



**OFFICE OF THE PURCHASING AGENT  
COUNTY OF COOK**

118 NORTH CLARK ST. ROOM 1018  
CHICAGO, ILLINOIS 60602-1375  
(312) 603-5370

THIS PURCHASE ORDER NUMBER  
MUST APPEAR ON ALL PACKAGES,  
INVOICES, SHIPPING PAPERS AND  
DROP SHIPMENTS.

PURCHASE ORDERED ISSUED TO  
83821

IBM Corp  
Lockbox 64300  
PO Box 643600  
Pittsburgh PA 15264-3600

DATE  
3/8/2012  
F.O.B. POINT

PURCHASE ORDER NO.  
**180381 - 000- OP**  
REQUISITION NO.  
00101144 OR

COOK COUNTY FEIN: 36-6006541  
ILLINOIS SALES TAX EXEMPT: E-9998-2013-04  
FEDERAL EXCISE TAX EXEMPT CERT: 36-75-D038K

**SHIP TO** Assessor - Administration  
Cook County Building  
118 N. Clark Street - RM 314  
Chicago IL 60602-1304

**DELIVERY INSTRUCTIONS**  
Victoria LaCalamita (312) 603-  
7514

DEPT NO	
0401422	Page 1 of 1

LINE	FURNISH THE FOLLOWING SUPPLIES AND/OR SERVICE	QUANTITY/ UOM	UNIT PRICE	EXTENDED PRICE	ACCOUNT NUMBER
1.00	Software Maintenance Contract 12-45-042 Yearly maintenance renewal of SPSS software, upgrades and technical support. Renewal period: April 1, 2012 thru March 31, 2013	1.00 JB	17,700.0000	17,700.00	0401422.540180
***** Total Order *****				17,700.00	

NOTE: VENDOR AGREES NOT TO EXCEED THE QUANTITY OR DOLLAR AMOUNT OF THIS ORDER WITHOUT WRITTEN AUTHORIZATION FROM THE PURCHASING AGENT

**RECEIPT CERTIFICATION (FOR DEPARTMENT USE ONLY)**

I hereby certify that I have received the goods/services reflected above and that the items referenced are in full conformity with the purchase order/contract.

Authorized Signature: \_\_\_\_\_

Date: \_\_\_\_\_

I hereby certify that this purchase is in agreement with the requisition on file authorizing the expenditure and is properly approved.

PURCHASING AGENT

Date: \_\_\_\_\_

*Mania de Armas Corp*  
3/30/12  
BA

# Purchase Requisition

Office of the Purchasing Agent  
Cook County of Illinois

Purchase Order Number

180381

45 Bk New

Requisition # OR 101144 Contract # 12-45-042

Open Date

Ship To: 8000188 Assessor - Administration  
Cook County Building  
118 N. Clark Street - RM 314  
Chicago IL 60602-1304

Delivery Instructions:  
Victoria LaCalamita  
(312) 603-7514

Supplier: 83821 IBM Corp  
Lockbox 64300  
PO Box 643600

Buyer Number 299999 TEAM LEAD MAILBOX  
Bid/Sole Src Code SSV  
Business Unit 0401422  
Internal Req Number 2040 0012  
Board Apr Date & Item  
Requisition Date 1/5/2012  
Date Needed 1/5/2012

One Time Purchase Yes No Covers Need for months. Specific Period of time thru Prior Contract No. Expiration Date Emergency No.

Line #	Commodity Description	Bal. on Hand	Quantity	UOM	Est. Unit Cost	Extended Cost	Business Unit and Object Account
1.000	941 Software Maintenance	<	>	1.00	JB	17,700.0000	0401422.540180
Yearly maintenance renewal of SPSS software, upgrades and technical support.							
Renewal period: April 1, 2012 thru March 31, 2013							
Total of Items Ordered						17,700.00	

CERTIFICATION  
I hereby certify that the items and/or services above are necessary to this department (or institution) and that the dept., account & activity numbers indicated above accurately reflect the specific line item budget appropriation approved by the Board of County Commissioners and there is a sufficient unencumbered balance in the account to grant same.

