



STATE OF UTAH COOPERATIVE CONTRACT AMENDMENT

AMENDMENT #: 6

CONTRACT #: AR2472

Starting Date: Unchanged

Expiration Date: Unchanged

TO BE ATTACHED AND MADE PART OF the specified contract by and between the State of Utah Division of Purchasing and Carahsoft Technology Corporation (Referred to as CONTRACTOR).

BOTH PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

Attachment E in the master agreement is hereby amended as follows:

1. The Riskconnect Master Services Agreement attached herein this Amendment 6 is made a part of Attachment E.
2. The IBM Cloud Services Agreement attached herein this Amendment 6 is made a part of Attachment E

Nothing within this amendment is to be construed to amend any term or condition provided outside of Attachment E.

Effective Date of Amendment: 11/7/2017

All other terms and conditions of the contract, including those previously modified, shall remain in full force and effect.
IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

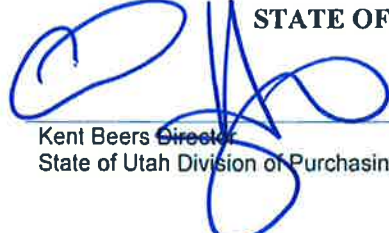
CONTRACTOR

 11-6-17
Contractor's Signature Date

Ellen Lord
Contractor's Name (Print)

Contracts Manager
Title (Print)

STATE OF UTAH

 11/6/17
Kent Beers Director
State of Utah Division of Purchasing Date

Purchasing Agent
Solomon Kingston

Phone #
801-538-3228

e-mail
skingston@utah.gov

Contract #
AR2472



MASTER SERVICES AGREEMENT

This Master Services Agreement (the "Agreement") is made by and between **RISKCONNECT, INC.**, a Delaware corporation with a principal office located at 1701 Barrett Lakes Boulevard, Suite 500, Kennesaw, Georgia 30144, and its Affiliates (collectively, herein "**Riskconnect**") and _____, a _____ corporation, with offices located at _____, and its Affiliates (herein collectively referred to as "**You**", or "**Your**"). This Agreement is effective as of the later of the dates beneath the parties' signatures below (the "**Effective Date**").

RISKCONNECT TERMS OF USE:

1. GENERAL

1.1 Riskconnect will provide Your Users with use of Your configuration of the Riskconnect Service as outlined in this Agreement. The implementation services provided by Riskconnect will be specified in one or more statements of work (each, a "**Statement of Work**" or "**SOW**") including any associated and mutually signed project change orders to an applicable SOW (each, a "**Project Change Order**" or "**PCO**"), and any subscription services and licenses will be specified in a subscription order (each a "**Subscription Order**" or "**Order**"), in each case which references this Agreement and is executed by both parties. Capitalized terms used without definition in this Agreement have the meanings specified in Section 1.2 below.

1.2 DEFINITIONS

As used in this Agreement and in any Statement of Work, Subscription Order, or addendum, now or hereafter, associated herewith:

- i. "**Affiliate**" means with respect to a party, any corporation, partnership, firm, joint venture, limited liability company, association, joint-stock company, trust, unincorporated organization, governmental organization or body that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with that party. The term "**control**" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, organization or body, whether through the ownership of voting securities or otherwise.

