International Agreement for Acquisition of Software Maintenance   IBM

Part 1- General Terms

This IBM International Agreement for Acquisition of Software Maintenance (called the "Agreement") governs Customer's acquisition of IBM software maintenance ("Software Maintenance"), which may also be referred to as subscription and support ("S&S") in connection with IBM System z Programs. Software Maintenance is provided only for those Eligible Programs licensed by Customer within its Enterprise. Acquisition of Software Maintenance in quantities greater than the number for which Customer is licensed does not create or imply any greater license authorization. An "Enterprise" in this Agreement is any legal entity (such as a corporation) and the subsidiaries it owns by more than 50 percent. "Eligible Programs" are described below.

IBM has signed agreements with certain organizations (called "IBM Business Partners") to promote and market Software Maintenance offerings. When Customer orders Software Maintenance marketed to Customer by IBM Business Partners, IBM will provide Software Maintenance to Customer under the terms of this Agreement. IBM is not responsible for 1) the actions of IBM Business Partners, 2) any additional obligations they have to Customer or 3) any products or services that they supply to Customer under their agreements. In the event that Customer's IBM Business Partner is no longer able to market Software Maintenance, for any reason, Customer may continue to receive Software Maintenance under the terms of this Agreement by instructing IBM to transfer administration of Software Maintenance to either 1) another IBM Business Partner of Customer's choice (who may require Customer to first execute one of their agreements) who is approved to market Software Maintenance to Customer, or 2) IBM.

Section 2 of the Agreement contains terms that are specific to a particular hardware platform. The terms in the remaining sections are in addition to those in section 2, and apply to all platforms.

1.   Incorporated Terms

Eligible Programs to which this Agreement applies are licensed under the International Program License Agreement ("IPLA") unless otherwise specified by IBM. A copy of the IPLA is provided with each Program in the Eligible Program's directory or in a library identified as "License," a booklet, or on a CD. Sections of the IPLA entitled "Licensee Data and Databases," "Limitation of Liability," "Compliance Verification," "General," and "Geographic Scope and Governing Law," including any associated Country-unique Terms applicable to those sections are also part of this Agreement, subject to the following:

a.   If the IPLA version provided with the IBM Eligible Program is not version 13 or higher (the version number is indicated by the last two digits in the form number—for example, the "13" in Z125-3301-13), then version 13 applies. Customer may obtain a copy of version 13 from IBM or its resellers and on the Internet at www.ibm.com/software/sla; and

b.   the following changes:

(1)   The terms "Program" and "Program license(s)" are replaced by the term "Software Maintenance."

(2)   The term "Licensee" is replaced by the term "Customer."

(3)   The phrase "the laws of the country in which Customer acquired the Program license" in the Governing Law subsection is replaced by "the laws of the country in which Software Maintenance is acquired."

(4)   The statement, "All of our rights, duties, and obligations are subject to the courts of the country in which Customer acquired the Program license" in the Jurisdiction subsection is replaced by the statement, "All rights, duties, and obligations of each of the parties are valid only in the country in which Software Maintenance is acquired or, if IBM agrees, the country where Software Maintenance is used."

Capitalized terms used but not defined in this Agreement have the meaning given to them in the IPLA.

2.   Software Maintenance

a.   For Eligible Programs running on an IBM System z platform or equivalent:

(1) **Eligible Programs:** Programs for which S&S is available are listed at **www-1.ibm.com/servers/eserver/zseries/library/swpriceinfo**. Click on IPLA Subscription and Support Addenda.

(2) **S&S Period:** One year. When Customer orders S&S with a Program, the initial S&S Period begins on the date that IBM makes the Program available to Customer.

(3) **Early Termination of an S&S Period for a Program**: While Customer may terminate an S&S Period, IBM does not issue a credit or refund for the unused portion of an S&S Period.

(4) **Automatic Renewal**: If, by the last day of the current S&S Period, IBM has received no written notification from Customer or Customer's Business Partner, as applicable, that Customer does not want to renew S&S for a Program, IBM will automatically renew that expiring S&S Period under the Agreement terms and charges in effect on that date, subject to applicable law. Subsequent S&S Periods begin on the day following the end of the preceding S&S Period.

