

IBM PROGRAM LICENSE AGREEMENT (IPLA)

The license details below are for software products within IBM's Schedule. The Government agrees to the terms and conditions by issuing IBM a delivery order or contract incorporating IBM's terms and conditions by reference. By downloading, installing, copying, accessing, or using the Program, the Government (Licensee) agrees to the terms stated in the IPLA Agreement

Definitions

“Authorized Use” – the specified level at which the Government is authorized to execute or run the Program. That level may be measured by number of users, millions of service units (“MSUs”), Processor Value Units (“PVUs”), or other level of use specified by IBM.

“IBM” - International Business Machines Corporation or one of its subsidiaries.

“License Information” (“LI”) – a document that provides information and any additional terms specific to a Program. The Program's LI is available at <http://www.ibm.com/software/sla>. The LI can also be found in the Program's directory, by the use of a system command, or as a booklet included with the Program.

“Program” – the following, including the original and all whole or partial copies; 1) machine-readable instructions and data, 2) components, files, and modules, 3) audio-visual content (such as images, text, recordings, or pictures), and 4) related licensed materials (such as keys, and documentation).

“Proof of Entitlement” – evidence of the Licensee's Authorized Use. The PoE is also evidence of Licensee's eligibility for warranty, future update prices, if any, and potential special or promotional opportunities. If IBM does not provide the Licensee with a PoE, then IBM may accept as the PoE the original paid sales receipt or other sales record from the party (either IBM or its reseller) from whom Licensee obtained the Program, provided that it specifies the Program name and Authorized Use obtained.

“Warranty Period” – one year, starting on the date the original Licensee is granted the license.

Agreement Structure - The IPLA consists of the terms and conditions as stated herein, the LI, and the PoE and is the complete agreement between the Government and IBM regarding the use of the Program. It replaces any prior oral or written communication between the Government and IBM concerning the Government's use of the Program. The terms of the LI may replace or modify sections of this IPLA. It is anticipated that changes to the LI and other IBM policies will not result in terms inconsistent with Federal law. If the terms of the LI replace or modify terms of this IPLA, the Government has a right to review any additional or different terms before acceptance.

License Program Acceptance - The Government's acceptance of a Program is the earlier of the second business day after the Program's standard transit allowance period, or receipt of the Program, or when IBM provides the Government authorization to download the product via the Proof of Entitlement.

Notwithstanding anything herein to the contrary, the parties agree as follows:

(i) the ordering activity may negotiate an extension regarding the time of acceptance before issuing a delivery order; and (ii) the parties may mutually agree on the acceptance period for overseas orders.

1. LICENSE GRANT

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

Use of the Program:

IBM grants to the Government a nonexclusive license to:

- 1) Use the Program up to the Authorized Use specified in the PoE,
- 2) Make and install copies to support such Authorized Use, and
- 3) Make a backup copy, all provided that:
 - a. The Government has lawfully obtained the Program and complies with the terms of this Agreement;
 - b. the backup copy does not execute unless the backed-up Program cannot execute;
 - c. the Government reproduces all copyright notices and other legends of ownership on each copy, or partial copy of the Program.
 - d. The Government ensures that anyone who uses the Program (accessed either locally or remotely) does so only on the Government's behalf and complies with the terms stated herein.
 - e. The Government does not 1) use, copy, modify, or distribute the Program except as expressly permitted in this IPLA Agreement; 2) reverse assemble, reverse compile, or otherwise translate, or reverse engineer the Program except as expressly permitted by law without the possibility of contractual waiver, 3) use any of the Program's components, files, modules, audio-visual content, or related licensed materials separately from that Program; or 4) sublicense, rent, or lease the Program and
 - f. if the Government obtains this Program as a Supporting Program, Government uses this Program only to support the Principal Program and subject to any limitations in the license to the Principal Program, or if Government obtains this Program as Principal Program, Government uses all Supporting Programs only to support this Program, and subject to any limitations in this IPLA Agreement. For purposes of this Item f. a "Supporting Program" is a Program that is part of another IBM Program ("Principal Program") and identified as a Supporting Program in the Principal Program's LI. (To obtain a separate license to a Supporting Program without these restrictions, the Government should contact IBM or the party from whom the Government obtained the Supporting Program.)

This license applies to each copy of the Program that the Government makes.

Program Transfer

The Government may transfer a Program and all the Government's license rights and obligations to another party only if that party agrees to the terms of the IPLA. If the license is terminated for any reason by either party, the Government is prohibited from transferring the Program to another party. When the Government transfers the Program, it must also transfer a copy of the IPLA terms and conditions including the LI, and the Proof of Entitlement for the Program. The Government may not transfer a portion of 1) the Program or 2) the Program's Authorized Use. Immediately after the transfer, the current Government's license terminates.