- ii. **"Agreement"** means the terms of this agreement, those online terms of use, any applicable Statement of Work, Subscription Order, and any materials available on the Riskconnect website specifically incorporated by reference herein, as such materials, may be updated by Riskconnect from time to time in its sole discretion (Riskconnect will notify You of any said updates); If there is a dispute between the express terms of this Agreement and the terms and conditions of any web page, statement of work, work order or purchase order, the express terms and conditions of this Agreement shall prevail.
- iii. **"Confidential Information"** shall have the meaning given in Section 2.5
- iv. **"Content"** means the audio and visual information, documents, software, products and services contained or made available to You in the course of using the Riskconnect Service (excluding Your Data);
- v. **"Data Infrastructure"** means the data processing abilities within the Riskconnect Service, including but not limited to, data and file storage, data security, disaster recovery, sandbox environment (quality assurance), platform data processing functionality, and history tracking within Your organization's account configured in the Riskconnect Service platform.
- vi. **"Effective Date"** means the date set forth on the first page of this Agreement;
- vii. **"Initial Term"** means the contract term, consisting of three (3) separate Subscription Terms, beginning on the Effective Date and ending thirty-six (36) months thereafter;
- viii. **"Integrated Risk Management Services" (IRMS)** is the foundational Riskconnect Application that comprises the minimum subscriptions for User licenses, Data Infrastructure, modules, and features as described in the initial Subscription Order and as further detailed in Exhibit E (Riskconnect Application Frameworks and User Licenses).
- ix. **"Intellectual Property Rights"** means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how, screenshots and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world.
- x. **"Licensor(s)" or "Riskconnect's Licensors"** means third party platform and utility providers of Riskconnect including but not limited to salesforce.com (cloud platform provider), Rackspace (provider of secure server for converting source data), Cognos (IBM's business intelligence tool), or other providers necessary for Riskconnect to provide the Riskconnect Service;
- xi. **"Non-Compliant Data"** shall have the meaning given in Section 9.3.2.
- xii. **"Platform Service"** means the online, web-based platform service provided by salesforce.com to Riskconnect in connection with Riskconnect's provision of the Riskconnect Service.
- xiii. **"Professional Services"** means any consulting, training, implementation, configuration ongoing support, or other professional services provided by Riskconnect and paid by You pursuant to the Agreement, including the applicable Statement of Work.
 - i. **"Project Change Order"** means the document which is signed by both parties to memorialize a significant change to business, technical or financial terms in a SOW (or an applicable Subscription Order or Addendum).
- xiv. **"Regulated Data"** means personal health information as defined by federal HIPAA regulations, financial information within the scope of the Gramm-Leach-Bliley Act, payment card data within the scope of PCI-DSS, data subject to laws protecting specific types of data such as social security numbers and genetic data, and, for data processed outside of the United States, "personal data" and "personal information" as defined by the country within whose borders the data originates and the country within whose borders the data is processed.

- xv. **"Riskconnect Application"** or **"Riskconnect Framework"** means a software product of Riskconnect, incorporating specific modules and features as identified in an applicable Subscription Order and further detailed in Exhibit E (Riskconnect Application Frameworks and User Licenses) for which a subscription is required to grant Your User(s) the right to access, use, and configure (dependent upon User profile).
- xvi. **"Riskconnect Service"** means Your specific edition of Riskconnect's software-as-a-service ("SaaS") which include the Platform Service, Riskconnect Applications, and deliverables expressly set forth in each Statement of Work, Subscription Order, and/or addendum, and that are accessible via <http://www.riskconnect.com> or another designated web site or IP address, or ancillary online or offline products and services provided to You by Riskconnect, to which You are being granted access under this Agreement.
- xvii. **"Riskconnect Technology"** means all of Riskconnect's and its Licensors' proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to You by Riskconnect in providing the Riskconnect Service.
- xviii. **"Software"** means the proprietary computer software programs of Riskconnect and its third party software licensors and all related materials, improvements, updates, licensed internal code, embedded third party software, new releases, fixes, enhancements, derivative products and information utilized by Riskconnect in providing You access to the Riskconnect Service and other services under this Agreement.
- xix. **"Statement of Work"** or **"SOW"** means the document agreed and signed by both parties that specifies the objectives, scope of work, initial implementation deliverables, and fees contracted by You in connection with Your configuration of the Riskconnect Service.
- xx. **"Subscription Order"** or **"Order"** means the document agreed and signed by both parties that specifies the Riskconnect Applications, any ongoing subscription services, and licenses subscribed to by You and the associated fees for such subscription services and licenses.
- xxi. **"Subscription Term(s)"** means the contract year [measured from the Agreement's Effective Date] during which a specified number of Users have a right to use the Riskconnect Service pursuant to the Statement of Work and related Subscription Order(s).
- xxii. **"System Administrator(s)"** means those User(s) designated by You who are authorized to purchase subscriptions by executing Subscription Order(s) and to create User accounts and otherwise administer Your use of the Riskconnect Service.
- xxiii. **"User(s)"** means an individual, including Your (including Your corporate Affiliates') employees, representatives, consultants, contractors or agents who are appropriately authorized by You to use Your configuration of the Riskconnect Service and have been issued a unique user identification and password by Your System Administrator (or by Riskconnect at Your request).
- xxiv. **"You"** and **"Your"** means the customer entity that has contracted to purchase subscriptions to use Your configuration of the Riskconnect Service.
- xxv. **"Your Data"** means the information or material, including Your Confidential Information and Regulated Data, that Your Users submit, upload, or transfer, or cause to be submitted, uploaded, or transferred to the Riskconnect Service.

