



International Agreement for Selected IBM SaaS Offerings

This IBM International Agreement for Selected IBM Software as a Service (“SaaS”) Offerings (“Agreement”), including any applicable Terms of Use and the IBM SaaS Quotation governs this transaction in which Customer acquires IBM SaaS offerings from IBM or a reseller. It is the complete agreement regarding this transaction by which Customer acquires IBM SaaS offerings, and replaces any prior oral or written agreements, communications, representations, statements, understandings, warranties, promises, covenants, commitments, or undertakings between Customer and IBM concerning Selected IBM SaaS offerings.

The terms of the Quotation are made part of the IBM SaaS Quotation with the following exceptions:

- a. Items 1, 2, 7, 9, 10, and 12 are deleted.
- b. Item 8 is replaced by the following: “Customer acknowledges and agrees that this transaction is executed in the language of this Agreement.
- c. All terms addressing acceptance of terms are replaced by Section **1.3 Acceptance of Terms**.
- d. All instances of the phrase “Programs and/or Software Subscription and Support” are replaced by “IBM SaaS offerings.”
- e. All instances of the terms “End User” and “You” or “you” are replaced by “Customer.”
- f. All instances of the term “personal property taxes” are replaced by “applicable taxes.”
- g. All instances of the term “delivery date” are replaced by “the date that IBM notifies Customer that Customer has access to the subscribed offering.

If there is a conflict among the terms of this Agreement, Terms of Use, and the IBM SaaS Quotation, those of the Agreement prevail over those of the IBM SaaS Quotation, and the Terms of Use prevail over those of both this Agreement and the IBM SaaS Quotation.

1. General

1.1 Agreement Structure

This Agreement is organized in three Parts:

Part 1 – General includes terms regarding Agreement Structure, Definitions, Acceptance of Terms, Payment, Taxes, IBM Business Partners and Resellers, Limitation of Liability, General Principles of Our Relationship, Agreement Termination, Compliance Verification, and Geographic Scope and Governing Law.

Part 2 – IBM SaaS includes terms regarding Ownership, Customer’s Right to Use, Warranties, Subscription to IBM SaaS, Withdrawal of IBM SaaS Offerings, IBM SaaS Technical Support, Content, and Termination of IBM SaaS.

Part 3 – Country-unique Terms

1.2 Definitions

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

Customer – the customer Enterprise company that is ordering the IBM SaaS offering(s).

Effective Date – the date IBM accepts Customer’s order for the IBM SaaS offering(s), either directly from Customer or from Customer’s reseller.

Enterprise – any legal entity that, by more than 50%, owns, is owned by, or is under common ownership with Customer.

IBM – the IBM Enterprise company that is providing the IBM SaaS offering(s).

IBM Business Partner – an organization with which IBM has signed agreements to promote, market, and, in some instances, support certain IBM SaaS offerings.

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

IBM SaaS Quotation – the terms of the Quotation as modified by this Agreement. The IBM SaaS Quotation contains specific details and terms related to this transaction.

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

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

Quotation – the price quote, including the "Quotation Terms and Conditions" for the IBM SaaS offering Customer is acquiring under the terms of this Agreement.

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

Term – the period that begins either on the date IBM accepts Customer's initial order (in the case of the initial Term) or on the Anniversary (in the case of subsequent Terms), and ends on the day immediately prior to the next Anniversary.

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

1.3 Acceptance of Terms

Customer accepts this Agreement, including the applicable Terms of Use, and the IBM SaaS Quotation, without modification by signing this Agreement or, where recognized by law, issuing a purchase order referencing this Agreement and the IBM SaaS Quotation.

1.4 Payment

- a. When Customer acquires the IBM SaaS offering from a reseller, Customer pays reseller directly.
- b. When Customer acquires the IBM SaaS offering from IBM, Customer agrees to pay as IBM specifies in the IBM SaaS Quotation, including any late payment fee.

1.5 Taxes

If, as a result of Customer accessing or using an IBM SaaS offering across a border, any authority imposes a customs duty, tax, levy or fee (including withholding taxes for the import or export of any such IBM SaaS offering), then Customer agrees that it is responsible for, and will pay, any such customs duty, tax, levy or fee. This excludes those taxes based on IBM's net income.

1.6 IBM Business Partners and Resellers

In addition to acquiring IBM SaaS offerings from IBM, Customer may acquire them from IBM Business Partners and resellers. Not all resellers, however, are authorized to resell all IBM SaaS offerings.

When Customer orders IBM SaaS offerings from Customer's IBM Business Partner(s) or reseller(s), IBM is not responsible for 1) their actions, 2) any additional obligations they have to Customer, or 3) any products or services that they supply to Customer under their agreements. When Customer acquires IBM SaaS offerings from an IBM Business Partner or reseller, the IBM Business Partner or reseller sets the charges and payment terms.

