



Program License Agreement For Distributed Systems Programs U.S. Government Terms (IPLA)

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, OR USING THE PROGRAM THE GOVERNMENT AGREES TO THE TERMS OF THIS AGREEMENT. IF THE GOVERNMENT DOES NOT AGREE TO THESE TERMS,

- DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, OR USE THE PROGRAM; AND
- PROMPTLY RETURN THE PROGRAM AND PROOF OF ENTITLEMENT TO IBM TO OBTAIN A REFUND OF THE AMOUNT THE GOVERNMENT PAID. IF THE GOVERNMENT DOWNLOADED THE PROGRAM, CONTACT YOUR IBM POINT OF CONTACT.

"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

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

A "Proof of Entitlement" ("PoE") is evidence of the Government's 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 the Government's eligibility for warranty, future upgrade prices, if any, and potential special or promotional opportunities.

If IBM does not provide the Government with a PoE, then IBM may accept the original invoice provided that it specifies the name of the Program and the usage level acquired.

This Agreement includes 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 the Government and IBM concerning the Government's use of the Program. The terms of License Information may replace or modify this Agreement. To the extent there is a conflict between the terms of this Agreement and those of the IBM Passport Advantage Agreement, U. S. Government Terms, the terms of the latter agreement prevail.

1. Entitlement License

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

Upon acceptance of a Government order, IBM grants the Government a nonexclusive license to use the Program.

The Government 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. The Government will reproduce all copyright notices and all other legends of ownership on each copy, or partial copy, of the Program.

If the Government acquires the Program as a program upgrade, after the upgrade is installed, your authorization to use or transfer the Program that was upgraded is terminated.

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

The Government 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 the Government's license if You fail to comply with the terms of this Agreement. If IBM does so, You must destroy all copies of the Program and its PoE.

Money-back Guarantee

Except as may be stated elsewhere in the contract, if for any reason the Government is dissatisfied with the Program and it is the original licensee, the Government may obtain a refund of the amount paid for the Program so long as the Program and the PoE is returned within 30 days of the invoice date. If the Government downloaded the Program, you may contact IBM for instructions on how to obtain the refund.

Program Transfer

Except as may be stated elsewhere in this contract, the Government may transfer a Program and all of its license rights and obligations to another party only if that party agrees to the terms of this Agreement. When the Government transfers the Program, it must also transfer a copy of this Agreement, including the Program's PoE and License Information. After the transfer, the Government may not use the Program.

2. Charges

The amount payable for a Program license is a one-time charge. One-time charges are based on the level of use acquired which is specified in the PoE. IBM does not give credits or refunds for charges already due or paid. The Government must notify IBM and pay applicable charges, except as may be specified elsewhere in this Agreement if You wish to increase the level of use. If any authority imposes a duty, tax, levy or fee, excluding those based on IBM's net income, upon the Program, then You agree to pay the amount specified or supply exemption documentation.

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 the Government 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, the Government may return the Program and its PoE to IBM and receive a refund in the amount paid. If the Government downloaded the Program, the Government may contact IBM for instructions on how to obtain the refund.

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

4. Limitation of Liability

Circumstances may arise where, because of a default on IBM's part or other liability, the Government is entitled to recover damages from IBM. In each such instance, regardless of the basis on which the Government may be entitled to claim damages from IBM, (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM is liable for no more than

- 1) damages for bodily injury (including death) and damage to real property and tangible personal property and
- 2) the amount of any other actual direct damages, up to the greater of \$100,000 or the charges (if recurring, 12 months' charges apply) for the Program that is the subject of the claim.

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

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

- a. **LOSS OF, OR DAMAGE TO, DATA;**
- b. **SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR**
- c. **LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**

5. General

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract. In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

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

You agree to allow IBM to store and use Your contact information, including names, phone numbers, and e-mail addresses, anywhere they do business. Such information will be processed and used in connection with our business relationship, and may be provided to contractors, Business Partners, and assignees of IBM for uses consistent with their collective business activities, including communicating with You (for example, for processing orders, for promotions, and for market research).

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

Neither You nor IBM is responsible for failure to fulfill any obligations due to causes beyond its control.

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.

IBM US Government Passport Advantage Agreement

Part 1 - General Terms

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

When used in this Agreement, "IBM" means the IBM company that is providing Eligible Products, and "you" means the Originating US Government customer (defined as an Agency or an affiliated entity of the US Government) that is ordering them, subject to the Agreement.