(5) **S&S Period Adjustment:** When Customer acquires S&S initially or resumes it, or prior to the end of the then current S&S Period, Customer may request that the S&S Period duration is adjusted to end at a month of Customer's choice. If Customer does not choose a date, IBM will inform Customer of the end date. The "S&S ("Software Maintenance") Charge" (see item (1) in subsection b. Software Maintenance acquired directly from IBM of section **3. Charges and Payment** below) will be pro-rated accordingly.

(6) **S&S:** During the S&S Period, for the unmodified portion of a Program, and to the extent problems can be recreated in the specified operating environment, IBM will provide the following:

(a) defect correction information, a restriction, or a bypass;

(b) Program Updates: periodic releases of collections of code corrections, fixes, functional enhancements and new versions and releases to the Program and documentation; and

(c) Technical Assistance: a reasonable amount of remote assistance via telephone or electronically to address suspected Program defects. Technical assistance is available from the IBM support center in the Customer's geography. Additional details regarding Technical Assistance, including IBM contact information (see Appendix C: Contact Information), are provided in the IBM Software Support Handbook at http://www14.software.ibm.com/webapp/set2/sas/f/handbook/home.html

S&S does not include assistance for 1) the design and development of applications, 2) Customer's use of Programs in other than their specified operating environment, or 3) failures caused by products for which IBM is not responsible under this Agreement.

S&S is provided only if the Program is within its support timeframe as specified in the Software Support Lifecycle policy for the Program.

(7) **Resumption Fee:** A charge to resume S&S after Customer either (a) declined S&S at the time Customer acquired the license for a Program or (b) terminated S&S. This charge is equal to the total of all S&S Charges that Customer would have paid during the lapsed interval. An S&S Period in such an instance begins on the date that IBM accepts Customer's order.

(8) **S&S Upgrade:** If Customer upgrades S&S due to an increase in the level of use of an Eligible Program, any increase to the S&S Charge will be pro-rated to the end of the current S&S Period.

b. For Eligible Programs running on IBM distributed platforms (e.g., IBM Power Systems, IBM System i, IBM System p, IBM System x, IBM System Storage, and IBM Retail Store Solutions) or equivalent:

(1) **Eligible Programs:** Unless otherwise provided by IBM, Eligible Programs for which Software Maintenance is available are listed at **www.ibm.com/servers/eserver/iseries/sftsol/subscript2.htm** or may be obtained from Customer's IBM marketing representative or IBM Business Partner.

(2) **Initial Software Maintenance Period:** Customer must choose either one year, the charge for which may be included with the Eligible Program, or, for an additional charge, three years of Software Maintenance at the time Customer orders an Eligible Program. The Initial Software Maintenance Period begins on the date that IBM makes the Program available to Customer. If the Eligible Program is part of an IBM Software Maintenance for OS/400, i5/OS, and selected

Programs, then the Initial Software Maintenance Period duration will be adjusted so that the expiration coincides with that of the other Eligible Programs in the group. In such event, the Initial Software Maintenance Period may be less than one year.

(3) **Subsequent Software Maintenance Periods (under this Agreement):** One or three years, at Customer's option.

(4) **Early Termination of a Software Maintenance Period for a Program**: While Customer may terminate a Software Maintenance Period, IBM does not issue a credit or refund for the unused portion of a Software Maintenance Period.

(5) **Renewal:**

    (a) It is Customer's responsibility to renew Software Maintenance at the end of each Software Maintenance Period. IBM or Customer's IBM Business Partner will renew expiring Software Maintenance under terms and charges made available to Customer prior to expiration of the then current Software Maintenance Period, if it receives Customer's order to renew (e.g., order form, order letter, purchase order) not later than the expiration date. Subsequent Software Maintenance Periods under this Agreement (or other terms and charges made available to Customer prior to expiration of the then current Software Maintenance Period) begin on the day following the end of the preceding Software Maintenance Period. If Customer does not renew Software Maintenance by the expiration date of the Software Maintenance Period but subsequently wishes to acquire Software Maintenance, a Software Maintenance After License Fee, as set forth below, will apply.