1.7 Limitation of Liability

The limitations and exclusions in this **Section 1.7 (Limitation of Liability)** apply to the full extent they are not prohibited by applicable law without the possibility of contractual waiver.

1.7.1 Items for Which IBM May Be Liable

Circumstances may arise where, because of a default on IBM's part or other liability, Customer is entitled to recover damages from IBM. Regardless of the basis on which Customer is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM's entire liability for all claims in the aggregate arising from or related to each IBM SaaS offering or otherwise arising under this Agreement will not exceed the amount of any actual direct damages up to the 12 months' charges. Customer paid for the IBM SaaS offering that is the subject of the claim.

This limit also applies to any of IBM's IBM SaaS offering developers and suppliers. It is the maximum for which IBM and its IBM SaaS offering developers and suppliers are collectively responsible. Damages for bodily injury (including death) and damage to real property and tangible personal property for which IBM is legally liable are not subject to a cap on the amount of damages.

1.7.2 Items for Which IBM Is Not Liable

UNDER NO CIRCUMSTANCES IS IBM, ITS IBM SaaS OFFERING 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, EXEMPLARY, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR**
- c. **LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**

1.8 General Principles of Our Relationship

1.8.1 Notices and Communications

To the extent permissible under applicable law, the parties consent to the use of electronic means and facsimile transmissions to send and receive communications in connection with our business relationship arising out of this Agreement, and such communications are acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity.

1.8.2 Assignment and Resale

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other. Any attempt to assign without consent is void. The assignment of this Agreement, in whole or in part, within the Enterprise of which either party 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 without obtaining Customer's 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.

Customer agrees that IBM SaaS offerings are for use within Customer's 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.

1.8.3 Compliance with Laws

IBM will comply with laws applicable to IBM generally as a provider of information technology products and services. IBM is not responsible for determining the requirements of laws applicable to Customer's business, including those relating to IBM SaaS offerings that Customer acquires under this Agreement, or that IBM's provision of or Customer's receipt of a particular IBM SaaS offering under this Agreement meets the requirements of such laws. Notwithstanding anything in this Agreement to the contrary, neither party is obligated to take any action that would violate law applicable to that party.

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

1.8.4 Dispute Resolution

Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this 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 such claim and all respective rights related to the claim lapse.

1.8.5 Other Principles of Our Relationship

- a. Neither party grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent.
- b. The exchange of any confidential information will be made under a separate, signed confidentiality agreement. However, to the extent confidential information is exchanged in connection with any IBM SaaS offering under this Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this Agreement.
- c. This Agreement and any transaction under it do not create an agency, joint venture, or partnership between Customer and IBM. Each party is free to enter into similar agreements with others to develop, acquire, or provide competitive products and services.

- d. Customer authorizes International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors, IBM Business Partners, and resellers) to store and use Customer's business contact information wherever they do business, in connection with the IBM SaaS offering or in furtherance of IBM's business relationship with Customer.
- e. 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 Customer except as permitted in Section 1.7 (Limitation of Liability) above for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable to that third party.
- f. Customer is responsible for selecting the IBM SaaS offering that meet its needs and for the results obtained from the use of the IBM SaaS offering, including Customer's decision to implement any recommendation concerning Customer's business practices and operations.
- g. IBM SaaS offerings may not be used to provide commercial hosting or other commercial information technology services to third parties.
- h. Where approval, acceptance, consent, or similar action by either party is required under this Agreement, such action will not be unreasonably delayed or withheld.
- i. Neither party is responsible for failure to fulfill any non-monetary obligations due to events beyond its control.
- j. Customer agrees that their use of IBM SaaS will comply with the IBM acceptable use policy at <http://www.ibm.com/services/us/imc/html/aup.html> and applicable data protection laws.
- k. As reasonably required by IBM to fulfill its obligations under this Agreement, Customer agrees to provide IBM with sufficient and safe access (including remote access) to Customer's facilities, systems, information, personnel, and resources, all at no charge to IBM. IBM is not responsible for any delay in performing or failure to perform caused by Customer's delay in providing such access or performing other Customer responsibilities under this Agreement.
- l. In entering into this Agreement, including each ToU and the IBM SaaS Quotation, neither party is relying on any representation that is not specified in this Agreement, including without limitation any representations concerning: i) performance or function of any IBM SaaS offering, other than as expressly warranted in this Agreement; ii) the experiences or recommendations of other parties; or iii) any results or savings that Customer may achieve.
- m. For a change to this Agreement, including any ToU and Quotation, to be valid, both Customer and IBM must sign it. Additional or different terms in any written communication from Customer are void.

