



# IBM Business Partner Agreement

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## Amendment for Sub-Capacity Terms to the Primary Support Provider Attachment (Sublicensing)

The terms of this Amendment for Sub-Capacity Licensing Terms (“Amendment”) are in addition to those of the IBM Primary Support Provider Attachment and govern the transaction when you obtain “Eligible Sub-Capacity Products” from IBM for the sublicensing of Programs to End Users. This Amendment will remain in effect until the IBM Primary Support Provider Attachment specified above terminates or expires. If there is a conflict, the terms of this Amendment will prevail over the terms of the IBM Primary support Provider Attachment. Except as modified herein, all other terms of the IBM Primary Support Provider Attachment remain in effect.

### 1. Definitions

**Audit Report Period** – The period that begins on the first day in a calendar quarter and ends on the last day in the calendar quarter. Alternatively, if your fiscal year is different from the calendar year, you may choose to begin the period on the first day in your fiscal quarter and end on the last day in your fiscal quarter. This period may also be monthly or weekly depending on your requirements.

**Audit Reports** – A set of reports available in the IBM License Metric Tool (“ILMT”), or by another method acceptable to IBM as specified at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html>. These reports provide the Processor Value Unit (“PVU”) license requirements based on the Virtualization Capacity available to the Eligible Sub-Capacity Product.

**Eligible Sub-Capacity Product** – A Product for which Sub-Capacity Licensing is available. See listing at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html>.

**Eligible Virtualization Environment** – A server or a group of servers cooperating as a single computing entity that contain an Eligible Processor Technology, an Eligible Operating System Technology, and an Eligible Virtualization Technology;

- **Eligible Operating System Technology** – An operating system for which Sub-Capacity Licensing is available. See listing at: <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html>.
- **Eligible Processor Technology** – A processor technology for which Sub-Capacity Licensing is available. See listing at: <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html>.
- **Eligible Virtualization Technology** – A virtualization technology for which Sub-Capacity Licensing is available. An Eligible Virtualization Technology is capable of restricting processor capacity to a subset of the total physical capacity, sometimes referred to as partition, LPAR, or virtual machine. See listing at: <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html>

**Enterprise** – any legal entity (such as a corporation) and the subsidiaries it owns by more than 50 percent.

**Full Capacity** – The total number of physical processor cores activated and available for use by the Eligible Sub-Capacity Product(s) on a server.

**Processor Chip** – Electronic circuitry containing one or more Processor Cores that plugs into a Processor Socket.

**Processor Core(s)** – A physical functional unit within a computing device that interprets and executes program instructions and consists of at least one instruction control unit and one or more arithmetic and logic units. A multi-core technology allows two or more Processor Cores to be active on a single Processor Chip. A System z Integrated Facility for Linux (IFL) engine is considered a single Processor Core.

**Processor Socket** – Electronic circuitry that accepts a Processor Chip.

**Processor Value Unit(s)** – A metric used by IBM to assign a value to a Processor Core. The Processor Value Unit licensing model is described at:

[http://www.ibm.com/software/lotus/passportadvantage/pvu\\_licensing\\_for\\_customers.html](http://www.ibm.com/software/lotus/passportadvantage/pvu_licensing_for_customers.html) .

**Sub-Capacity Licensing** – Licensing of Eligible Sub-Capacity Products based on Virtualization Capacity.

**Virtualization Capacity** – the highest peak processor capacity available to an Eligible Sub-Capacity Product when deployed on an Eligible Virtualization Environment. Rules for calculating the Virtualization Capacity for each Eligible Virtualization Environment can be found at <http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html> .

## 2. Authorizations

- a. A Proof of Entitlement (PoE) must be acquired by you for the total number of PVUs associated with the Virtualization Capacity available to an Eligible Sub-Capacity Product.
- b. Prior to an increase in an Eligible Sub-Capacity Product's Virtualization Capacity, you must first acquire additional authorizations, including Subscription and Support, if applicable.
- c. IBM does not give credits or refunds for charges already due or paid if an Eligible Product's use falls below the authorized level of use.

## 3. IBM's Responsibilities

IBM will make available and authorize you to use:

- a. the ILMT at no charge, when ordered by you. IBM provides the ILMT to you for your and your End User's compliance with these Sub-Capacity Licensing terms; and
- b. the Information Center included with the ILMT to aid in your and your End User's compliance with these Sub-Capacity Licensing terms.

You may make copies of the ILMT and Information Center for your and your End User's compliance with these Sub-Capacity Licensing terms.

## 4. Your Responsibilities under Sub-Capacity Licensing Terms

You agree to:

- a. audit your End User(s) compliance with these Sub-Capacity Licensing terms at IBM's option and discretion when IBM requests such, and allow IBM to either:
  - (1) assist you in such audits, or
  - (2) perform such audits, or
  - (3) hire an independent auditor, chosen and compensated by IBM to perform such audits;
- b. contractually require your End User(s) to commit to the terms in Section 5 of this Amendment, and include, in your End User contract, your right to audit their compliance to those terms during the period Sub-Capacity Licensing terms remain in effect, and for two years thereafter. You agree to notify such End User(s) that IBM reserves the right to audit their records (either directly or through the use of an independent auditor) during this same period to demonstrate compliance with the Sub-Capacity terms;
- c. distribute the latest version/release of the ILMT and Information Center to your End User(s) who are subject to Sub-Capacity Licensing terms. IBM may provide you with updated versions of this product and Information Center as they become available. You agree to distribute the most current version of the ILMT and Information Center, including any fix packs, to all of your End Users who are subject to Sub-Capacity Licensing terms within thirty days of IBM providing you with such updated versions;
- d. provide to IBM the contact information for those End User(s) that were granted Sub-Capacity Licensing terms, together with information on each Eligible Sub-Capacity Product licensed with quantity and date licensed, in the event you do not renew this Amendment. You will inform the End User(s) that IBM may charge them for excess capacity if they are found to be non-compliant;

- e. communicate to your End User their PVU license entitlements (# of PVUs by Program) acquired as part of your solution.