*Victoria W. Stewart*  
BUREAU or DEPARTMENT HEAD

CCA

APPROVED BUDGETARY ACCOUNT: 1111 5 - PURCHASING USE ONLY

ACCT # \_\_\_\_\_ DATE \_\_\_\_\_ BY \_\_\_\_\_

RECEIVED  
DEPARTMENT OF PURCHASING

JOSEPH BERRIOS  
ASSESSOR



COOK COUNTY  
ASSESSOR'S OFFICE  
VICTORIA LACALAMITA  
DIRECTOR OF HUMAN RESOURCES  
118 NORTH CLARK STREET  
ROOM 320, COUNTY BUILDING  
CHICAGO, ILLINOIS 60602  
TEL: (312) 603-7514  
FAX: (312) 603-2494  
vlacalamita@cookcountyassessor.com

January 5, 2012

Ms. Maria de Lourdes Coss  
Purchasing Agent  
118 N. Clark Street – Room 1018  
Chicago, IL 60602

Dear Ms. Coss:

The Assessor's Office is submitting the attached Requisition 2040 0012, System Requisition no. 101144, with IBM Corp. for the purpose of renewing maintenance on our SPSS software, upgrades and technical support for 16 users. This will not exceed \$17,700.00 and will be effective from April 1, 2012 to March 31, 2013.

Attached justification letter from IBM Corp. advises they are the sole source of maintenance for SPSS base and family of modules. The government's use of this includes upgrades, patches and updates at no additional cost, hotline support and technical support 24 hours a day.

Please see attached the vendor's quote, the vendor's sole source justification letter, the sole source justification form, and requisition. Should you have any questions please contact me at (312) 603-7514. Thank you.

Sincerely,

Victoria LaCalamita  
Director of Human Resources



# International Business Machines Corporation

International Business Machines Corporation, PO Box 643600, Pittsburgh, PA 15264-3600



20-Dec-2011

Quotation Number: 15669856  
 IBM Contact: MARJORIE S. FITZSIMMONS  
 Phone Number: 1-770-863-1639

SAP Customer Number: 3242848  
 IBM Customer Number: 2180819

Quote Effective Date: 20-Dec-2011  
 Quote Expiration Date: 31-Mar-2012

**Customer:**

Attn: Haleema Brady  
 Cook County Assessor-Administration  
 Cook County Building  
 118 N. Clark St. Rm. 320  
 CHICAGO IL 60602  
 UNITED STATES

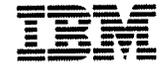
**Payer:** 3242848

Cook County Assessor-Administration  
 Cook County Building  
 118 N. Clark St. Rm. 320  
 CHICAGO IL 60602  
 UNITED STATES

Item	Part Number	Quantity	Unit Price	Extended Amount	
<b>IBM SPSS Advanced Statistics Authorized User Annual SW Subscription &amp; Support Renewal</b>					
001	E0A7BLL	16	250.00	4,000.00	
01-Apr-2012 - 31-Mar-2013					
<b>IBM SPSS Statistics Base Authorized User Annual SW Subscription &amp; Support Renewal</b>					
002	E0A56LL	16	450.00	7,200.00	
01-Apr-2012 - 31-Mar-2013					
<b>IBM SPSS Custom Tables Authorized User Annual SW Subscription &amp; Support Renewal</b>					
003	E0A5SLL	16	250.00	4,000.00	
01-Apr-2012 - 31-Mar-2013					
<b>IBM SPSS Regression Authorized User Annual SW Subscription &amp; Support Renewal</b>					
004	E0A67LL	10	250.00	2,500.00	
01-Apr-2012 - 31-Mar-2013					
Applicable tax will be recalculated at the time of order processing.					
				<b>Subtotal in USD:</b>	<b>17,700.00</b>
				<b>Total in USD:</b>	<b>17,700.00</b>

Final coverage dates for new license, Software Subscription and Support reinstatement, and Software Subscription and Support renewal part numbers will be based upon IBM's acceptance of the order, and as specified in the applicable agreements, irrespective of the dates which may appear in this quote.