1.9 Agreement Termination

IBM may terminate this Agreement at any time, with or without cause, immediately and without notice, after the initial IBM SaaS Subscription Period has expired. If Customer renewed IBM SaaS prior to the notice of termination, IBM, at its sole discretion, may either continue to provide those IBM SaaS offerings for the remainder of the current term or give Customer a prorated refund.

Customer will be considered to have terminated this Agreement if it does not have the IBM SaaS offering(s) acquired under this Agreement 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 that by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees.

1.10 Compliance Verification

For purposes of this **Section 1.10 (Compliance Verification)**, "IBM SaaS Offering Terms" means 1) this Agreement, the IBM SaaS Quotation, and the Terms of Use provided by IBM, and 2) IBM software policies that may be found at the IBM Software Policy website (<http://www.ibm.com/softwarepolicies/>), including but not limited to those policies concerning migration.

The rights and obligations set forth in this **Section 1.10** remain in effect during the period Customer is accessing the IBM SaaS offering and for two years thereafter.

1.10.1 Verification Process

Customer agrees to create, retain, and provide to IBM and its auditors accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that Customer's use of all IBM SaaS offerings is in compliance with the IBM SaaS Offering Terms, including, without limitation,

all of IBM's applicable licensing and pricing qualification terms. Customer is responsible for 1) ensuring that it does not exceed its authorized use, and 2) remaining in compliance with IBM SaaS Offering Terms.

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

1.10.2 Resolution

IBM will notify Customer in writing if any such verification indicates that Customer has used any IBM SaaS offering in excess of its authorized use or is otherwise not in compliance with the IBM SaaS Offering Terms. Customer agrees to promptly pay directly to IBM the charges that IBM specifies in an invoice for 1) any such excess use and 2) any additional charges and other liabilities determined as a result of such verification.

1.11 Geographic Scope and Governing Law

1.11.1 Geographic Scope

The terms of this Agreement apply in countries in which 1) IBM markets its IBM SaaS offerings directly or 2) its IBM SaaS offerings have been announced as otherwise available.

1.11.2 Governing Law

The rights, duties, and obligations of each party are valid only in the country in which the transaction is performed or, if IBM agrees, the country where the IBM SaaS offering is placed in productive use, except that all licenses are valid as specifically granted.

Both parties agree to the application of the laws of the country in which the transaction is performed to govern, interpret, and enforce all of Customer's and IBM's respective 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.

If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

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

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

2. IBM SaaS

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

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

The exchange of any confidential information made under a separate, signed confidentiality agreement, pursuant to 1.8.5b of this Agreement, does not apply to Content. IBM assumes no confidentiality obligations regarding Content, notwithstanding the terms of any separate confidentiality agreement between Customer and IBM.

2.1 Ownership

IBM and its suppliers own IBM SaaS. Customer agrees that title to, ownership of and all rights in and to patents, copyrights, trademarks, and all other intellectual property rights in IBM SaaS, and any copy or part of IBM SaaS will remain with IBM and its suppliers. IBM may subcontract IBM SaaS, or any part of it, including technical support, to subcontractors selected by IBM.

2.2 Warranties

The warranties for IBM SaaS are stated in the Terms of Use.

2.3 Customer's Right to Use

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

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

2.4 Subscription to IBM SaaS

2.4.1 Terms for a Specific IBM SaaS Offering

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

2.4.2 IBM SaaS Subscription Period

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

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

Customer may not decrease Customer's subscribed level of an IBM SaaS offering during a Subscription Period but may decrease in a subsequent Subscription Period.

2.4.3 IBM SaaS Subscription Period Renewal

Customer may renew an IBM SaaS offering at the end of a Subscription Period, unless otherwise specified in the offering's Terms of Use. Some IBM SaaS offerings, as specified in the IBM SaaS offering's Terms of Use, automatically renew at the end of the Subscription Period unless, prior to the end of the Subscription Period, IBM receives, either directly or through Customer's reseller, as applicable, Customer's written notification not to renew.

2.5 Withdrawal of IBM SaaS Offerings

IBM may withdraw an IBM SaaS offering at any time.

2.6 IBM SaaS Technical Support

During an IBM SaaS Subscription Period:

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

2.7 Content

IBM provides only services for Content. IBM is not the publisher of Content transmitted within IBM SaaS. Customer has sole responsibility for the following:

- a. ensuring the adequacy of any IBM SaaS elements to satisfy any Customer requirements:

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

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

2.8 Termination of IBM SaaS

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

Notwithstanding anything to the contrary in this Agreement, if IBM terminates Customer's access to the IBM SaaS offering due to Customer's breach of any of the applicable terms of this Agreement, IBM is not obligated to issue a refund or credit for any unused portion of the IBM SaaS offering.