    (b) For Eligible Programs running on Power Systems, System i or System p platforms, if the Customer specifies in advance, IBM, even if it does not receive Customer's order to renew, will continue to provide Software Maintenance under terms and charges made available to Customer prior to expiration of the current Software Maintenance Period.

(6) **Software Maintenance**: During the Software Maintenance Period:

    (a) IBM makes available to Customer the most current commercially available version, release, or update to all of the Eligible Programs for which Customer acquires Software Maintenance under this Agreement, should any be made available. For Power Systems, System i, and System p Programs under this Agreement, Customer may obtain upgrades to any more recent commercially available version, release or update. Customer's right to upgrade to a new version, release or update under this subsection may only be exercised during the Software Maintenance Period and expires at the end of the Period if Software Maintenance is not renewed.

    (b) For IBM Software Maintenance for OS/400, i5/OS, and selected Programs, Customer is entitled to upgrade an Eligible Program to a specific version or release only one time per machine, notwithstanding 2.b.(6)(a) above.

    (c) IBM provides Customer technical assistance for Customer's 1) routine, short duration installation and usage (how-to) questions; and 2) code-related questions.

    (d) IBM provides assistance via telephone and, if available, electronic access, to only Customer's information systems (IS) technical support personnel during the normal business hours (IBM published prime shift hours) of IBM support center in the Customer's geography. This assistance is not available to Customer's end users. IBM provides Severity 1 assistance 24 hours a day, every day of the year. Additional details regarding assistance, including the definition of Severity 1, are provided in the IBM Software Support Handbook at http://www14.software.ibm.com/webapp/set2/sas/f/handbook/home.html.

    (e) Software Maintenance does not include assistance for 1) the design and development of applications, 2) Customer's use of Eligible Programs in other than their specified operating environment, or 3) failures caused by products for which IBM is not responsible under this Agreement.

    (f) And only if the Program is within its support timeframe as specified in the Software Support Lifecycle policy for the Program.

(7) **Software Maintenance After License Fee** (which may be referred to as "Maintenance After License" or "MAL" in connection with System i platforms and as "After License Charge" or "ALC" in connection with System p platforms):

(a) Software Maintenance After License Fee is the charge to resume Software Maintenance if Customer

(i) did not renew it before the end of the then current Software Maintenance Period; or

(ii) terminated it.

(b) The Software Maintenance Period for a resumption of Software Maintenance begins on the date that IBM accepts Customer's order.

(c) The Software Maintenance After License Fee applies when Customer acquires a used Power Systems, System i, or System p machine and wishes to acquire Software Maintenance for OS/400, i5/OS, and selected Programs, unless

(i) the machine has the most current version and release of the appropriate operating system installed; and

(ii) Customer acquires Software Maintenance within 30 days of Customer's acquisition of the machine.

(d) The Software Maintenance After License Fee applies when Customer acquires a used Power Systems, System i, or System p machine and wishes to acquire Software Maintenance for the AIX operating system or AIX selected Programs unless

(i) the machine has a current version and release of the AIX operating system or AIX selected Programs installed and

(ii) Customer acquires Software Maintenance within 30 days of Customer's acquisition of the machine.

(e) For Software Maintenance for other Eligible Programs not otherwise covered by this subsection 2.b(7), a Software Maintenance After License Fee may apply to Customers acquiring used Power System, System i, or System p machines. Please contact your IBM representative, or where applicable, an IBM Business Partner or IBM Call Center, for further information.

(8) Transfer of IBM Software Maintenance on Power Systems, System i and System p machines: In addition to the provisions of section 4. "Software Maintenance Transferability" below, Software Maintenance for Programs running on Power Systems, System i or System p platforms

(a) applies to a designated machine (type, model and serial number);

(b) may be transferred only to another machine that is licensed for the same operating system at the same or a more recent release level; and

(c) may incur an increase in the Software Maintenance Charge if the "transferred to" machine is of a larger capacity.

