## **Program Transfer**

You may transfer a Program and all of Your license rights and obligations to another party only if that party agrees to the terms of DIR Contract No. DIR-SDD-2108 and this Agreement. When You transfer the Program, You must also transfer a copy of this Agreement, including the Program's PoE. After the transfer, You may not use the Program.

## **2. Charges**

The amount payable for a Program license is a one-time charge governed by Appendix C of DIR Contract No. DIR-SDD-2108.

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

If You wish to increase the level of use, notify IBM and pay any applicable charges.

If any authority imposes a duty, tax, levy or fee, excluding those based on IBM's net income, upon the Program, then taxes will be governed in accordance with Section 4.F of DIR Contract No. DIR-SDD-2108.

## **3. Limited Warranty**

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

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

If the Program does not function as warranted during the Warranty Period and the problem cannot be resolved with information available in the IBM databases, You may return the Program and its PoE to IBM and receive a refund in the amount You paid.

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

## **4. Limitation of Liability**

Limitation of Liability will be governed by Appendix A, Section 9.K. of DIR Contract No. DIR-SDD-2108.

## **5. General**

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

2. In the event that any provision of DIR Contract No. DIR-SDD-2108 and this Agreement is held to be invalid or unenforceable, the remaining provisions of DIR Contract No. DIR-SDD-2108 and this Agreement remain in full force and effect.

3. You agree to comply with all applicable export and import laws and regulations.

4. Neither You nor IBM will bring a legal action under this Agreement more than four (4) years after the cause of action arose unless otherwise provided by local law without the possibility of contractual waiver or limitation.

5. Force Majeure will be governed in accordance with DIR Contract No. DIR-SDD-2108.

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

## **Governing Law and Jurisdiction**

### **Governing Law**

Both You and IBM consent to the application of the laws of the State of Texas to govern, interpret, and enforce all of Your and IBM's rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this

Agreement, without regard to conflict of law principles. Exclusive Venue for all disputes relating to this Agreement will lie in the state courts in Travis County, Texas. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.

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

**Country-Specific Terms: Programs acquired under this Agreement are acquired in and for use in the United States of America only. If Programs are acquired in or used in any other country, country-specific terms will apply. The “other county terms” can be found here:**

[http://www-01.ibm.com/software/lotus/passportadvantage/pa\\_agreements.html](http://www-01.ibm.com/software/lotus/passportadvantage/pa_agreements.html)