2 PATENT AND COPYRIGHT INDEMNITY

For purposes of this Section, the term "Product" includes Materials, Machine Code and Licensed Internal Code.

If a third party claims that a Product IBM provides to the Government infringes that party's patent or copyright, IBM will indemnify the Government, its officers, agents, and employees against liability, at IBM's expense and pay all costs, damages, and attorneys fees that a court finally awards or that are included in a settlement approved by IBM, provided that the Government:

- A. Promptly notifies IBM in writing of the claim; and
- B. Gives IBM such opportunity as is offered by applicable laws, rules or regulations to participate in the defense thereof. The Government shall make every effort to permit IBM to fully participate in the defense and/or in any settlement of such claim. However, IBM understands that such participation will be under the control of the Department of Justice.

Remedies

If such a claim is made or appears likely to be made, the Government agrees to permit IBM to enable the Government to continue to use the Product, or to modify it, or replace it with one that is at least functionally equivalent. If IBM determines that none of these alternatives is reasonably available, the Government agrees to return the Product to IBM on IBM's written request. IBM will then give the Government a credit equal to:

1. For a Machine, the Government's net book value, provided the Government has followed generally-accepted accounting principles.
2. For a Program, the amount paid by the Government or 12 months' charges (whichever is less). If the Product is an IBM SaaS or subject to Fixed Term charges, up to twelve months' charges.
3. For Materials, the amount the Government paid IBM for the creation of the Materials.

This is subject to the Government's right to require continued use of the Products pursuant to the provisions of 28USC1498. In the event of such continued use, the Government shall notify IBM in writing of its election to continue use and agrees to undertake at the Government's expense the defense of any action against the Government and IBM shall have no further indemnification obligation; it being understood that IBM may participate at its expense in the defense of any such action if such claim is against IBM.

Claims for Which IBM is Not Responsible:

IBM has no obligation regarding any claim based on any of the following:

- A. The Government's modification of a Product, or a Program's use in other than its Specified Operating Environment;
- B. Anything the Government provides which is incorporated into a Product or IBM's compliance with any designs, specifications, or instructions provided by the Government or by a third party on behalf of the Government;
- C. The combination, operation, or use of a Product with other Products not provided by IBM as a system, or the combination, operation or use of a Product with any product, data, apparatus, or business method that IBM did not provide, or the distribution, operation or use of a Product for the benefit of a third party;
- D. Infringement by a non-IBM Product.
- E. Product's use other than in accordance with its applicable licenses and restrictions or use of a non-current version or release of a Product, when a claim could have been avoided or the risk of a claim reduced by using the current version or release;
- F. the distribution, operation, or use of the Product outside Government's Enterprise or for the benefit of any third party; or
- G. Separately Licensed Code, if any, as identified in the LI for the Product.

The LI for the Product or other documents may permit the Government to copy, modify, or redistribute all or portions of the Product without paying additional licensing fees to IBM. The indemnification obligation under this Patent and Copyright provision only applies to copies of the Product provided to the Government by IBM and additional copies expressly authorized in a PoE. IBM has no obligation for claims relating to copies of the Product neither provided by IBM nor specifically authorized by a POE, even if permitted by the LI for the Product or other documents.

These Patent and Copyright terms do not obligate in any manner any third-party supplier of code (including Separately Licensed Code) included with or part of the Product.

The foregoing states the entire obligation of IBM with respect to infringement of patents or copyrights.

3 LIMITATION OF LIABILITY

Circumstances may arise where, because of a default on IBM's part or other liability, the Government is entitled to recover damages from IBM. In each such instance, regardless of the basis on which the Government is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM is liable only for:

- A. Payments referred to in IBM's Patents and Copyrights terms described herein;
- B. Damages for bodily injury (including death) and damage to real property and tangible personal property; and

C. The amount of any other actual direct damages or loss, up to the greater of: (i) \$100,000; OR (ii) the contract price (if recurring, 12 months' charges apply) for the Product or Service that is the subject of the claim. For purposes of this item, the term "Product" includes Materials, Machine Code and Licensed Internal Code. Nothing in this subsection C shall limit the Government's right to (i) excess procurement costs in the event of a Termination for Default; or (ii) the contractual remedies prescribed under the Price Reductions clause (GSAR 552.238-75) (May 2004)(Alternate I- May 2003) and GSAR 552.215-72, Price Adjustment – Failure to Provide Accurate Information (Aug 1997).

D. For classroom training or education material, IBM is liable for the charges associated with the corresponding item provided.