3. Charges and Payment

If Customer returns an Eligible Program for refund as allowed under its license terms, IBM or Customer's IBM Business Partner will terminate, and refund any charges paid for, Software Maintenance ordered with the Program. IBM does not give refunds for Software Maintenance without the return of the associated Eligible Program.

a. Software Maintenance acquired from an IBM Business Partner

When Customer acquires Software Maintenance from an IBM Business Partner, the IBM Business Partner sets the charges and the terms governing charges. Customer will pay Customer's IBM Business Partner directly.

b. Software Maintenance acquired directly from IBM

(1) Charges for Software Maintenance during each Software Maintenance Period, called the Software Maintenance Charge, are invoiced in advance.

(2) The Software Maintenance Charge may vary, depending on, for example, the machine (type/model), the Eligible Program or group of Eligible Programs, or level of use of the Eligible Program.

(3) IBM may increase the Software Maintenance Charge without notice. An increase will not apply to Customer if IBM receives Customer's order for Software Maintenance before the announcement date of the increase and within three months of receipt by IBM of Customer's order IBM makes Software Maintenance available to Customer. Customer receives the benefit of a decrease in the Software Maintenance Charge for amounts which become due on or after the effective date of the decrease.

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

(5) If any authority imposes a duty, tax, levy or fee, excluding those based on IBM's net income, upon Software Maintenance IBM supplies under this Agreement, then Customer agrees to pay that amount as specified in the invoice, unless Customer supplies exemption documentation.

4. Software Maintenance Transferability

Customer may transfer Software Maintenance only to an entity that is within Customer's Enterprise and located within the country in which Software Maintenance is acquired, provided that the entity receiving the Eligible Program agrees to the terms of this Agreement.

5. Customer's Responsibilities

Customer agrees that when Customer acquires Software Maintenance for an Eligible Program:

a. Customer will acquire Software Maintenance for the same level of use as that at which the Eligible Program is authorized. Partial coverage for a particular Eligible Program is not offered;

b. Customer is responsible for the results obtained from the use of the Software Maintenance;

c. Customer will, at IBM's request, allow IBM to remotely access Customer's system to assist Customer in isolating the software problem cause;

d. Customer remains responsible for adequately protecting Customer's system and all data contained in it whenever IBM remotely accesses it with Customer's permission to assist Customer in isolating the software problem cause;

e. Customer will provide sufficient, free, and safe access to Customer's facilities for IBM to fulfill its obligations; and

f. except as permitted by section 4. Software Maintenance Transferability above, Customer will not assign, or otherwise transfer, this Agreement or Customer's rights under this Agreement, or delegate Customer's obligations, without IBM's prior written consent. Any attempt to do so is void. 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.

6. Warranty for Software Maintenance

IBM warrants that Software Maintenance will be provided using reasonable care and skill and according to its description in the IBM Software Support Handbook at http://www14.software.ibm.com/webapp/set2/sas/f/handbook/home.html. Customer agrees to provide timely written notice of any failure to comply with this warranty so that IBM can take corrective action.

The warranties will be voided by misuse, accident, modification, unsuitable physical or operating environment, operation in other than the specified operating environment, or failure caused by a product for which IBM is not responsible.

EXCEPT AS EXPRESSLY REQUIRED BY LAW WITHOUT THE POSSIBILITY OF CONTRACTUAL WAIVER OR LIMITATION, THESE WARRANTIES ARE CUSTOMER'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF SATISFACTORY QUALITY, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

IBM does not warrant uninterrupted or error-free provision of Software Maintenance or that IBM will correct all defects.

7. Changes to Agreement Terms

IBM may change the terms of this Agreement by giving Customer three months' prior written notice by letter or e-mail, either directly to Customer or through Customer's IBM Business Partner. These changes are not retroactive and apply, as of the effective date IBM specifies in the notice, only to new orders and renewals.

Otherwise, for a change to be valid, both of us must sign it.

8. Termination and Withdrawal

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.

IBM may withdraw Software Maintenance for an Eligible Program by publishing a notice of withdrawal not less than 12 months prior to its effective date. If IBM withdraws Software Maintenance for which Customer has prepaid and IBM has not yet fully provided it to Customer, at its sole discretion IBM will either continue to provide Software Maintenance to Customer until the end of the current Software Maintenance Period or give Customer a prorated refund. Acquisition of Software Maintenance does not extend the period for which an Eligible Program is supported.