3. Country-unique Terms

For transactions performed in the countries specified below, the following terms replace or modify the referenced terms in Parts 1 through 2. All terms in Parts 1 through 2 that are not changed by these amendments remain unchanged and in effect. This part 3 is organized as follows:

- Section 3.1 contains multiple country amendments to section 1.11 (Geographic Scope and Governing Law);
- Section 3.2 contains the Americas country amendments to other Agreement terms;
- Section 3.3 contains the Asia Pacific country amendments to other Agreement terms; and
- Section 3.4 contains the Europe, Middle East, and Africa country amendments to other Agreement terms.

3.1 Multiple country amendments to section 1.11 (Geographic Scope and Governing Law)

3.1.1 Geographic Scope

EUROPE, MIDDLE EAST, AND AFRICA

In South Africa, Namibia, Lesotho, and Swaziland, the following paragraph pertains to geographic scope and replaces the first paragraph in section 1.11.2 Governing Law:

The rights, duties, and obligations of each party are valid only in South Africa, Namibia, Lesotho, and Swaziland, unless otherwise stated in a transaction document, except that all licenses are valid as specifically granted.

3.1.2 Governing Law

In the second paragraph of section 1.11 Governing Law, the phrase, "the laws of the country in which the transaction is performed" is replaced with the following:

AMERICAS

- a. in **Canada**: the laws in the Province of Ontario;
- b. in **Mexico**: the federal laws of the Republic of Mexico;
- c. in the **United States, Anguilla, Antigua/Barbuda, Aruba, British Virgin Islands, Cayman Islands, Dominica, Grenada, Guyana, Saint Kitts and Nevis, Saint Lucia, Saint Maarten, and Saint Vincent and the Grenadines**: the laws of the State of New York, United States;
- d. in **Venezuela**: the laws of the Bolivarian Republic of Venezuela;

ASIA PACIFIC

- e. in **Cambodia and Laos**: the laws of the State of New York, United States;
- f. in **Australia**: the laws of the State or Territory in which the transaction is performed;

- g. in **Hong Kong SAR** and **Macau SAR**: the laws of Hong Kong Special Administrative Region (“SAR”);
- h. in **Taiwan**: the laws of Taiwan;

EUROPE, MIDDLE EAST, AND AFRICA

- i. 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;
- j. 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;
- k. in **Estonia, Latvia, and Lithuania**: the laws of Finland;
- l. 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
- m. in **South Africa, Namibia, Lesotho and Swaziland**: the laws of the Republic of South Africa.

3.1.3 Jurisdiction

The following paragraph pertains to jurisdiction and is added to section 1.11.2 as it applies for the countries identified in bold print below:

All rights, duties, and obligations under this Agreement are subject to the courts of the country in which the transaction is performed 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

- a. in **Argentina**: the Ordinary Commercial Court of the city of Buenos Aires,
- b. in **Brazil**: the court of Rio de Janeiro, RJ;
- c. in **Chile**: the Civil Courts of Justice of Santiago;
- d. in **Columbia**: the judges and courts of general jurisdiction of Bogota, Colombia;
- e. in **Ecuador**: the civil judges of Quito for executory or summary proceedings (as applicable);
- f. in **Mexico**: the courts located in Mexico City, Federal District;
- g. in **Peru**: the judges and tribunals of the judicial district of Lima, Cercado;
- h. in **Uruguay**: the courts of the city of Montevideo;
- i. in **Venezuela**: the courts of the metropolitan area of the city of Caracas;

EUROPE, MIDDLE EAST, AND AFRICA

- j. in **Austria**: the court of law in Vienna, Austria (Inner-City);
- k. 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;
- l. 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;

- m. in **South Africa, Namibia, Lesotho and Swaziland**: the High Court in Johannesburg;
- n. in **Greece**: the competent court of Athens;
- o. in **Israel**: the courts of Tel Aviv-Jaffa;
- p. in **Italy**: the courts of Milan;
- q. in **Portugal**: the courts of Lisbon;
- r. in **Spain**: the courts of Madrid; and
- s. in **Turkey**: the Istanbul Central Courts and Execution Directorates of Istanbul, the Republic of Turkey.

3.1.4 Arbitration

The following terms pertain to arbitration and are added to section 3.1 as they apply for the countries identified in bold print below. The provisions of these paragraphs apply to the extent permitted by applicable governing law and rules of procedure:

ASIA PACIFIC

- a. 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.

- b. in the People’s Republic of China: In the event of a dispute, 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 that the parties are disputing and which is undergoing arbitration.
- c. 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

- d. 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; and
- e. 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.