2. **PRIVACY & SECURITY; DATA; CONFIDENTIAL INFORMATION**

- 2.1 You shall always own Your Data.

2.2 Riskconnect shall maintain and handle all of Your Data with commercially reasonable physical, electronic, and procedural safeguards to protect and preserve the confidentiality and security of Your Data (including personal information) in accordance with applicable data protection legislative requirements and as further described in Riskconnect's Privacy Statement located at <http://riskconnect.com/privacy-policy> which is incorporated herein by reference to the extent that it does not conflict with the express terms of this Agreement.

2.3 Riskconnect restricts access to Your Data to Riskconnect employees, affiliates' employees, or others who need to know that information to provide services to You or in the course of conducting our normal business operations. Your Data (including personal information) may be accessed by Riskconnect staff or Riskconnect's Licensors and, transferred to, and/or stored at, a destination outside the European Economic Area (EEA) where the data protection laws may be of a lower standard than in the EEA. Regardless of location or whether the person is a Riskconnect employee or contractor, Riskconnect will impose the same data protection safeguards that Riskconnect deploys inside the EEA.

2.4 Riskconnect will use Your Data for the purposes described in this Agreement. Riskconnect will not sell, license, transmit or disclose this information outside of Riskconnect unless: (1) You expressly authorize Riskconnect to do so; (2) it is necessary to allow Riskconnect's Licensors to perform services under this Agreement; (3) in order to provide Riskconnect products or services to You; (4) it is necessary in connection with a sale of all or substantially all of the assets of Riskconnect or the merger of Riskconnect into another entity or any consolidation, share exchange, combination, reorganization, or like transaction in which Riskconnect is not the survivor; or (5) otherwise as Riskconnect is required by law. Notwithstanding the foregoing, Riskconnect is responsible for any disclosures of Your Data by Riskconnect's Licensors made contrary to the terms of this Agreement.

2.5 As used herein, "Confidential Information" means all confidential and proprietary information of a party disclosed to the other party, whether orally, in writing or electronically, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the terms and conditions of this Agreement (including pricing), Your Data, the Riskconnect Service, business and marketing plans, screenshots, technology and technical information, product designs, and business processes. Confidential Information (except for Your Data) shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the other party; (ii) was known to a party prior to its disclosure by the other party without breach of any obligation owed to the other party; (iii) was independently developed by a party without breach of any obligation owed to the other party; or (iv) is received from a third party without breach of any obligation owed to the other party.

2.6 Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind (but in no event using less than reasonable care). If a party is compelled by law to disclose Confidential Information of the other party, it shall provide the other party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the other party's cost, if the other party wishes to contest the disclosure.

2.7 If a party discloses or uses (or threatens to disclose or use) any Confidential Information of the other party in breach of confidentiality protections hereunder, the other party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

2.8 You warrant that, prior to being granted access to the Riskconnect Service, each of Your Users will have agreed to be bound by confidentiality obligations no less stringent than those in this Agreement.

3. RIGHT TO USE THE RISKCONNECT SERVICE; RESTRICTIONS

3.1 Subject to the terms and limitations set forth in this Agreement and provided that Your Users are in compliance with this Agreement, Riskconnect hereby grants to Your Users, on a subscription basis only, a revocable, worldwide, non-exclusive, non-sublicenseable, non-transferable (except as set forth in Section 13 (Assignment)), right for Your Users to use Your configuration of the Riskconnect Service and the services of its Licensors, solely for Your own internal business purposes and as specified in the exhibits attached hereto and incorporated herein. All rights not expressly granted to Your Users are reserved by Riskconnect and its Licensors. To the extent necessary in the provision of their services to You, Your Affiliates and Contractors are entitled to access and use the Riskconnect Service in accordance with this Agreement and are entitled to all rights and benefits granted to You hereunder as long as You remain accountable for their acts or omissions relating to this Agreement. "Contractor" means any third party employed or retained by You to perform services for or on Your behalf.