Notwithstanding anything to the contrary in this Agreement, if IBM terminates Customer's license for an Eligible Program due to Customer's breach of any of its terms, IBM may also concurrently terminate Software Maintenance for that Eligible Program. In this instance, IBM is not obligated to issue a refund or credit for any unused portion of Software Maintenance.

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

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

9. Additional Terms

a. To assist Customer in isolating the cause of a software problem, IBM may ask Customer to (1) allow IBM to remotely access Customer's system or (2) send customer information or system data to IBM. IBM uses information about errors and problems only to improve its products and services and assist with its provision of Software Maintenance. IBM may use subcontractors and IBM Enterprise entities in other countries for these purposes, and Customer authorizes IBM to do so.

   Customer remains responsible for (i) any data and the content of any database Customer makes available to IBM, (ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally-identifiable data), and (iii) backup and recovery of the database and any stored data. Customer will not send or provide to IBM access to personal information and will be responsible for any reasonable costs and other amounts that IBM may incur relating to any such information mistakenly provided to IBM or to the loss or disclosure of such information by IBM, including those arising out of any third party claims.

b. All information exchanged is nonconfidential. If either of us requires the exchange of confidential information, it will be made under a signed confidentiality agreement.

c. Each may communicate with the other by electronic means and such communication is acceptable as a signed writing to the extent permissible under applicable law. 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.

This Agreement is the complete agreement regarding Customer's acquisition of Software Maintenance, and replaces any prior oral or written communications between Customer and IBM concerning Software Maintenance. In entering into this Agreement, neither party is relying on any representation that is not specified in this Agreement including without limitation any representations concerning: 1) performance or function of any product or system, other than as expressly warranted in section 6 above; 2) the experiences or recommendations of other parties; or 3) results or savings Customer may achieve. Additional or different terms in any written communication from Customer (such as a purchase order) are void.

Customer accepts the terms of this Agreement without modification by any one of the following means: to the extent permissible under applicable law, by ordering, using, or making payment for Software Maintenance or,

where required by law, signing a transaction document. Software Maintenance becomes subject to this Agreement when IBM or Customer's IBM Business Partner accepts Customer's order or payment. Once in effect, 1) unless prohibited by applicable local law or specified otherwise, any reproduction of this Agreement made by reliable means (for example, photocopy, electronic scan or facsimile) is considered an original and 2) Software Maintenance Customer orders under this Agreement is subject to it.

International Agreement for Acquisition of Software Maintenance

Part 2- Country-unique Terms

AMERICAS

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

3. Charges and Payment

*In subsection **b. Software Maintenance acquired directly from IBM,** the following replaces item (4):*

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

(a) 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.

(b) 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 which 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.

All additional terms apply to the referenced country.

BRAZIL

2. Software Maintenance

*In subsection **a. For Eligible Programs running on an IBM System z platform**,*

> *items 2 through and including 5 are deleted in their entirety.*

> *In item 6, the phrase "S&S Period" is replaced by the following:*

> > the period for which Customer has paid for S&S

> *In item 8, the phrase "pro-rated to the end of the current S&S Period" is replaced by the following:*

> > effective on the first day of the following month

3. Charges and Payment

*In subsection **b. Software Maintenance acquired directly from IBM,** the following replaces item (1):*

For Eligible Programs running on IBM distributed platforms or equivalent, charges for Software Maintenance during each Software Maintenance Period, called the Software Maintenance Charge, are invoiced in advance. For Eligible Programs running on an IBM System z platform or equivalent, charges for Software Maintenance, called the Software Maintenance Charge, are invoiced monthly in advance.

*In subsection **b. Software Maintenance acquired directly from IBM,** the following replaces item (3):*

IBM may increase charges for Software Maintenance provided under this Agreement. IBM's ability to increase such charges is subject to the requirements of Brazilian law.

*In subsection **b. Software Maintenance acquired directly from IBM,** the following replaces item (4):*

Amounts are due upon receipt of invoice and payable in local currency as IBM specifies in a transaction document. 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:

(a) if payment is made between the 31st day and the 60th day from invoice date, a two percent late payment penalty applied to the resultant delinquent amount, or

 (b) if payment is made 61 or more days from invoice date, a ten percent late payment penalty applied to the resultant delinquent amount.

