



AIX Binary Compatibility Guarantee Agreement

YOUR ELIGIBILITY FOR THE AIX BINARY COMPATIBILITY GUARANTEE IS CONDITIONED ON YOUR ACCEPTANCE OF THE TERMS OF THIS AIX BINARY COMPATIBILITY AGREEMENT (“AGREEMENT”). BY SIGNING AND FAXING THE AIX BINARY COMPATIBILITY GUARANTEE SUBMISSION FORM TO IBM (AVAILABLE AT <http://www.ibm.com/systems/p/os/aix/compatibility/guarantee/>), YOU ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT AS OF THE DATE YOU SUBMIT THE AIX BINARY COMPATIBILITY GUARANTEE SUBMISSION FORM TO IBM. IF YOU DO NOT ACCEPT TO THE TERMS OF THIS AGREEMENT, DO NOT SIGN AND FAX THE AIX BINARY COMPATIBILITY GUARANTEE SUBMISSION FORM TO IBM. IF YOU DO NOT ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU WILL NOT BE ELIGIBLE FOR THE IBM BINARY COMPATIBILITY GUARANTEE. THE PERSON WHO ACCEPTS THE TERMS OF THIS AGREEMENT WARRANTS THAT HE OR SHE HAS FULL AUTHORITY TO BIND THE CUSTOMER TO THESE TERMS.

1. DEFINITIONS

- a. AIX OS: IBM AIX Operating System generally released versions 4.1, 4.2, 4.3, 5.1, 5.2, or 5.3.
- b. AIX 6: IBM AIX Operating System generally released version 6.1.
- c. Claim: a Customer request for support pursuant to this Agreement.
- d. Customer: a person or entity with a valid license to an AIX OS and to AIX 6 and with an Agreement for Software Maintenance with IBM for AIX 6.
- e. Eligible Application: Any application developed by or for a Customer that: 1) executes without experiencing significant problems on the Originating Platform; 2) either (i) fails to recompile on the Target Platform or (ii) experiences execution errors not experienced on the Originating Platform; 3) is used in a production environment or is commercially available; and 4) is reported to IBM in accordance with the Submission Process. Determination of whether or not an application is an Eligible Application is at IBM's sole discretion.
- f. Originating Platform: The Supported Hardware executing an AIX OS on which the Eligible Application executes successfully.
- g. Submission Process: On or before December 31, 2009, Customer contacts IBM for technical support as provided in Customer's Agreement for Software Maintenance regarding AIX Binary Compatibility and submits to IBM the fully completed and signed AIX Binary Compatibility Guarantee Submission Form (available at <http://www.ibm.com/systems/p/os/aix/compatibility/guarantee/>) via facsimile to Jay Kruemcke at 1-801-720-3422 and, if so requested by IBM, a list of recompile errors and failing binary and source code fragments.
- h. Supported Hardware: Selected IBM Power PC 970 systems, POWER4 systems, POWER5 systems, and POWER 6 systems that implement the POWER Architecture Platform Requirements (PAPR).
- i. Target Platform: The Supported Hardware executing AIX 6 on which Customer is attempting to recompile and execute the Eligible Application.
- j. Well-Behaved Program: Adheres to the specified functionality and programming interfaces as documented in IBM's AIX user reference publications (which are available at <http://publib.boulder.ibm.com/infocenter/pseries/>) and does not attempt to rely on AIX OS or IBM machine behaviors that are either contrary to, or not specified in, such publications.

2. TERM AND TERMINATION

- a. The Agreement begins when Customer submits a Claim through the Submission Process.
- b. The Agreement terminates on the earliest of the following:
 - (1) the date IBM notifies Customer: i) of a remedy pursuant to Section 4.d below, or ii) IBM has reached the maximum of one hundred person-hours as specified in Section 4.e below;
 - (2) the manufacture or service of any portion of the Eligible Application is discontinued;
 - (3) the Customer's Software Maintenance Agreement with IBM for AIX 6 terminates or is no longer enforceable;

- (4) the Eligible Application was once remedied in accordance with this Agreement and is later modified changed, enhanced or altered by Customer;
- (5) Customer has failed to comply with its obligations as specified in this Agreement; or
- (6) Based on the information provided to IBM by the Customer, if IBM is unable to replicate Customer's success in executing the application on an AIX OS