3.2 Only Your Users with valid User subscriptions may access the Riskconnect Service.

3.3 Notwithstanding any access Your Users may have to the services of Riskconnect's Licensors via Your configuration of the Riskconnect Service, Riskconnect is the sole provider of the Riskconnect Service and You are entering into a contractual relationship solely with Riskconnect. In the event that Riskconnect ceases operations or otherwise ceases or fails to provide the Riskconnect Service, Riskconnect's Licensors have no obligation to refund You any fees paid by You to Riskconnect or to provide You the Riskconnect Service (except as set forth in Section 10.3 herein or the attached **Exhibit D** (Platform Continuity Warranty)).

3.4 As an express condition of Your configuration of the Riskconnect Service and the services of Riskconnect's Licensors, You agree that You shall not (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, timeshare, provide on a service bureau basis or otherwise commercially exploit or make available to any third party the Riskconnect Service (or Riskconnect's Licensors) or the Content in any way; (ii) modify or make derivative works based upon the Riskconnect Service or the Content; (iii) create Internet "links" to the Riskconnect Service or "frame" or "mirror" any Content other than on Your own intranets or otherwise for Your own internal business purposes; or (iv) reverse engineer or access the Riskconnect Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Riskconnect Service, or (c) copy any ideas, features, functions or graphics of the Riskconnect Service. You also shall not (i) modify, copy or create derivative works based on the services of Riskconnect's Licensors; (ii) frame or mirror any content forming part of the services of Riskconnect's Licensors, other than on Your own intranets or otherwise for Your own internal business purposes; (iii) reverse engineer the services of Riskconnect's Licensors; or (iv) access the services of Riskconnect's Licensors in order to (A) build a competitive product or service, or (B) copy any ideas, features, functions or graphics of the services of Riskconnect's Licensors.

3.5 Your Users shall only access, use, and/or configure those modules and features associated with the applicable Riskconnect Application(s) to which You subscribe under this Agreement. If one of Your Users accesses, uses, configures, and/or replicates a Riskconnect Application module or feature within the Riskconnect Service other than those to which You have subscribed, then Riskconnect shall adjust Your subscriptions and invoice You for the additional Riskconnect Application.

3.6 User subscriptions cannot be shared or used by more than one individual User but You shall have the right to deactivate User-id's of one User and, for no additional charge, request Riskconnect to activate a new User-id of the same type for another User for the balance of the remaining Subscription Term. At all times, You shall not permit User-id sharing.

3.7 Your subscription to use Your configuration of the Riskconnect Service includes the use of products and services of Riskconnect's Licensors that are provided in Your configuration of the Riskconnect Service. Your subscription does not include a subscription to use applications provided directly by Riskconnect's Licensors outside of the Riskconnect Service.

3.8 You may use the Riskconnect Service only for Your internal business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights; (iii) send or store viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Riskconnect Service or the data contained therein; or (v) attempt to gain unauthorized access to the Riskconnect Service. The Riskconnect Service is restricted to: the management, administration, and reporting of risk management information; governance, risk and compliance (GRC); and/or environmental, health, & safety (EHS), if and to the extent expressly provided for in a Statement of Work signed by the parties.

3.9 (a) You are responsible for all activity occurring under Your User accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with Your use of the Riskconnect Service, including those related to data privacy, international communications and the transmission of technical, financial or personal data.

(b) Riskconnect reserves the right to immediately suspend access under any User ID which Riskconnect reasonably suspects poses a risk to the security of Your Data, the Riskconnect Service, or which Riskconnect reasonably suspects of activity that is in material breach of the terms of this Agreement.

4. ACCOUNT INFORMATION AND DATA

4.1 Your Data Generally. As the parties agree that You shall always own Your Data, You expressly agree to have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all of Your Data. Riskconnect shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any of Your Data caused by You or Your Users.

4.2 Integration of Non-Riskconnect Service Applications. Third parties may make available to You third-party products, services or applications unrelated to the Riskconnect Service and implementation and other consulting services ("Non-Riskconnect Service Applications"). Any acquisition by You of

such non-Riskconnect Service Applications, and any exchange of data between You and any third-party, is solely between You and such third party. Riskconnect does not warrant or support, and shall have no liability whatsoever for, any Non-Riskconnect Service Applications, whether or not they are designated by Riskconnect Service as “certified”, “compatible”, or otherwise.

