



---

## USER LICENSE AGREEMENT FOR IBM DEVICE DRIVERS

**NOTICE: PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE PROGRAM AND DOCUMENTATION. IBM WILL ONLY LICENSE THIS PROGRAM AND DOCUMENTATION TO YOU IF YOU FIRST ACCEPT THE TERMS OF THIS AGREEMENT. BY USING THE PROGRAM AND DOCUMENTATION, YOU AGREE TO ABIDE BY THESE TERMS AND APPLICABLE COPYRIGHT LAWS. IBM LIMITS YOUR ACCEPTANCE OF THE PROGRAM AND DOCUMENTATION TO THE TERMS OF THIS AGREEMENT.**

The Program and Documentation is owned by International Business Machines Corporation or one of its subsidiaries (IBM) or IBM suppliers, and is copyrighted and licensed, not sold. IBM does not transfer title to this Program and Documentation to you. The terms of this Agreement apply to any additional license copy of the Program or Documentation that IBM authorizes you to make. The term "Program" means the original program and all whole or partial copies of it, including portions merged with other programs. A Program consists of machine-readable instructions and related license materials.

Under this Agreement, IBM provides you with a license to use the Program and Documentation only.

### 1. BACKGROUND / PURPOSE:

IBM provides certain device drivers and Documentation under this Agreement. The device drivers and library support that IBM provides under this Agreement are in object code form only. Appendix A of this Agreement indicates which device drivers, feature codes, etc. are available for use on server platforms that are supported. IBM uses announcements to withdraw service for device drivers, feature codes, etc., on hardware and/or operating system platforms. IBM reserves the right to change the Programs or Documentation at any time without prior notice.

### 2. DEFINITIONS:

**Derivative Work** is a work based on a preexisting work, including a compilation. A Derivative Work prepared without the authorization of the copyright owner of the preexisting work would constitute a copyright infringement.

**Documentation** is the Program documentation that IBM provides to you as indicated in Appendix A.

**Object Code** is machine-readable instructions in Object Code format. It is substantially in binary form and directly executable by a computer after suitable processing but without the intervening steps of compilation or assembly.

**Program** is the IBM device and/or library driver as indicated in Appendix A.

### 3. LICENSE GRANT:

IBM grants you a revocable, nontransferable, nonexclusive, worldwide, paid-up copyright license to:

- a) use the Program and Documentation solely on the platforms and solely with the applicable IBM devices described in Appendix A of this Agreement; and
- b) maintain one copy of the Program for backup purposes only.

Your license to the Programs and Documentation terminates when you no longer rightfully possess the IBM device described in Appendix A.

This Agreement does not grant you any right or license to prepare Derivative Works of the Program and Documentation. Nothing in this Agreement grants either party any rights or licenses under any patents or patent applications regardless of whether use and/or execution of the software licensed herein may be construed to practice one or more patents.

### 4. RESPONSIBILITIES:

You agree to use the Program and Documentation only with the IBM devices described in Appendix A of this Agreement.

You will not:

- a) otherwise copy, display, transfer, adopt, modify or distribute in any form, the Program and Documentation, except as IBM expressly authorizes in the Documentation;
- b) decompile, disassemble, reverse engineer, or in any way modify the Program or Documentation;
- c) sell, rent, lease, sublicense the Program or Documentation, unless explicitly permitted by law without the possibility of contractual waiver; and sublicense or assign the license for the Program and Documentation.

### 5. CONFIDENTIAL INFORMATION:

Any information which either party may disclose to the other party shall not be deemed to be confidential. If the parties require the exchange of confidential information, such exchange will be made under a separate written confidentiality agreement.

#### **6. LIMITATION OF LIABILITY:**

IN NO EVENT SHALL IBM OR ITS SUPPLIERS BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF DATA, LOST PROFITS, BUSINESS INTERRUPTION OR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

You acknowledge that circumstances may arise where, because of a default on IBM's part or other liability, you may be entitled to recover damages. Under any such circumstances, you agree that in each such instance, regardless of the basis on which you are entitled to claim damages, IBM shall be liable only up to an amount equal to five thousand U.S. dollars (\$5,000). This limitation will not apply to claims relating to bodily injury (including death), and damage to real property and personal property.

#### **7. TERMINATION:**

**Termination for Cause.** If either party fails to perform its obligations hereunder, then the other party may terminate this Agreement or the license granted hereunder for cause.