You and IBM agree to coordinate the administration of this Agreement within our respective Enterprises.

IBM is the legal entity within International Business Machines Corporation's Enterprise that accepts your orders.

This Agreement is entered into with the understanding that each of us is bound by its terms. You accept the terms of this Agreement without modification by submitting an IBM Passport Advantage Enrollment Form and both of us agree to distribute copies of the Agreement to our respective Enterprise. "Enterprise" is defined in Section 2, Enterprise, below.

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

This Agreement is effective on the date IBM accepts your initial order for Eligible Products ("Effective Date") and remains in effect until You or IBM terminates it in accordance with Section 11, "Agreement Termination."

The terms of the sections of the IBM Program License Agreement ("IPLA") entitled "Limitation of Liability," "General," and "Governing Law, Jurisdiction, and Arbitration," are also part of this Agreement and are incorporated by reference into this Agreement with the following changes:

1. The term "Program" is replaced by the term "Eligible Product."
2. If not otherwise stated in the Limitation of Liability section of the IPLA, the amount of any other actual direct damages up to the charges for the Program that is the subject of the claim for a fixed term license is 12 months' charges.

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

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

The Passport Advantage "Anniversary" for the Government is October 1 of each fiscal year or the Government's existing "Anniversary", unless a different date is mutually agreed to in writing.

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

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

1. Eligible Products

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

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

1. IBM Programs

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

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

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

Competitive Trade-ups: Licenses for certain Programs that replace qualifying Non-IBM Programs (see Subsection 2, Non-IBM Programs, below) may be obtained for a reduced charge. You agree to terminate your use of the replaced Non-IBM Programs when you install the replacement Programs.

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

2. Non-IBM Programs

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

3. Software Maintenance and Selected Support (a) Software Maintenance

IBM provides software maintenance ("IBM Software Maintenance") with each IBM Program licensed under the IPLA. IBM does not provide IBM Software Maintenance for Non-IBM Programs or for Programs that are licensed under the IBM License Agreement for Non-Warranted Programs (together "Selected Programs"). Third parties may provide software maintenance ("Third Party Software Maintenance") with Non-IBM Program licenses under the third parties' terms. For purposes of this Agreement, "software maintenance" means both IBM Software Maintenance and Third Party Software Maintenance.

IBM Software Maintenance begins on the date of acquisition and ends on the last day of the corresponding month in the following year, unless the date of acquisition is the first day of the month, in which case coverage ends on the last day of the month, 12 months from the date of acquisition.

While IBM Software Maintenance is in effect for an IBM Program license:

- (i) IBM will make available to you and authorize you to use the most current commercially available version, release, or update, should any be made available.
- (ii) IBM provides you assistance for your 1) routine, short duration installation and usage (how-to) questions; and 2) code-related questions ("Support"). Such Support for a particular version or release of a Program is available only until IBM or the third party, as applicable, withdraws Support for that Program's version or release. When Support is withdrawn, you must upgrade to a supported version or release of the Program in order to continue to receive Support. The IBM "Software Support Lifecycle" policy is available at <http://www-306.ibm.com/software/info/supportlifecycle/>.
- (iii) IBM provides assistance via telephone and, if available, electronic access, only to your information systems (IS) technical support personnel during the normal business hours (published prime shift hours) of your IBM support center. (This assistance is not available to your end users.) IBM provides Severity 1 assistance 24 hours a day, every day of the year. Consult the IBM Software Support Handbook for details at ibm.com/software/support.
- (iv) IBM may request that you allow it to remotely access your system to assist you in isolating the software problem cause. You remain responsible for adequately protecting your system and all data contained in it whenever IBM remotely accesses it with your permission.
IBM Software Maintenance does not include assistance for 1) the design and development of applications, 2) your use of IBM Programs in other than their specified operating environment or 3) failures caused by products for which IBM is not responsible under this Agreement.

(b) Selected Support

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

Selected Support begins on the date of acquisition and ends on the last day of the corresponding month in the following year, unless the date of acquisition is the first day of the month, in which case coverage ends on the last day of the month, 12 months from the date of acquisition.