3.2 AMERICAS COUNTRY AMENDMENTS

BELIZE, COSTA RICA, DOMINICAN REPUBLIC, EL SALVADOR, HAITI, HONDURAS, GUATEMALA, NICARAGUA, AND PANAMA.

ALL AMERICAS (EXCEPT BRAZIL, CANADA, MEXICO, AND THE UNITED STATES)

The following terms apply to all Americas countries (except Brazil, Canada and the United States), unless a specific country term states otherwise.

1.4 Payment

The following replaces 1.4b:

Amounts are due upon receipt of invoice and payable as IBM specifies in IBM SaaS Quotation. The currency for payment of amounts due is US dollars or the equivalent in local currency as follows:

1. As long as the country operates in a free currency exchange market, Customer and IBM agree that IBM will accept payment in the applicable country national currency calculated at the country official exchange rate published by the bank specified in a transaction document on the date payment is made.
2. If the government of a country establishes any restriction or limitation on its free currency exchange markets, Customer agrees to make payments to IBM in US dollars to a bank account in New York, NY, USA, designated by IBM in the transaction document, provided that such payment is not illegal under country law. If such method of payment is forbidden by country law, Customer agrees to pay the amount indicated in the transaction document in country national currency, calculated at the official exchange rate that is in use for the remittance of dividends and net earnings to foreign investors outside the country.

Customer agrees to pay accordingly, including any late payment fee. The late payment fee is calculated and payable in US dollars at two percent (or the maximum rate allowed by local law if such is less than two percent) of the delinquent amount due per each thirty day period during which any delinquent balance remains unpaid.

LATIN AMERICA

The following term applies to all countries in Latin America, except for Argentina and Brazil.

1.3 Acceptance of Terms

The following replaces the first sentence:

Customer accepts the terms in Agreement, Terms of Use, IBM SaaS Quotation, and transaction documents by signing them.

BRAZIL AND COLOMBIA

1.9 Agreement Termination

The following is added after the fourth paragraph:

All notices will be sent to the other party by registered letter.

ARGENTINA AND BRAZIL

1.3 Acceptance of Terms

The following replaces the second sentence:

An IBM SaaS offering becomes subject to this Agreement when IBM accepts Customer's order by signing a transaction document.

1.5 Taxes

Both IBM and the Customer will pay the stamp tax in equal amounts and when applicable (Impuesto de Sellos).

BRAZIL

1.4 Payment

The following replaces 1.4b:

Amounts due are expressed in local currency.

Amounts are due upon receipt of invoice and payable in local currency as IBM specifies in the IBM SaaS Quotation. Customer agrees to pay accordingly, including any late payment fee. Delinquent amounts are subject to monetary correction based on the inflation index called the "General Price Index" calculated by Getulio Vargas Foundation (IGP-M/FGV), plus interest at the rate of one percent per month, both calculated "pro rata die." The late payment fee is calculated against the resultant delinquent amount at the following rates:

1. two percent of the delinquent amount due per the first thirty day period during which any delinquent balance remains unpaid, plus
2. ten percent for each successive thirty day period during which any delinquent balance remains unpaid.

1.8.1 Notices and Communications

The following replaces 1.8.1:

Each of us may communicate with the other by electronic means and such communication is acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity;

2.5 Withdrawal of IBM SaaS Offerings

The following is added to this section:

IBM may add or withdraw IBM SaaS offerings at any time. IBM's ability to increase such charges, rates, and minimums will be subject to the requirements of Brazilian law.

PERU

1.7 Limitation of Liability

The following is added to the end of this section:

Except as expressly required by law without the possibility of contractual waiver, Customer 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. 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").

NORTH AMERICA

CANADA

1.7 Limitation of Liability

1.7.1 Items for which IBM May be Liable

The following replaces the last sentence in this section 1.7.1:

Damages for bodily injury (including death) and physical harm to real property and tangible personal property caused by IBM's negligence for which IBM is legally liable are not subject to a cap on the amount of damages.

1.8 General Principles of Our Relationship

1.8.3 Compliance with Laws

The following replaces the one-sentence paragraph at the end of this section:

Each party will comply with applicable export and import laws and regulations, including those that apply to goods of US origin and those that restrict or prohibit or limit export for certain uses or to certain users.