*The following is added to subsection **b. Software Maintenance acquired directly from IBM** as item (6):*

Amounts due are expressed in local currency.

*The following is added to subsection **b. Software Maintenance acquired directly from IBM** as item (7):*

The charges for Software Maintenance acquired under this Agreement are inclusive of all applicable taxes that are IBM's responsibility on the base date established in a transaction document. The parties agree that IBM will adjust the charges accordingly should any of the following occur:

(a)   any change is made to the rate, form or base of calculation, form of payment, classification or taxes levied on the Software Maintenance or on their costs,

(b)   a new applicable tax is created,

(c)   any change is made to any other legal aspect related to the taxes applicable on the base date,

(d)   any change is made to the origin or to the delivery location for the Software Maintenance,

(e)   any change is made to the location where Services are to be provided, or

(f)   any change is made to the manner in which Services are marketed.

7. Changes to Agreement Terms

The following replaces this section in its entirety:

In order to maintain flexibility in our business relationship, the terms of this Agreement may be changed upon execution of an amendment and the changes shall apply as of the effective date specified in the amendment. They apply only to new orders, on-going transactions that do not expire, and transactions with a defined renewable contract period. For transactions with a defined renewable contract period, Customer may request that IBM defer the change effective date until the end of the current contract period.

8. Termination and Withdrawal

The words "or e-mail" in the fourth paragraph of this section are deleted.

9. Additional Terms

In the first sentence of item c, the phrase "and such communications are acceptable as a signed writing" is deleted.

In the clause that begins with "This Agreement is the complete …"

In the fourth sentence, which begins with "Customer accepts the terms …," the following phrase is deleted:

any one of the following means: to the extent permissible under applicable law, by ordering, using, or making payment for Software Maintenance or, where required by law,

In the fifth sentence, which begins with "Software Maintenance becomes subject to this Agreement…," the phrase "accepts Customer's order or payment" is replaced by the following phrase:

 accepts Customer's order by signing it.

ANGUILLA, ANTIGUA AND BARBUDA, ARUBA, BAHAMAS, BARBADOS, BERMUDA, BRITISH VIRGIN ISLANDS, CAYMAN ISLANDS, DOMINICA, GRENADA, GUYANA, JAMAICA, MONTSERRAT, NETHERLANDS ANTILLES, SAINT KITTS AND NEVIS, SAINT LUCIA, SAINT MARTIN, SAINT VINCENT AND THE GRENADINES, SURINAME, TRINIDAD AND TOBAGO, TURKS AND CAICOS ISLANDS, BELIZE, BOLIVIA, COSTA RICA, DOMINICAN REPUBLIC, EL SALVADOR, HAITI, HONDURAS, GUATEMALA, NICARAGUA, PANAMA, AND PARAGUAY

2. Software Maintenance

*The following replaces (4) Automatic Renewal in subsection **2.a For Eligible Programs running on an IBM System z platform or equivalent**:*

IBM will renew, for an additional payment, expiring S&S for all of Customer's Program licenses for an additional Software Maintenance Period if IBM receives (1) Customer's order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current coverage period or (2) Customer's payment within 30 days of Customer's receipt of the S&S invoice for the next coverage period.

UNITED STATES OF AMERICA

2. Software Maintenance

*The following is added at the end the sentence beginning with "While Customer may terminate an S&S Period …" in (3) Early Termination of an S&S Period for a Program in subsection **2.a For Eligible Programs running on an IBM System z platform or equivalent**:*

unless the S&S Period was renewed under the provisions of subsection 4, Automatic Renewal (below). In such event, Customer may obtain a credit, prorated to the end of that S&S Period from the first day of the month following the later of (a) IBM's receipt of Customer's termination request or (2) Customer's requested date of termination, through the end of that S&S Period.

ASIA PACIFIC

AUSTRALIA

3. Charges and Payment

The following paragraph is added after item b:

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

The following paragraph replaces item b(5) in its entirety:

If any government or authority imposes a duty, tax (other than income tax), levy, or fee, on the Agreement or on the Software Maintenance 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.

6. Warranty for Software Maintenance

The following paragraph is added as the first paragraph of this section:

The warranties specified in this section are in addition to any rights Customer may have under the Trade Practices Act 1974 or other legislation and are only limited to the extent permitted by the applicable legislation.