3. GUARANTEE

- a. As the Guarantee offered under this Agreement, IBM warrants that
 - (1) A 32-bit or 64-bit Eligible Application that executes on AIX 5.1, 5.2 or 5.3 can be executed on AIX 6 without recompilation and without experiencing problems that did not exist on AIX 5.1, 5.2, or 5.3, provided such program is a Well-Behaved Program and does not utilize programming techniques that are non-portable including those stated in the "AIX Binary Compatibility Statement" located at <http://www.ibm.com/systems/p/os/aix/compatibility/conditions/> Additionally,
 - (2) A 32-bit Eligible Application that executes on AIX 4.1, 4.2, or 4.3 can be executed on AIX 6 without recompilation and without experiencing problems that did not exist on the AIX 4.1, 4.2, or 4.3, provided such program is a Well-Behaved Program.
- b. IBM warrants that support for a Claim will be provided using commercially reasonable care and skill.
- c. THESE WARRANTIES ARE YOUR AND, IF APPLICABLE, 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.
- d. IBM does not warrant uninterrupted or error-free provision of support or that IBM will correct all defects.
- e. The Guarantee 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. The Guarantee is also void if the Eligible Application is not used by Customer in a production environment or is not commercially available; if the Customer's licenses for AIX OS or AIX 6 become invalid; or if the Customer does not have a valid Agreement for Software Maintenance with IBM for AIX 6 at the time Customer submits a Claim to IBM under the terms of this Agreement.

4. REMEDY

- a. Customer must provide to IBM any other information which IBM believes, in its sole discretion, is necessary either to determine whether the application is an Eligible Application, or to diagnose the problem, including without limitation:
 - (1) failing binary and source code fragments of the application;
 - (2) failure reports and all other test data associated with the reported problem;
 - (3) information regarding configuration, workload, other applications that are executing, and system environment;
 - (4) either:
 - (a) access to Customer's system containing all binaries necessary to execute the Eligible Application on Customer's system remotely, or
 - (b) all binaries and any other information deemed necessary by IBM to reproduce the problem reported for the Eligible Application; and
 - (5) all information IBM needs in order to replicate Customer's success in executing the application on an existing AIX System.
- b. Remedies provided by IBM are limited to the following:

- (1) In the event IBM determines the problem to be caused by the AIX 6, IBM will use commercially reasonable efforts to deliver to Customer a patch to AIX 6.
 - (2) IBM will provide email support to assist Customer in modifying the application so that the application either executes without requiring recompilation or may be re-submitted as an Eligible Application.
 - (3) Changes to AIX 6 to correct incompatibility may be limited to only the latest update level or, in some instances, a future level of AIX.
- c. Notwithstanding the above, or any part of this Agreement, support under this Agreement is limited to one hundred person-hours per Eligible Application. In no event shall support under this Agreement include on-site support. Assistance from IBM to Customer to resolve problems that prevent an application from becoming an Eligible Application are specifically excluded from this Agreement. The foregoing limitations apply notwithstanding any failure of essential purpose of any limited remedy.
 - d. Customer agrees that the remedy provided by IBM under the terms of this Agreement is Customer's sole and exclusive remedy for any Claim.

5. GENERAL

- a. All information exchanged between the parties will be considered non-confidential. Any exchange of confidential information will be made under a separate, signed confidentiality agreement.
- b. Any term of this Agreement which by its nature extends beyond the Agreement termination remains in effect until fulfilled, and applies to both of our respective successors and assignees.
- c. All Claims and support provided pursuant to this Agreement, including the AIX Binary Compatibility Guarantee Submission Form, will be made in English.
- d. The terms of the International Program License Agreement for AIX 6 entitled "Limitation of Liability," "General," and "Governing Law, Jurisdiction, and Arbitration," including their applicable Country-unique Terms, are also made part of this Agreement and are incorporated by reference with the following changes:
 - (1) The term "Program" is replaced by the term "Guarantee."
 - (2) 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 Guarantee is acquired or, if IBM agrees, the country where the claim is submitted."
 - (3) The phrase "the laws of the country in which Customer acquired the Program license" in the Governing Law subsection is replaced by "the laws of the country in which the Guarantee 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 <http://www.ibm.com/software/sla> .

This Agreement and the incorporated terms of the IPLA are the complete agreement between IBM and the Customer regarding AIX Binary Compatibility Guarantee, and replace any prior oral or written communications between Customer and IBM concerning the AIX Binary Compatibility Guarantee. 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 3 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. Each party accepts the terms of this Agreement by signing the AIX Binary Compatibility Guarantee Submission Form (or another document that incorporates it by reference) by hand.