1.8.5 Other Principles of Our Relationship

The following replaces item 1.8.5f:

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 Customer except or 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 subsection is added:

1.8.6 Data Privacy

For purposes of this section, "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:

a. General

- (1) Each party is responsible for complying with any obligations applying to it under applicable Canadian data privacy laws and regulations ("Laws").
- (2) 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.

b. Security Safeguards

- (1) 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.
- (2) Each party will ensure that Personal Data is protected in accordance with the security safeguards communicated and agreed to by the other.
- (3) Each party will ensure that any third party to whom Personal Data is transferred is bound by the applicable terms of this section.
- (4) Additional or different services required to comply with the Laws will be deemed a request for new services.

c. 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.

d. Access Requests

- (1) Each party agrees to reasonably cooperate with the other in connection with requests to access or amend Personal Data.
- (2) Each party agrees to reimburse the other for any reasonable charges incurred in providing each other assistance.
- (3) Each party agrees to amend Personal Data only upon receiving instructions to do so from the other party or its personnel.

e. 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.

f. Public Bodies Who Are Subject to Public Sector Privacy Legislation

For Customers who are public bodies subject to public sector privacy legislation, this section 1.8.6 applies only to Personal Data made available to Customer in connection with this Agreement, and the obligations in this section apply only to Customer, except that: 1) section b(1) applies only to IBM; 2) sections a(1) and d(1) apply to both parties; and 3) section d(2) and the last sentence in a(2) do not apply.

UNITED STATES OF AMERICA

1.8 General Principles of Our Relationship

1.8.4 Dispute Resolution

The following is added to the end of this section:

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

1.8.5 Other Principles of Our Relationship

The following is added as 1.8.5.n:

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

3.3 ASIA PACIFIC COUNTRY AMENDMENTS

AUSTRALIA

1.2 Definitions - Definition of "Personal Data"

The definition is amended and replaced with the following:

"Personal Data – any information that can be used to identify a specific individual such as name, email address, home address or phone number that is provided to IBM to store, process or transfer and includes Personal Information as defined by the Privacy Act 1988 (Cth)."

1.4 Payment

The following paragraph is added after 1.4b as 1.4c:

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

1.5 Taxes

The following paragraph replaces 1.5 in its entirety:

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

1.7 Limitation of Liability

The following paragraph is included at the end of 1.7.1:

Where IBM is in breach of a guarantee implied by the Competition and Consumer Act 2010, IBM's liability is limited to, at IBM's discretion:

- (1) the supplying of the services again or
- (2) the payment of the cost of having the services supplied again; and

Where services are of a kind ordinarily acquired for personal, domestic, or household use or consumption, then none of the limitations in this section apply.

2.2 Warranties

The following paragraph is added after the paragraph that begins "These warranties are customer's exclusive warranties.."

The warranties specified this Section are in addition to any rights Customer may have under the Competition and Consumer Act 2010 or other legislation and are only limited to the extent permitted by the applicable legislation. The reference to warranties and conditions throughout this agreement includes a reference to guarantees for the purpose of the Competition and Consumer Act 2010.

2.7 Content

The following paragraph is added after the paragraph that begins "IBM provides only storage and delivery services for Content."

To the extent IBM is collecting any Personal Data, Customer acknowledges that in disclosing the Personal Data to IBM, it has undertaken all steps necessary to comply with the disclosure and collection requirements of the National Privacy Principles contained in the Privacy Act 1988, Customer agrees and acknowledges that it has taken reasonable steps to disclose to the relevant individuals such information about IBM that is prescribed under National Privacy Principle 1.3 that Customer reasonably believes is necessary for Customer to comply with the National Privacy Principle.

NEW ZEALAND

1.2 Definitions - Definition of "Personal Data"

The definition is amended and replaced with the following:

"Personal Data – any information that can be used to identify a specific individual such as name, email address, home address or phone number that is provided to IBM to store, process or transfer and includes Personal Information as defined by the Privacy and Personal Information Protection Act."

1.4 Payment

The following paragraph is added after 1.4b as 1.4c:

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

1.5 Taxes

The following paragraph replaces 1.5 in its entirety:

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

2.2 Warranties

The following paragraph is added after the paragraph that begins "These warranties are customer's exclusive warranties.."

The warranties specified in this section are in addition to any rights Customer may have under the Consumer Guarantee Act 1993 or other legislation that cannot be excluded or limited by law.

HONG KONG SAR, MACAU SAR, AND TAIWAN

As applies to transactions initiated and performed in Taiwan and the Special Administration Regions "SARs" specified, phrases throughout this Agreement containing the word "country" (for example, "country of acquisition" and "country of installation") are replaced with the following:

- 1) In **Hong Kong SAR**: "Hong Kong SAR"
- 2) In **Macau SAR**: "Macau SAR," except under section 1.11.2 (Governing Law) above; and
- 3) In **Taiwan**: "Taiwan."

INDIA

1.8.4 Dispute Resolution

The following replaces the final sentence in 1.8.4:

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

1.9 Agreement Termination

The following paragraph is added:

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

JAPAN

1.4 Payment

Add the following sentence:

Customer agrees to pay within 30 days from our invoice date.