**Effect of Termination.** The rights and licenses granted to you under this Agreement shall automatically terminate upon the termination of this Agreement.

#### **8. REPRESENTATIONS AND WARRANTIES:**

THE PROGRAM AND DOCUMENTATION IS PROVIDED ON AN "AS IS" BASIS. IBM MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROGRAM AND DOCUMENTATION. IBM DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE PROGRAM AND DOCUMENTATION REMAINS WITH YOU.

#### **9. GENERAL PROVISIONS:**

**Transfer.** You may transfer possession of the program and its media and Documentation to another party with the transfer of the IBM device described in Appendix A on which such Program is used with. If you do so, you must give the other party a copy of these terms and provide all user documentation to that party, and such party must first agree to such terms before it uses the Program and Documentation. Upon transfer of the Program and Documentation, you must destroy all your copies of the Program and Documentation.

**Severability.** If any provision of this Agreement is found to be illegal or unenforceable, the remainder of this Agreement shall continue in full force and effect provided that the Agreement still effectuates the parties' original intent.

**Governing Law and Jury Trial Waiver.** This Agreement shall be governed by the laws of the State of New York, excluding its conflict of law rules. Each party hereby agrees to waive its rights to a trial by jury.

**Modifications.** No modification to this Agreement, nor any waiver of any rights, shall be effective unless agreed to in a writing that is executed by both parties, and the waiver of any breach or default of this Agreement shall not constitute a waiver of any other right or of any subsequent breach or default.

**Limitations on Legal Actions.** Neither party will bring a legal action against the other more than two (2) years after the cause of action arose. Both parties will act in good faith to resolve disputes.

**Order of Precedence.** In the event of a conflict in terms between this Agreement and another agreement, the terms of this Agreement shall take precedence and prevail over such other terms.

**Entire Agreement.** This Agreement constitutes the entire and exclusive agreement between the parties with respect to this subject matter. All previous discussions and agreements with respect to this subject matter are superseded by this Agreement.

## APPENDIX A

This Appendix indicates:

1. the name of the Program or Programs supported by this license;
2. the name of the associated Documentation for the Program or Programs;
3. with which specific IBM devices the Program and Documentation are to be used; and what specific Operating Systems environments in which the Program and Documentation are supported.

### **Program:**

- IBM Tape Device and Library Driver, known as the AIX Tape and Medium Changer Device Driver on IBM AIX, the Linux Device Driver on Linux, the Solaris Device Driver on Oracle Solaris, the HP-UX Device Driver on Hewlett-Packard HP-UX, the Windows Device Driver on Microsoft Windows Server.

### **Documentation:**

- IBM Tape Device Drivers Installation and User's Guide.

### **IBM Devices and Supported Operating Systems:**

- For details on supported tape attachment please refer to the System Storage Interoperation Center website: <http://www.ibm.com/systems/support/storage/config/ssic/>
- Tivoli Storage Manager Certified Virtual Tape Library Devices, when used with and only with Tivoli Storage Manager, as specified by the "Ready for Tivoli" program and listed as such on [www-306.ibm.com/software/sysmgmt/products/support/IBM\\_TSM\\_Supported\\_Devices\\_for\\_AIXHPSUNWIN.html#Virtual%20Tape%20Libraries](http://www-306.ibm.com/software/sysmgmt/products/support/IBM_TSM_Supported_Devices_for_AIXHPSUNWIN.html#Virtual%20Tape%20Libraries) which require use of Program listed directly above. Operating Systems supported by Devices, per first bullet directly above, based on an emulation mode of same type physical device.

### **Program:**

- IBM Enterprise Tape Library Driver, known as the AIX 3494 Enterprise Tape Library Driver on IBM AIX, the Solaris 3494 Enterprise Tape Library Driver on Oracle Solaris, the HP-UX 3494 Enterprise Library Driver on Hewlett-Packard HP-UX, the Linux 3494 Enterprise Tape Library Driver on Linux, the Microsoft Windows 3494 Enterprise Tape Library Service on Microsoft Windows Server.

### **Documentation:**

- IBM Tape Device Drivers Installation and User's Guide.

### **IBM devices:**

- IBM TotalStorage Enterprise Automated Tape Library 3494

### **Supported Operating Systems:**

- For details on supported tape attachment please refer to the System Storage Interoperation Center website: <http://www.ibm.com/systems/support/storage/config/ssic/>