While Selected Support is in effect for a Selected Program:

- (i) IBM will make available to you Selected Program defect corrections, if any, that it develops.
- (ii) IBM provides you assistance for your 1) routine, short duration installation and usage (how-to) questions; and 2) code related questions. Selected Support for a particular version or release of a Program is available only until IBM withdraws Selected Support for that Program's version, release, or modification. When such Selected Support is withdrawn, you must upgrade to a supported version or release of the Program in order to continue to receive such support. The IBM "Software Support Lifecycle" policy does not apply to Selected Support.
- (iii) IBM may provide you with assistance in designing and developing applications based on your subscription level.
- (iv) IBM may provide assistance via telephone and electronic access, depending on your location and the subscription level you acquire. Such assistance is provided only to your information systems (IS) technical support personnel during the normal business hours (published prime shift hours) of your IBM support center. Consult the IBM Software Support Handbook for details applicable to Selected Support at ibm.com/software/support.
- (v) IBM may request that you allow it to remotely access your system to assist you in isolating the software problem cause. You remain responsible for adequately protecting your system and all data contained in it whenever IBM remotely accesses it with your permission.

IBM WARRANTS THAT IT PROVIDES IBM SOFTWARE MAINTENANCE AND SELECTED SUPPORT USING REASONABLE CARE AND SKILL. THIS WARRANTY IS YOUR EXCLUSIVE WARRANTY AND REPLACES ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR

IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

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

(c) Annual Renewal of Software Maintenance and Selected Support

You may renew your expiring software maintenance or Selected Support by written authorization to renew prior to the expiration date, in accordance with the terms of this Agreement.

IBM will renew, expiring software maintenance for all of Your Program licenses to the next Anniversary if IBM receives an order within seven (7) days after the Anniversary. Otherwise, IBM's systems will automatically terminate the service. If You do not renew Software Maintenance coverage for certain or all of Your Program licenses and at a later date You wish to again acquire Software Maintenance coverage for such Program licenses, You must obtain IBM Software Maintenance Reinstatement.

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

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

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

(d) Withdrawal of software maintenance or Selected Support for a particular Program

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

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

4. Fixed Term Licensing

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

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

(a) Renewal of Fixed Term Licenses

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

IBM will renew, expiring Fixed Term Licenses for all of Your Program licenses to the next Anniversary if IBM receives an order within seven (7) days after the Anniversary. Otherwise, IBM's systems will automatically terminate the service. If You do not renew Fixed Term Licenses for certain or all of Your Program licenses and at a later date You wish to again acquire Fixed Term Licenses coverage for such Program licenses, You must obtain IBM Software Maintenance Reinstatement.

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

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

(b) Anniversary Coordination

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

(c) Withdrawal of Fixed Term License for a particular Program

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

(i) you may not renew the Fixed Term License for that Program; and

(ii) if you renewed the Fixed Term License for a Program prior to the notice of withdrawal, you will, at IBM's or the third party's sole discretion, either (a) continue to use the Program under the Fixed Term licensing terms until the end of the then current Fixed Term or (b) obtain a prorated refund.

2. Enterprise

An Enterprise is the US Government Agency or affiliated entity of the US Government Agency. For purposes of this contract, the U. S. Government Agency or affiliated entity of the US Government Agency shall mean United States Special Operations Command (USSOCOM). The US Government Agency awarding a contract and subsequent Purchase Order under such contract is the legal entity that is authorized to execute and administer this Agreement.

3. Site

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

Your Site is defined as the "Originating Site."

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

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

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

You are responsible for all Sites' compliance with the terms of this Agreement.

4. Obtaining Eligible Products

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

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

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

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

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

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

CEO Product Categories: Additions and Deletions

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

Increasing the number of Users

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

Decreasing the number of Users

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

5. Payment

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

6. Mutual Responsibilities

Both of us agree that, under this Agreement:

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

7. Assignment

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

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

8. Changes to the Agreement Terms

IBM may add or withdraw Eligible Products at any time. Otherwise, for a change to be valid, both You and IBM must sign it. Additional or different terms in any order or written communication from you are void.

9. Agreement Termination

You may terminate this Agreement without cause on one month's written notice.

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

You will be considered to have terminated this Agreement if you have neither placed orders for Eligible Products for 24 consecutive months nor have software maintenance in effect.

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

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

10. Geographic Scope

The terms of this Agreement apply in the United States, Puerto Rico and the District of Columbia.