4.3 **Modifications Performed By You.** Riskconnect does not warrant or support, and shall have no liability whatsoever for, any configuration, development, or data integration work to the Riskconnect Service that is performed by You or Your third parties. However, You may request Riskconnect to render support for modifications performed by You provided that such support shall be billable to You at Riskconnect’s hourly rate.

4.4 **Disaster Recovery.** Riskconnect protects its customers’ data by running the Riskconnect Service on geographically dispersed data centers with extensive backup, data archive, and failover capabilities. Disaster recovery plan includes: (1) Data backup procedures that create multiple backup copies of customers’ data, in near real time, at the disk level; and (2) A multi-level backup strategy that includes disk-to-disk-to-tape data backup in which tape backups serve as a secondary level of backup, not as the primary disaster-recovery data source. This disk-oriented model ensures maximum recovery speed with a minimum potential for data loss in the event of a disaster. Riskconnect maintains the right to amend this procedure from time to time to maintain industry best practices.

5. INTELLECTUAL PROPERTY OWNERSHIP

Riskconnect alone (and its Licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the Riskconnect Service, the Content, the Software, the Riskconnect Technology and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by You or any other party relating to the Riskconnect Service. This Agreement, including its Statements of Work, Subscription Order(s) and exhibits, constitutes a transaction for the Riskconnect Service; however, this Agreement does not convey to You any rights of ownership in or related to the Riskconnect Service, Riskconnect Technology, Software or the Intellectual Property Rights owned by Riskconnect and its Licensors, where applicable.

6. FEES AND PAYMENT

6.1 **Fees Generally.** As consideration for Your use of the Riskconnect Service, You shall pay Riskconnect the fees set out in each Statement of Work, and any Subscription Order(s) or addendum, in each case executed by both parties. **Exhibit A** (Statement of Work No. 1) and **Exhibit B** (Subscription Order No. 1) are attached hereto. Except as otherwise specified herein, in the foregoing exhibits, Subscription Order(s), or addenda, You acknowledge and agree that: (i) Riskconnect charges and collects in advance for use of the Riskconnect Service and all related services; (ii) fees are based on subscriptions subscribed and not actual usage, (iii) payment obligations are non-cancelable and fees paid are non-refundable, (iv) payment for the renewals of each Subscription Term is due on or before the renewal date of the Subscription Term; (v) quantities purchased cannot be decreased during the applicable Subscription Term; (vi) all travel expenses necessary to carry out Riskconnect’s deliverables under this Agreement and pre-approved by You will be invoiced separately; and (vii) payment hereunder shall be rendered in United States Dollars.

6.2 User Subscription Fees. In addition to the terms outlined in Section 6.1, You are responsible for paying for all User subscriptions and services ordered for an entire Subscription Term under the payment terms set forth herein in Section 6.4.

6.3 Billing. All fees are due on or before the renewal of a Subscription Term. Thirty (30) days prior to the renewal of a Subscription Term, Riskconnect will automatically issue You an invoice and You agree to pay thirty (30) calendar days from the invoice date. Riskconnect's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and You shall be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) taxes based solely on Riskconnect's income.

You agree to provide Riskconnect with complete and accurate billing and contact information, including Your legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact and tax exemption certificate number, if applicable. You agree to update this information within thirty (30) days of any change to it. If You believe Your bill is incorrect, You must contact Riskconnect in writing within thirty (30) days of receipt of the invoice with the amount in dispute in order to be eligible to receive an adjustment.

6.4 Fee Changes. Riskconnect reserves the right to modify its fees and charges, upon written notice to You at least seventy five (75) days' prior to the end of the then current Subscription Term, which notice may be provided to Your billing contact by e-mail; provided however, that: (i) Riskconnect shall not increase the fees and charges more than once in any consecutive twelve (12) month period; and (ii) any such increase shall not exceed six percent (6%) of the applicable fees or charges payable during the immediately preceding twelve (12) month period.

7. DELINQUENCIES, SUSPENSIONS, AND TERMINATION

7.1 Termination for Convenience. After the Initial Term, either party may terminate for any or no reason this Agreement, SOW, PCO or Subscription Order, or any portion thereof, if it notifies the other party in writing with at least sixty (60) calendar days prior to the expiration of then current Subscription Term.