# International Agreement for Acquisition of Software Subscription and Support



## Part 1- General Terms

This IBM International Agreement for Acquisition of Software Subscription and Support (called the "Agreement") governs Customer's acquisition of IBM software subscription and support ("Software Subscription and Support"), which may also be referred to as subscription and support ("S&S") in connection with IBM System z Programs. Software Subscription and Support is provided only for those Eligible Programs licensed by Customer within its Enterprise. Acquisition of Software Subscription and Support 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 Subscription and Support offerings. When Customer orders Software Subscription and Support marketed to Customer by IBM Business Partners, IBM will provide Software Subscription and Support 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 Subscription and Support, for any reason, Customer may continue to receive Software Subscription and Support under the terms of this Agreement by instructing IBM to transfer administration of Software Subscription and Support 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 Subscription and Support to Customer, or 2) IBM.

Section 3 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 3, and apply to all platforms.

The terms of the sections of the International Program License Agreement ("IPLA") entitled "Limitation of Liability," "General," and "Governing Law, Jurisdiction, and Arbitration," including any associated applicable Country-unique Terms, are also part of this Agreement and are incorporated by reference into this Agreement with the following changes:

- a. The term "Program" is replaced by the term "Software Subscription and Support."
- b. The statement, "All of our rights, duties, and obligations are subject to the courts of the country in which Customer acquired the Program license" is replaced by the statement, "The rights, duties, and obligations of each of us are valid only in the country in which Software Subscription and Support is acquired or, if IBM agrees, the country where Software Subscription and Support is used; and"
- c. 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 Subscription and Support is provided."

A copy of the IPLA in its entirety, either in a booklet or on a CD, is provided with IBM Programs licensed under the IPLA. It is also available from IBM or its resellers and on the Internet at [www.ibm.com/software/sla](http://www.ibm.com/software/sla).

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

### 1. Eligible Programs

Eligible Programs are listed on a "quote" form that IBM provides to Customer.

### 2. Software Subscription and Support Period

The Software Subscription and Support Period is one year, or the period IBM specifies in the PoE, or other document that IBM provides to Customer, beginning on the date of acquisition and ending on the same day of the corresponding month of the following year. If Customer terminates Software Subscription and Support, IBM does not issue a credit or refund for the unused Software Subscription and Support Period.

### 3. Software Subscription and Support

- a. For Programs running in a System z environment or equivalent:

(1) **Subscription and Support:** During the Software Subscription and Support Period, for the unmodified portion of a Program, and to the extent problems can be recreated in the specified operating environment, S&S is composed of the following:

- (a) Code Corrections: code to correct reported, substantial deviations from the Program's then applicable specifications;
- (b) Fixes: existing Code Corrections, restrictions or known bypasses for reported problems;
- (c) Program Updates: periodic releases of collections of Code Corrections, Fixes, functional enhancements and new versions and releases to the Program and documentation.
- (d) Technical Assistance: a reasonable amount of remote assistance via telephone or electronically to address suspected Program defects. Technical assistance is available from Customer's IBM support center in their geography. Additional details regarding Technical Assistance, including IBM contact information (see Appendix C: Contact Information), are provided in the Software Support Handbook at [www14.software.ibm.com/webapp/set2/sas/ff/handbook/home.html](http://www14.software.ibm.com/webapp/set2/sas/ff/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.

b. For Programs running on IBM distributed platforms (e.g., IBM Power Systems), IBM System i, IBM System p, or IBM System x or equivalent:

(1) **Software Subscription and Support:** During the Software Subscription and Support Period:

- (a) IBM makes available to Customer the most current commercially available version, release, or update to all of the Programs for which Customer acquires Software Subscription and Support under this Agreement, should any be made available. 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) IBM provides Customer technical assistance for Customer's 1) routine, short duration installation and usage (how-to) questions; and 2) code-related questions.
- (c) IBM provides technical 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 Customer's IBM support center in their geography. This assistance is not available to Customer's end users. Additional details regarding assistance are provided in the IBM Software Support Handbook at [www14.software.ibm.com/webapp/set2/sas/ff/handbook/home.html](http://www14.software.ibm.com/webapp/set2/sas/ff/handbook/home.html).

Software Subscription and Support 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.

#### 4. **Software Subscription and Support Renewal**

IBM, at its option, may renew expiring Software Subscription and Support under the Agreement terms and charges in effect on that date, subject to applicable law. Subsequent Software Subscription and Support Periods begin on the day following the end of the preceding Software Subscription and Support Period

#### 5. **Charges and Payment**

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

a. **Software Subscription and Support acquired from an IBM Business Partner**

When Customer acquires Software Subscription and Support 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 Subscription and Support acquired directly from IBM
- (1) Charges for Software Subscription and Support during each Software Subscription and Support Period, called the Software Subscription and Support Charge, are invoiced in advance.
  - (2) The Software Subscription and Support Charge may vary, depending on, for example, the machine (type/model), the Program or group of Programs, or level of use of the Program.
  - (3) IBM may increase the Software Subscription and Support Charge without notice. An increase will not apply to Customer if IBM receives Customer's order for Software Subscription and Support before the effective date of the increase and within three months of receipt by IBM of Customer's order IBM makes Software Subscription and Support available to Customer. Customer receives the benefit of a decrease in the Software Subscription and Support 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 Subscription and Support IBM supplies under this Agreement, then Customer agrees to pay that amount as specified in the invoice, unless Customer supplies exemption documentation.

## 6. Software Subscription and Support Transferability

Customer may transfer Software Subscription and Support only to an entity that is within Customer's Enterprise and located within the country in which Software Subscription and Support is acquired, provided that (1) the applicable Program is transferable and is transferred in accordance with its license terms and (2) the entity receiving the Program agrees to the terms of this Agreement. When Customer transfers the Program, Customer must also transfer a printed copy of this Agreement for the entity to receive Software Subscription and Support.

## 7. Customer's Responsibilities

Customer agrees that when Customer acquires Software Subscription and Support for a Program:

- a. Customer will acquire Software Subscription and Support at the same level of use as that at which the Program it is authorized. Partial coverage for a particular Program is not offered;
- b. Customer is responsible for the results obtained from the use of the Software Subscription and Support;
- 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 6. Software Subscription and Support 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.

## 8. Compliance Verification

Upon reasonable notice, IBM may verify Customer's compliance with this Agreement at all sites and for all environments in which Customer uses or installs Eligible Programs. Such verification will be conducted during Customer's normal business hours and in a manner that minimizes disruption to Customer's business. IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

As reasonably necessary to verify Customer's use and installation of Eligible Programs and Customer's compliance with the terms of this Agreement and IBM's applicable licensing and pricing terms, Customer agrees to: (1) create, retain and provide to IBM and its auditors written and other records, system tools outputs, and other electronic or hard copy system information, (including, without limitation, system configurations on which the Eligible Programs operate, necessary to demonstrate Customer's use and deployment of Eligible Programs; and (2) provide IBM and its auditors with access to the machines on which the Eligible Programs are installed or permit IBM and its auditors to be present and observe while Customer accesses such machines to provide such records, outputs and other system information. IBM will notify Customer in writing if any such audit indicates Customer is not in compliance with the terms of this Agreement.