## 5. Your End User's Responsibilities under Sub-Capacity Licensing Terms

While using Sub-Capacity Licensing terms, your End User must agree to:

- a. install and configure the most current version of the ILMT in accordance with the ILMT Information Center, within 90 days of their first Eligible Sub-Capacity Product deployment on an Eligible Virtualization Environment, to enable them to collect Virtualization Capacity data by Eligible Sub-Capacity Product and generate Audit Reports in accordance with these Sub-Capacity Licensing terms. Exceptions to this requirement are:
  - 1) when the ILMT does not yet provide support for the Eligible Virtualization Environment.
  - 2) if your End User's Enterprise has fewer than 1,000 employees and contractors, and your End User is not a Primary Support Provider, nor has your End User contracted with a Primary Support Provider to manage their Eligible Virtualization Environment. This Primary Support Provider exclusion to the ILMT requirement exception includes you if you provide such IT services to your End User.
  - 3) if the total physical capacity of your End User's Enterprise servers with an Eligible Virtualization Environment, measured on a Full Capacity basis, but licensed using sub-capacity terms is less than 1,000 PVUs.
  - 4) when your End User's servers with Eligible Sub-Capacity Products are licensed to the Full Capacity of the servers.

For these exceptions use of the ILMT, while recommended, is not required for Sub-Capacity Licensing. In lieu of the ILMT, you your End Users are required to manually manage and track their Eligible Virtualization Environment, and manually prepare Audit Reports documenting the Virtualization Capacity by Eligible Sub-Capacity Product for their Eligible Virtualization Environment during each calendar or fiscal quarter. These Audit Reports must contain the information listed in the example Audit Report available at:

<http://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html>

These Audit Reports must be prepared as frequently as is required to maintain a history of increases to Virtualization Capacity, but not less often than once per quarter, and must be maintained for at least two years to demonstrate your End User's ongoing compliance with these Sub-Capacity Licensing terms;

- b. promptly install new versions, releases, modifications, or code corrections ("fixes") of the ILMT that IBM makes available. Your End User will need to subscribe to Tivoli Support notifications via <http://www.ibm.com/support/mynotifications> in order to be notified when these become available;
- c. generate, using ILMT or manually, Audit Reports at least each calendar or fiscal quarter and retain for a period of not less than two years the Audit Reports and make these reports available to IBM upon notice as specified in Section 6. Failure to generate Audit Reports or make Audit Reports available to IBM will result in charging you for Eligible Sub-Capacity Products under Full Capacity terms;
- d. assign a person in their organization with authority to manage and promptly resolve any questions on Audit Reports or inconsistencies between Audit Report contents, license entitlement, or ILMT configuration;
- e. notify you if Audit Reports reflect Eligible Sub-Capacity Product use in excess of their authorized level. You agree to promptly submit an order to IBM including Subscription and Support coverage based on the date your End User exceeded their authorized level.

## 6. Compliance Verification

Upon reasonable notice, IBM may verify your compliance with this Amendment for all your End Users and for all Eligible Virtualization Environments in which your End User uses or installs Eligible Sub-Capacity Products subject to the terms of this Amendment for any purpose. Such verification will be conducted in a manner that minimizes disruption to your and your End User's business and may be conducted on your

or your End User's, as IBM determines, 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.

You agree to require that your End Users to create, retain, and provide to IBM and its auditors written records, system tool outputs, evidence of the license entitlements you provided to your End User, and other system information sufficient to provide auditable verification to IBM that your End User's installation and use of Eligible Sub-Capacity Products is in compliance with the terms of this Amendment, including, without limitation, all of IBM's applicable licensing and pricing qualification terms.

IBM will notify you in writing if any such verification indicates that you or your End Users have used Eligible Sub-Capacity Products in excess of you or your End User's authorized level of use or you or your End User's are otherwise not in compliance with this Amendment. You agree to promptly pay directly to IBM i) the charges as IBM specifies in an invoice for any additional licenses equal to the quantity used in excess of authorized level of use and applicable Subscription and Support offerings, as applicable, for such licenses for the lesser of the time that such licenses have been used or two years, and ii) any additional charges and other liabilities determined as a result of such verification.

The rights and obligations set forth in this section remain in effect during the period the Eligible Sub-Capacity Product is licensed to you and your End Users and for two years thereafter.

### **Additional Terms**

7. Product deployments that are not able to meet these Sub-Capacity Licensing requirements must be licensed using Full Capacity terms.
- For a change to be valid, both of us must sign it. Additional or different terms in any written communication from you are void.

Once signed and completed, both parties agree any reproduction of this Amendment made by reliable means (for example, photocopy, scan, or facsimile) is an original.

After signing this Profile, please return a copy to the IBM address shown below.

Revised Profile Number: \_\_\_\_\_

Date received by IBM: \_\_\_\_\_

Agreed to: \_\_\_\_\_  
(IBM Business Partner Name)

Agreed to: IBM Ireland Limited

By: \_\_\_\_\_  
(Authorized Signature)

By: \_\_\_\_\_  
(Authorized Signature)

Name (type or print):

Name (type or print):

Date:

Date:

IBM Business Partner Number:

IBM Business Partner Agreement Number:

IBM Address:

IBM Business Partner Address:

IBM House,  
Shelbourne Road,  
Ballsbridge, Dublin 4.  
Ireland