CAMBODIA, LAOS, PEOPLE'S REPUBLIC OF CHINA, VIETNAM, BANGLADESH, BHUTAN, NEPAL

2. Software Maintenance

*The following replaces (4) Automatic Renewal in subsection **2.a For Eligible Programs running on an IBM System z platform or equivalent**:*

IBM will renew, for an additional payment, expiring S&S for all of Customer Program licenses for an additional S&S Period if IBM receives (1) Customer's order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current coverage period or (2) Customer's payment within 30 days of Customer's receipt of the S&S invoice for the next coverage period.

HONG KONG SAR, MACAU SAR, AND TAIWAN

As applies to transactions initiated and performed in Taiwan and the special administrative regions, 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 in the Governing Law clause (section 14.1)

(3)   In Taiwan: "Taiwan."

INDONESIA

8. Termination and Withdrawal

The following paragraph is added between the first and second paragraphs:

We both waive in this regard, the provision of article 1266 of the Indonesian Civil Code to the extent the article provision requires such court decree for the termination of an agreement creating mutual obligations.

JAPAN

8. Termination and Withdrawal

The following paragraph is added to this section:

When all or a substantial portion of either party's assets, credits or business are so changed as to make continued performance of that party's obligations impracticable or impossible, the other party may terminate this Agreement with prior notice.

NEW ZEALAND

6. Warranty for Software Maintenance

The following paragraph is added as the first paragraph of this section:

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

EUROPE, MIDDLE EAST, AFRICA (EMEA)

EUROPEAN UNION MEMBERS

6. Warranty for Software Maintenance

For European Union Member States the following is added to Section 6:

In the European Union, consumers have legal rights under applicable national legislation governing the sale of consumer goods and services. Such rights are not affected by the provisions set out in this Section 6 Warranty for Software Maintenance.

AUSTRIA

6. Warranty for Software Maintenance

*This Section **6. Warranty for Software Maintenance** is amended as specified for **GERMANY**.*

FRANCE

3. Charges and Payment

*In subsection **b. Software Maintenance acquired directly from IBM** the following is added to the end of item (3).*

If Customer disagrees with the increase, Customer may terminate the transaction by notifying IBM, in writing, within fifteen days after the date of IBM's notification to Customer of the increase.

GERMANY

3. Charges and Payment

*In subsection **b. Software Maintenance acquired directly from IBM**, item (3), "three months" is replaced with "four months."*

6. Warranty for Software Maintenance

*For **Germany** (and **Austria**) the following replaces Section **6. Warranty for Software Maintenance** in its entirety.*

IBM warrants that Software Maintenance will be provided using reasonable care and skill and according to its description in the IBM Software Support Handbook at http://www14.software.ibm.com/webapp/set2/sas/f/handbook/home.html. Customer agrees to provide timely written notice of any failure to comply with this warranty so that IBM can take corrective action. IBM will remedy any defects covered by warranty, of which written notice has been given by Customer. If a defect is not remedied within a reasonable period of time, Customer may with respect to that defect, at Customer's choice, either request a reduction of price, or, if the value or the serviceability of the work is substantially impaired, instant termination ("Kündigung") of this Agreement. In case of minor defects or deviations, Customer shall not be entitled to terminate the Agreement.

The warranties will be voided by misuse, accident, modification, unsuitable physical or operating environment, operation in other than the specified operating environment, or failure caused by a product for which IBM is not responsible.

Without prejudice to Customer's rights under other warranty provisions of the Agreement, IBM does not warrant uninterrupted or error-free provision of Software Maintenance or that IBM will correct all defects.

9. Additional Terms

The following paragraph is added as the last paragraph of subsection a:

When assisting Customer in isolating the cause of a software problem, should IBM access Customer's personally-identifiable data upon Customer's request, "IBM Supplementary Terms and Conditions for Processing of Customer Data by Order according to § 11 BDSG" applies.

IRELAND and UNITED KINGDOM

6. Warranty for Software Maintenance (Ireland only)

The following paragraph is added:

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

Entire Agreement

The following sentence is added to the second from last paragraph of Part 1:

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