Customer agrees to promptly pay any additional charges (including charges for Software Subscription and Support or S&S) and other liabilities Customer becomes obligated to pay based on Customer's use or deployment of Eligible Programs or Customer's failure to comply with this Agreement or applicable licensing and pricing terms, including, without limitation, any such failure identified through IBM's exercise of its verification rights under this Agreement.

The rights and obligations set forth in this section 8 of the Agreement remain in effect during the term of this Agreement and for two years thereafter.

## **9. Warranty for Software Subscription and Support**

IBM warrants that Software Subscription and Support will be provided using reasonable care and skill.

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.

**THESE WARRANTIES ARE CUSTOMER'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER EXPRESS WARRANTIES OR CONDITIONS EXCEPT AS EXPRESSLY REQUIRED BY LAW WITHOUT THE POSSIBILITY OF CONTRACTUAL WAIVER OR LIMITATION. IBM DISCLAIMS ALL IMPLIED WARRANTIES OR CONDITIONS, INCLUDING, BUT NOT LIMITED TO, THE 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 Subscription and Support or that IBM will correct all defects.

## **10. 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.

## **11. 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 Subscription and Support for a Program by publishing a notice of withdrawal not less than 12 months prior to its effective date. If IBM withdraws Software Subscription and Support 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 Subscription and Support to Customer until the end of the current Software Subscription and Support Period or give Customer a prorated refund. Acquisition of Software Subscription and Support does not extend the period for which a 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 Subscription and Support for that Program. In this instance, IBM is not obligated to issue a refund or credit for any unused portion of Software Subscription and Support.

IBM may withdraw the Software Subscription and Support offering in its entirety on 12 months' written notice to all then current Software Subscription and Support 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.

## 12. Additional Terms

- a. Customer authorizes International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors and IBM Business Partners) to store and use Customer's business contact information wherever they do business, in connection with IBM Products and Services or in furtherance of IBM's business relationship with Customer.
- b. To assist Customer in isolating the cause of a software problem, IBM may request that Customer (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 Subscription and Support. 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.

- c. All information exchanged is nonconfidential. If either of us requires the exchange of confidential information, it will be made under a signed confidentiality agreement;
- d. 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;
- e. Each of us will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations;

This Agreement is the complete agreement regarding Customer's acquisition of Software Subscription and Support, and replaces any prior oral or written communications between Customer and IBM concerning Software Subscription and Support. 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 9 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 Subscription and Support or, where required by law, signing a transaction document. Software Subscription and Support 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 Subscription and Support Customer orders under this Agreement is subject to it.

# International Agreement for Acquisition of Software Subscription and Support

## 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:*

#### 5. Charges and Payment

*In subsection, b. Software Subscription and Support 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

#### 5. 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 Subscription and Support 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 ten percent applied to the resultant delinquent amount.

*The following is added to subsection b. Software Subscription and Support 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.

#### **10. 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.

## **ASIA PACIFIC**

### **AUSTRALIA**

#### **5. Charges and Payment**

*The following paragraph is added after item b(5):*

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 Subscription and Support 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.

#### **9. Warranty for Software Subscription and Support**

*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.

### **HONG KONG S.A.R.**

#### **PART 1 and PART 2**

*As applies to transactions initiated and performed in Hong Kong S.A.R., phrases throughout this Agreement containing the word "country" (for example, "country of acquisition" and "country of installation") are replaced with "Hong Kong S.A.R."*

## **INDONESIA**

### **11. 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**

### **11. 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.

## **MACAU S.A.R.**

### **PART 1 and PART 2**

*As applies to transactions initiated and performed in Macau S.A.R., phrases throughout this Agreement containing the word "country" (for example, "country of acquisition" and "country of installation") are replaced with "Macau S.A.R."*

## **NEW ZEALAND**

### **9. Warranty for Software Subscription and Support**

*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.