1.8.4 Dispute Resolution

The following is inserted at the end of 1.8.4:

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

SINGAPORE

1.8.5 Other Principles of Our Relationship

The following replaces the terms of 1.8.5e:

Subject to the rights provided to IBM's IBM SaaS offering developers and suppliers as provided in 1.7 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.

3.4 EUROPE, MIDDLE EAST, AFRICA COUNTRY AMENDMENTS

Amendments Applicable to Many Countries

EUROPE, MIDDLE EAST, AND AFRICA

EU MEMBER STATES AND ADDITIONAL COUNTRIES SPECIFIED

The following term applies to all EU Member States, Iceland, Liechtenstein, Norway, Switzerland, Turkey, and any other European country that has enacted local data privacy or protection legislation similar to the EU model.

1.8.5 Other Principles of Our Relationship

The following replaces 1.8.5d:

- a. Definitions – For the purposes of 1.8.5d, the following additional definitions shall apply:
 - (1) Business Contact Information – business-related contact information disclosed by Customer to IBM, including names, job titles, business addresses, telephone numbers and email addresses of Customer's employees and contractors.

- (2) Business Contact Personnel – Customer employees and contractors to whom the Business Contact Information relates. For Austria, Italy, and Switzerland, Business Contact Information also includes information about Customer and its contractors as legal entities (for example, Customer's revenue data and other transactional information).
 - (3) 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.
 - (4) 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.
 - (5) IBM Group – International Business Machines Corporation of Armonk, New York, USA, its subsidiaries, and their respective Business Partners and subcontractors.
- b. Customer authorises IBM:
- (1) to process and use Business Contact Information within IBM Group in support of Customer, including the provision of support services, and for the purpose of furthering the business relationship between Customer 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
 - (2) to disclose Business Contact Information to other members of IBM Group in pursuit of the Specified Purpose only.
- c. 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.
- d. To the extent required by the Data Protection & Electronic Communications Legislation, Customer represents that 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.
- e. Customer 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.

WESTERN EUROPEAN COUNTRIES

EMEA-WIDE

1.4 Payment

The following replaces 1.4b for the following countries except as noted:

Amounts are due and payable upon receipt of invoice. Customer agrees to pay accordingly, including any late payment charges.

If payment is not made within 30 days from the date of invoice, (or in the case of quarterly advance billing of recurring charges, within 60 days from the date of invoice), Customer may be subject to late payment charges.

The late payment charges are calculated as follows:

Belgium and Luxembourg:

Replace the first sentence in the second paragraph of the above EMEA-wide text with the following:

Any amounts not paid within the terms stated on the IBM invoice will be subject to a late payment fee that will be equal to 1% per period of 30 days, based on the outstanding balance VAT included, until paid in full. Late payment fees due will have to be paid at the end of each period of 30 days.

Denmark and Sweden:

Interest according to the Late Payment Interest Act apportioned to the number of days of delay.

Estonia, Latvia, and Lithuania:

2% per month apportioned to the number of days of delay.

Finland:

Interest according to the Act on interest rate apportioned to the number of days of delay.

France:

In compliance with article 441-6 of the Code of Commerce, a late payment fee is payable, without any need for IBM to issue a reminder, in respect of the period commencing on the day following the payment due date specified on IBM's invoice, and ending on the date when full payment of the invoiced amount is made; such late payment fee shall be calculated on the basis of a rate equal to the European Central Bank's rate for its most recent refinancing operation, plus 10 points.

Germany:

Late payment fees will be calculated according to the German statutory rate.

In the second paragraph of the above EMEA-wide text replace both usages of "date of invoice" with the following:

due date

Greece:

The following replaces the above EMEA-wide text:

Amounts are due and payable upon receipt of invoice. If payment is not made within 30 days from the date of invoice, Customer may be subject to late payment fees.

The late payment fees will be calculated, per day of actual delay, from the due date of the invoice, based on the maximum rate of late payment fee allowed by law.

Italy:

Replace the final paragraph of the above EMEA-wide text with the following:

The late payment charges will be calculated, per day of actual delay, based on the prime rate published by the Italian Banking Association ABI in effect on the last day of the month the payment has been received by IBM, increased by three points.

In case of no payment or partial payment and following a formal credit claim procedure or trial IBM might initiate, the late payment fee will be calculated from the due date of the invoice based on the prime rate published by the Italian Banking Association ABI in effect on the last day of the month the payment was due, increased by three points. IBM can transfer the credit to a factoring company; if IBM does so, it will advise Customer in writing.

Netherlands:

The following replaces the second and third sentences of the EMEA-wide text:

If payment is not made within 30 days from the date of invoice, Customer will be in default without the necessity of a default notice. In such case Customer will be subject to late payment fees of 1% per month.

Norway:

Interest according to the Late Payment Interest Act apportioned to the number of days of delay.