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

Items for which IBM is not liable:

Under no circumstances is IBM, or its subcontractors, or Program developers liable for any of the following even if informed of their possibility:

A. Loss of, or damage to data, or

B. Special, incidental, or indirect damages or for any economic consequential damages, or

C. Lost profits, business, revenue, goodwill or anticipated savings, or

D. Any third party claims against you except as described in the Patents and Copyrights section or as permitted by the Limitation of Liability section for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable

The parties acknowledge that nothing in this provision shall restrict the Government's statutory remedies in the event of fraud.

4 TRADE-UPS, UPDATES, FIXES, AND PATCHES

Trade-ups

If the Program is replaced by a trade-up Program, the replaced Program's license is promptly terminated.

Updates, Fixes, and Patches

When the Government receives an update, fix, or patch to a Program, the Government has a right to review any additional or different terms that are applicable before accepting such update, fix, or patch that are specified in its LI. If no additional or different terms are provided, then the update, fix, or patch is subject solely to the terms stated herein for the IPLA Agreement. If the Program is replaced by an update, the Government agrees to promptly discontinue use of the replaced Program.

5 FIXED TERMS LICENSES

If IBM licenses the Program for a fixed term, the Government's license is terminated at the end of the fixed term unless the Government provides a funded delivery order to renew it.

6 MONEY-BACK GUARANTEE

If the Government is dissatisfied with the Program for any reason and is the original Licensee, the Government may terminate the license and obtain a refund of the amount the Government paid for the Program, provided the Government returns the Program and PoE to IBM or the party from who the Government obtained it within 30 days of the date the PoE was issued to the Government. If the license is for a fixed term that is subject to renewal, then the Government may obtain a refund only if the Program and its PoE are returned within the first 30 days of the initial term. If the Government downloaded the Program, the Government should contact IBM or the party from who the Program was acquired, for instructions on how to obtain the refund.

7 WARRANTY

Limited Warranty

IBM warrants that the Program when used in its specified operating environment will conform to its specifications. The Program's specifications, and specified operating environment information, can be found in documentation accompanying the Program (such as a read-me file) or other information published by IBM (such as an announcement letter).

The warranty applies only to the unmodified portion of the Program. IBM does not warrant uninterrupted or error-free operation of the Program or that IBM will correct all Program defects. The Government is responsible for the results obtained from the use of the Program.

During the Warranty Period IBM provides the Government with access to IBM databases containing information on known Program defects, defect corrections, restrictions, and bypasses at no additional charge. Consult the IBM Software Support Handbook for further information at <http://www.ibm.com/software/support>.

If the Program does not function as warranted during the Warranty Period and the problem cannot be resolved with information available in the IBM databases, the Government may return the Program and its POE to IBM, or the party from who the Government obtained the Program (e.g., IBM Reseller), and receive a refund of the amount the Government paid. After returning the Program, the Government's license terminates. If the Government downloaded the Program, the Government should contact IBM, or the party from whom the Program was obtained, for instructions on how to obtain the refund.

Exclusions

THESE WARRANTIES ARE THE GOVERNMENT'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR

A PARTICULAR PURPOSE, TITLE, AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT.

THE WARRANTIES IN THIS SECTION (WARRANTY AND EXCLUSIONS) ARE PROVIDED SOLELY BY IBM. THE DISCLAIMERS IN THE SECTION EXCLUSIONS, HOWEVER, ALSO APPLY TO IBM'S SUPPLIERS OF THIRD PARTY CODE. THOSE SUPPLIERS PROVIDE SUCH CODE WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND. THIS PARAGRAPH DOES NOT NULLIFY IBM'S WARRANTY OBLIGATIONS UNDER THIS IPLA AGREEMENT.

8. LICENSEE DATA AND DATABASES

To assist the Government in isolating the cause of a problem with the Program, IBM may request that the Government 1) allow IBM to remotely access the Government's system or 2) send the Government's information or system data to IBM. However, IBM is not obligated to provide such assistance unless, IBM and the Government enter a separate written agreement under which IBM agrees to provide to the Government that type of technical support which is beyond IBM's warranty obligations in this IPLA Agreement. In any event, IBM uses information about errors and problems to improve its products and services, and assist with its provision of related support offerings. For these purposes, IBM may use IBM entities and subcontractors (including in one or more countries other than the one in which Licensee is located), and Licensee authorizes IBM to do so.

The Government remains responsible for 1) any data and the content of any database the Government makes available to IBM, 2) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally-identifiable data), and 3) backup and recovery of any database and any stored data. The Government will not send or provide IBM access to any personally-identifiable information, whether in data or any other form. IBM will not be responsible for any cost that may incur relating to any such information mistakenly provided to IBM or the loss or disclosure of such information by IBM, including those arising out of any third party claims.