## **TAIWAN**

### **PART 1 and PART 2**

*As applies to transactions initiated and performed in Taiwan, phrases throughout this Agreement containing the word "country" (for example, "country of acquisition" and "country of installation") are replaced with "Taiwan."*

## **EUROPE, MIDDLE EAST, AFRICA (EMEA)**

### **EUROPE**

The following terms apply to all countries in Europe (meaning: (i) all EU member states; (ii) Iceland, Liechtenstein, Norway, and Switzerland; and (iii) any other country (e.g., Turkey) that has enacted local data privacy or protection legislation similar to the EU model).

### **12. Additional Terms**

*The following replaces the provisions of subsection a. in their entirety; for certain specific countries expressly listed below, further amendments also apply:*

**Business Contact Information** means 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.

**Business Contact Personnel** means the Customer employees and contractors to whom the Business Contact Information relates.

**Data Protection Authority** means: (i) the national authority established by the domestic legislation implementing EU Directive 95/46/EC in the applicable country; or (ii) in any country where no such authority has been established, the European Commission or the national authority responsible for (a) regulating the use and protection of personal data, and (b) the regulation of electronic communications involving personal data.

**Data Protection & Electronic Communications Legislation** means the relevant specific domestic legislation and associated regulation(s) passed in the applicable country pursuant to (a) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and (b) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) or (in either case) any statutory replacement or modification thereof. For non-EU countries, it means the relevant specific country legislation and associated regulation(s) passed in the applicable country relating to (i) the use and protection of personal data and (ii) the regulation of electronic communications involving personal data, or (in either case) any statutory replacement or modification thereof.

**IBM Group** means International Business Machines Corporation of Armonk, New York, USA, its subsidiaries, and their respective Business Partners and subcontractors. IBM Group entities are principally providers of information technology, including hardware and software products, services, consultancy, financing services and other related activities.

- (1) Customer authorizes IBM to process and use Business Contact Information for the purpose of furthering the business relationship between Customer and IBM Group, including the marketing of products and services (the "Specified Purpose").
- (2) Customer agrees that Business Contact Information may be disclosed to, and processed and used by, IBM Group in pursuit of the Specified Purpose.
- (3) IBM agrees that all Business Contact Information will be processed in accordance with the applicable Data Protection & Electronic Communications Legislation and will be used only in accordance with the Specified Purpose.
- (4) To the extent that the Data Protection & Electronic Communications Legislation requires them, Customer represents that it has obtained (or will obtain) such consents from and has issued (or will issue) such notices to, the Business Contact Personnel as are necessary in order to enable the IBM Group to process and use the Business Contact Information to contact them, including by email, in accordance with the Specified Purpose.
- (5) Customer consents to IBM transferring Business Contact Information outside the European Economic Area, provided that any such transfer is made on contractual terms approved by the Data Protection Authority as ensuring adequate safeguards for the rights and freedoms of data subjects.

*Except that*

*in ITALY, item (1) above is replaced with the following:*

Customer authorizes IBM to process and use Business Contact Information for the purpose of furthering the business relationship between Customer and IBM Group, including the marketing of products and services (the "Specified Purpose"), on the basis of an "Informative Notice" given by IBM to Business Contact Personnel and the related obtained consent, whenever required by law.

*and item (4) above is replaced with the following:*

To the extent that the Data Protection & Electronic Communications Legislation requires it, Customer agrees to cooperate with IBM (as Data Controller) in sending an "Informative Notice" to Business Contact Personnel (as Data Subjects) and obtaining their consent for IBM Group to process and use the relevant Business Contact Information to contact such Personnel, including by email, in accordance with the Specified Purpose.

*in TURKEY, the following phrase is deleted from item (5) above*

outside the European Economic Area”

#### **AUSTRIA**

##### **9. Warranty for Software Subscription and Support**

The last sentence is replaced in its entirety by:

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

#### **FRANCE**

##### **5. Charges and Payment**

*In subsection b. Software Subscription and Support 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**

##### **5. Charges and Payment**

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