South Africa, Namibia, Lesotho, Swaziland:

Such charges accrue daily from the date payment must have been received by IBM, and will be equal to 2% (two percent) above the ruling prime rate (of a bank designated by IBM) on any outstanding payment.

Spain:

Such fees will be calculated applying 1% of the charges per month to the number of days of delay.

UK and Ireland:

Such charges will be calculated at a monthly rate of 2% of the invoice amount, or as permitted by applicable law.

UK, Ireland, South Africa, Namibia, Lesotho, Swaziland:

Add the following:

IBM's rights relating to late payment charges shall be in addition to any other right that IBM may have in the event that Customer fails to make any payment due to IBM under this Agreement.

IBM reserves the right to require payment in advance of delivery or other security for payment.

AUSTRIA

1.4 Payment

Replace the above EMEA-wide text in 1.4b with the following:

Payment in full is due and payable without deduction upon receipt of invoice. Customer agrees to pay accordingly, including any late payment fees. If the invoice amount is not received on IBM's account within 30 days, upon due date, IBM may charge late payment fees at the rate indicated in the transaction document.

1.7 Limitation of Liability

The following sentence is added:

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

1.7.1 Items for which IBM May Be Liable

The following replaces the first sentence:

Circumstances may arise where, because of a default by IBM in the performance of its obligations under this Agreement or other liability, Customer 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)."

1.7.2 Items for which IBM Is Not Liable

The following replaces 1.7.2b:

indirect damages or consequential damages; or

AUSTRIA, DENMARK, ESTONIA, FINLAND, LATVIA, LITHUANIA, NORWAY, SWEDEN:

1.5 Taxes

Delete the last sentence:

This excludes those taxes based on IBM's net income.

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

1.5 Taxes

Delete 1.5.

EGYPT

1.8. General Principles of Our Relationship

Delete 1.8.1.

GERMANY

1.7 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 Customer is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), per claim only up to 12 months' charges Customer paid for the IBM SaaS offering 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 Customer 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 Customer suffers, subject to the provisions of Items a and b above.

1.8.4 Dispute Resolution

The following replaces the third sentence of 1.8.4:

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

1.8.5 Other Principles of Relationship

The following replaces 1.8.5e:

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 Customer, except (to the extent permitted in Section 1.7 (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.

2.2 Warranties

Items Not Covered by Warranty

The following replaces the subsection:

Without prejudice to Customer's rights under other warranty provisions of this Agreement, IBM does not warrant uninterrupted or error-free operation of any IBM SaaS offering, or that IBM will correct all defects.

IRELAND AND UNITED KINGDOM

1.7.1 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.

1.7.2 Items for Which IBM is Not Liable

The following replaces Items 1.7.2b and 1.7.2c:

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

NETHERLANDS

1.4 Payment

Add the following paragraphs to 1.4b:

We may apply Customer's payment to Customer's other outstanding invoices.

Our rights relating to late payment charges shall be in addition to any other right that we may have in the event that Customer fails to make any payment due to us under this Agreement.

We reserve the right to also base our decision on the conclusion of an agreement with Customer on Customer's solvency and to require payment in advance of delivery or other security for payment.

Customer's obligation to pay is unconditional and shall not be subject to any abatement, reduction, set-off, defense, counter-claim interruption, deferment, or recoupment.

1.5 Taxes

Replace 1.5 with the following:

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

SOUTH AFRICA, NAMIBIA, LESOTHO, SWAZILAND

1.4 Payment

Add the following additional sentence:

When Customer makes payment by cheque, payment is deemed to have been made only when Customer's cheque has been received by IBM and its relevant account has been credited by IBM's authorised bankers.

SWITZERLAND

1.8 General Principles of Our Relationship

Delete 1.8.1.

TURKEY

1.4 Payment

The following replaces 1.4b

Amounts are due and payable upon receipt of invoice. Customer agrees to pay accordingly, including any late payment charges.

If payment is not made within 30 days from the date of invoice, Customer may be subject to late payment charges.

Add the following to the end of this section:

Customer is responsible for all banking charges (including, but not limited to, LC charges, commissions, stamps, and extensions) incurred within and outside of Turkey.

IRELAND AND UNITED KINGDOM

The following sentence is added to the first paragraph of the preamble:

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

1.7 Limitation of Liability

1.7.1 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 relating to, any Program license granted, any goods old or services rendered by IBM under this Agreement in respect of which IBM is legally liable to Customer, 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, Customer is entitled to recover damages from IBM. Regardless of the basis on which Customer 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 Customer 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 Eligible Product is subject to fixed term charges, up to 12 months' charges) for the Eligible Product 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.

1.7.2 Items for Which IBM is Not Liable

The following replaces Items 1.7.2b and 1.7.2c:

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

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