9. COMPLIANCE VERIFICATION

For purposes of this Section, "IPLA Program Terms" means 1) this Agreement and applicable amendments and transaction documents provided by IBM, and 2) IBM software policies that may be found at the IBM Software Policy website (www.ibm.com/softwarepolicies/), including but not limited to those policies concerning backup, sub-capacity pricing, and migration.

The rights and obligations set forth in this Section remain in effect during the period the Program is licensed to Licensee, and for two years thereafter.

Verification Process

Licensee 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

Licensee's use of all Programs is in compliance with the IPLA Program Terms, including, without limitation, all of IBM's applicable licensing and pricing qualification terms. Licensee is responsible for 1) ensuring that it does not exceed its Authorized Use, and 2) remaining in compliance with IPLA Program Terms.

Upon reasonable notice, IBM may verify Licensee's compliance with IPLA Program Terms at all sites and for all environments in which Licensee uses (for any purpose) Programs subject to IPLA Program Terms. Such verification will be conducted in a manner that minimizes disruption to Licensee's business, and may be conducted on Licensee'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.

Resolution

IBM will notify Licensee in writing if any such verification indicates that Licensee has used any Program in excess of its Authorized Use or is otherwise not in compliance with the IPLA Program Terms. Subject to the terms of the Contract Disputes Act (if applicable), FAR Part 33 (if applicable), and 28 U.S.C. § 1498, IBM will invoice for 1) any such excess use, 2) support for such excess use for the lesser of the duration of such excess use or two years, and 3) any additional charges and other liabilities determined as a result of such verification.

10. THIRD PARTY NOTICES

The Program may include third party code that IBM, not the third party, licenses to the Government under this IPLA Agreement. Notices, if any, for the third party code ("Third Party Notices") are included for the Government's information only. These notices can be found in the Program's NOTICES file(s). Information on how to obtain source code for certain third party code can be found in the Third Party Notices. If in the Third Party Notices IBM identifies third party code as "Modifiable Third Party Code", IBM authorizes the government to 1) modify the Modifiable Third Party Code and 2) reverse engineer the Program modules that directly interface with the Modifiable Third Party Code provided that it is only for the purpose of debugging the Government's modifications to such third party code. IBM's service and support obligations, if any, apply only to the unmodified Program.

11. CHARGES

The amount payable for a Program license is a one-time charge. Charges are based on Authorized Use obtained which is specified in the POE. If the Government wishes to increase its Authorized Use, the Government must issue IBM a Delivery Order for the additional charges, as applicable charges. IBM does not give refunds or credits for charges already due or paid.

12. RISK OF LOSS

If licensed programs in a tangible form are lost or damaged during shipment from IBM, IBM will replace such licensed programs and program storage media at no additional charge to the Government.

If licensed programs are lost or damaged while in the possession of the Government, IBM will replace such licensed programs at the then current commercial charges, if any, for processing, distribution, and/or program storage media. Such charges will be outside the scope of this Contract.

13. TERMINATION

Upon termination of the license, the Government must destroy all copies of the Program. Any terms of this IPLA that by their nature extend beyond the termination of the Program remain in effect until fulfilled and apply to both party's respective successors and assignees.

Any violation of the terms of this IPLA shall be handled in accordance with the Contract's Disputes Act and the rights provided to the vendor under the Act.

14. GENERAL

Neither party is relying on any representation not specified in this IPLA Agreement, including but not limited to any representation concerning: 1) the performance or function of the Program, other than as expressly warranted in the Warranty section above; 2) the experiences or recommendations of other parties; or 3) any results or savings that the Government may achieve.

Neither party is relying on any representation not specified in the IPLA terms, including but not limited to any representation concerning: 1) the performance or function of the Program, other than as expressly warranted per the terms above; 2) the experiences or recommendations by other parties; or 3) any results or saving that Licensee may achieve.

14. EUROPEAN UNION GENERAL DATA PROTECTION REGULATION (GDPR)

The European Union passed the General Data Protection Regulation (EU/2016/679) (GDPR), effective 25 May 2018. The GDPR is designed to ensure a consistent level of protection of the rights and freedoms of natural persons with regard to the processing of their data and to establish one set of data protection rules for Personal Data. IBM is committed to GDPR readiness.

Regarding GDPR, you represent as follows:

a. Either you do not require IBM to process Personal Data within the meaning of GDPR (e.g., because no processing of Personal Data occurs in the European Union (EU); no monitoring of Personal behavior takes place in EU; or your activities are otherwise exempt from GDPR); and

you will communicate to IBM in writing, without undue delay, any anticipated change affecting this representation, or

b. You agree to IBM's Data Processing Addendum at <http://ibm.com/dpa> (DPA) and applicable DPA Exhibit, which apply and supplement the contract. Please contact your IBM representative for the applicable Data Processing Exhibit.