

License Agreement for Non-Warranted, No-Charge Tape Tools

Part 1 - General Terms

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, OR OTHERWISE USING THE TAPE TOOL PROGRAMS, LICENSEE AGREES TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF LICENSEE, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND LICENSEE TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS,

* DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, OR USE THE PROGRAM; AND

* PROMPTLY RETURN THE UNUSED MEDIA AND DOCUMENTATION TO THE PARTY FROM WHOM IT WAS OBTAINED. IF THE PROGRAM WAS DOWNLOADED, DESTROY ALL COPIES OF THE PROGRAM.

1. Definitions

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

"Tape Tool Programs" – the IBM Tape Analysis Tools , 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).

2. License Grant

The Tape Tool Programs are owned by IBM or an IBM supplier, and are copyrighted and licensed, not sold.

IBM grants Licensee a nonexclusive license to 1) use the Tape Tool Programs in support of Licensee's use of any vendor's tape products, 2) make and install copies to support such authorized use, and 3) make a backup copy; all provided that

- a. Licensee complies with the terms of this Agreement;
- b. Licensee reproduces all copyright notices and other legends of ownership on each copy, or partial copy, of the Program;
- c. Licensee ensures that anyone who uses the Tape Tool Programs (accessed either locally or remotely) 1) does so only on Licensee's behalf and 2) complies with the terms of this Agreement;
- e. Licensee does not 1) use, copy, modify, or distribute the Tape Tool Programs except as expressly permitted in this Agreement; 2) reverse assemble, reverse compile, otherwise translate, or reverse engineer the Tape Tool Programs, except as expressly permitted by law without the possibility of contractual waiver; 3) use any of the Tape Tool Programs' components, files,

modules, audio-visual content, or related licensed materials separately from that Tape Tool Program; or 4) sublicense, rent, or lease the Tape Tool Programs.

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

3 Term and Termination

This Agreement is effective until terminated.

IBM may terminate Licensee's license if Licensee fails to comply with the terms of this Agreement. If the license is terminated for any reason by either party, Licensee agrees to promptly discontinue use of and destroy all of Licensee's copies of the Tape Tool Programs. Any terms of this Agreement that by their nature extend beyond termination of this Agreement remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

4. Program Transfer

Licensee may transfer the Tape Tool Programs and all of Licensee's license rights and obligations under this license to another party only if that party agrees to the terms of this Agreement. If the license is terminated for any reason by either party, Licensee is prohibited from transferring the Tape Tool Programs to another party. Licensee may not transfer a portion of 1) the Tape Tool Programs or 2) the Tape Tool Programs' Authorized Use. When Licensee transfers the Tape Tool Programs, Licensee must also transfer a hard copy of this Agreement, including the LI. Immediately after the transfer, Licensee's license terminates.

5. No Warranties

SUBJECT TO ANY STATUTORY WARRANTIES THAT CANNOT BE EXCLUDED, IBM MAKES NO WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, REGARDING THE TAPE TOOL PROGRAMS, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND TITLE, AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT.

THE DISCLAIMERS AND EXCLUSIONS IN THIS SECTION 5 ALSO APPLY TO ANY OF IBM'S PROGRAM DEVELOPERS AND SUPPLIERS.

IBM DOES NOT PROVIDE SUPPORT OF ANY KIND, UNLESS IBM SPECIFIES OTHERWISE. IN SUCH EVENT, ANY SUPPORT PROVIDED BY IBM IS SUBJECT TO THE DISCLAIMERS AND EXCLUSIONS IN THIS SECTION 5 AND IS PROVIDED ON A BEST EFFORT BASIS.

6. Licensee Data and Databases

To assist Licensee in isolating the cause of a problem with the Tape Tool Programs, IBM may

request that Licensee 1) allow IBM to remotely access Licensee's system or 2) send Licensee information or system data to IBM. However, IBM is not obligated to provide such assistance unless IBM and Licensee enter a separate written agreement under which IBM agrees to provide to Licensee that type of support, which is beyond IBM's obligations in this 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.

Licensee remains responsible for 1) any data and the content of any database Licensee 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. Licensee will not send or provide IBM access to any personally-identifiable information, whether in data or any other form, and will be responsible for reasonable costs and other amounts that IBM 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.

7. Limitation of Liability

The limitations and exclusions in this Section 7 (Limitation of Liability) apply to the full extent they are not prohibited by applicable law without the possibility of contractual waiver.

7.1 Items for Which IBM May Be Liable

Circumstances may arise where, because of a default on IBM's part or other liability, Licensee is entitled to recover damages from IBM. Regardless of the basis on which Licensee is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM's entire liability for all claims in the aggregate arising from or related to each Program or otherwise arising under this Agreement will not exceed the amount of any 1) damages for bodily injury (including death) and damage to real property and tangible personal property and 2) other actual direct damages up to \$1000.

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

7.2 Items for Which IBM Is Not Liable

UNDER NO CIRCUMSTANCES IS IBM, ITS PROGRAM DEVELOPERS OR SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:

a. **LOSS OF, OR DAMAGE TO, DATA;**

b. **SPECIAL, INCIDENTAL, EXEMPLARY, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR**

c. LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

8. Third Party Notices

The Tape Tool Programs may include third party code that IBM, not the third party, licenses to Licensee under this Agreement. Notices, if any, for the third party code ("Third Party Notices") are included for Licensee'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 Licensee 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 Licensee's modifications to such third party code. IBM's service and support obligations, if any, apply only to the unmodified Program.

9. General

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

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

c. Licensee agrees to comply with all applicable export and import laws and regulations, including U.S. embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users.

d. Licensee authorizes International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors and IBM Business Partners) to store and use Licensee's business contact information wherever they do business, in connection with IBM products and services, or in furtherance of IBM's business relationship with Licensee.

e. Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement.

f. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation: 1) neither party will bring a legal action, regardless of form, for any claim arising out of or related to this Agreement more than two years after the cause of action arose; and 2) upon the expiration of such time limit, any such claim and all respective rights related to the claim lapse.

g. Neither Licensee nor IBM is responsible for failure to fulfill any obligations due to causes beyond its control.

h. In entering into this Agreement, neither party is relying on any representation not specified in this Agreement, including but not limited to any representation concerning: 1) the performance or function of the Program; 2) the experiences or recommendations of other parties; or 3) any results or savings that Licensee may achieve.

i. IBM has signed agreements with certain organizations (called "IBM Business Partners") to promote, market, and support certain Programs. IBM Business Partners remain independent and separate from IBM. IBM is not responsible for the actions or statements of IBM Business Partners or obligations they have to Licensee.

j. The license and intellectual property indemnification terms of Licensee's other agreements with IBM (such as the IBM Customer Agreement) do not apply to Program licenses granted under this Agreement.

k. Both parties agree that all information exchanged is nonconfidential. If either party requires the exchange of confidential information, it will be made under a signed confidentiality agreement;

10. Geographic Scope and Governing Law

11.1 Governing Law

Both parties agree to the application of the laws of the State of New York, United States govern, interpret, and enforce all of Licensee's and IBM's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

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

14.2 Jurisdiction

All rights, duties, and obligations are subject to the courts of the State of New York, United States in which Licensee obtained the Program license.