7.2 Termination By You for Cause. In addition to any other rights granted to You in this Agreement or under law, You have the right to terminate this Agreement upon written notice due to:

- a) a material breach of a term, representation, or warranty under this Agreement (including a material breach under an Exhibit to this Agreement) by Riskconnect if such material breach is not remedied within thirty (30) days following receipt of written notice from You; or
- b) a third party's claim that the Riskconnect Service, Content, Data Infrastructure, Professional Services, Riskconnect Technology, Software, any other services and products provided by Riskconnect, Riskconnect Licensors or other third parties the and Intellectual Property Rights associated thereof, infringes upon such party's intellectual property right.

7.3 Termination/Suspension by Riskconnect for Cause. In addition to any other rights granted to Riskconnect herein or under law, Riskconnect reserves the right, upon written notice to You, to suspend or terminate this Agreement and/or Your access to and use of the Riskconnect Service due to:

- a) any amounts owed by You that are delinquent greater than fifteen (15)

calendar days; or

b) a material breach of the terms of this Agreement, other than a payment obligation, by You or Your Users if such breach is not remedied within thirty (30) days following receipt of notice of such breach from Riskconnect; or

(c) a third party's claim that Your use of the Riskconnect Service, Your Data, Your Intellectual Property, or that of Your Contractors, infringes upon such party's intellectual property rights.

7.4 Delinquent Invoices. Delinquent and undisputed portions of invoices (accounts in arrears) are subject to late charges of 1.5% per month on any outstanding balance in default, or the maximum permitted by law, whichever is less, plus reasonable expenses of collection. The portions of invoices that are subject to a good-faith billing dispute under Section 6.4 (Billing) shall not be considered delinquent for purposes of this Agreement.

7.5 Suspension of Service & Acceleration.

7.5.1 You will continue to be charged and accountable for User subscriptions during any period of suspension regardless of length of suspension. Riskconnect reserves the right to be compensated for any overhead (at actual cost) associated with Your suspension, such fees not to exceed \$1,500, in addition to all fees in arrears accrued during the suspension period in the event You are suspended and thereafter request access to the Riskconnect Service.

7.6 Effect of Termination.

7.6.1 If You terminate for cause or if Riskconnect terminates for convenience, You will only be obligated to pay the amounts then due as calculated up to the date of termination and, if applicable, You will be reimbursed a prorated amount of unused, prepaid fees.

If Riskconnect terminates for cause or if You terminate for convenience, You agree there will be no refund of any fees prepaid by You and, if a balance is still due on Your account, then You agree that Riskconnect may bill You for such unpaid fees.

7.6.2 Data Portability and Deletion. In the event this Agreement expires or terminates for any reason, Riskconnect shall make available to You a file of Your Data in CSV file format within 30 days of the effective date of termination. Furthermore, You agree and acknowledge that Riskconnect has no obligation to retain Your Data and thus Riskconnect may delete Your Data after thirty (30) of the effective date of termination of the Agreement.

8. RENEWAL; CHANGE IN NUMBER OF SUBSCRIPTIONS

8.1 Term; Renewal. The initial term of this Agreement commences on the Effective Date and shall continue for a period of three (3) years (each year a Subscription Term) unless this Agreement is terminated sooner in accordance with this Agreement (the "Initial Term"). Thereafter, this Agreement will automatically extend for successive renewal Subscription Terms equal to one year at Riskconnect's then stated rates unless either party notifies the other party in writing of such party's election to terminate this Agreement for convenience in accordance with Section 7.1.

8.2. Changes to Your Subscriptions.

a. General Terms.

- i. You may add new subscriptions at any time during a Subscription Term, and those new subscriptions shall be prorated from the effective date of the applicable Subscription Order.
 - ii. All reductions to subscriptions must be communicated to Riskconnect in writing via a Subscription Order executed by the parties with at least sixty (60) days remaining in the then current Subscription Term. For clarity, if You choose to reduce any subscriptions, then You agree there will be no refund (prorated or otherwise) of subscription fees already paid for the Subscription Term in which You provide the written notice and the reduction in subscriptions will take effect on the first day of the next Subscription Term. *Reductions may impact applicable discounts and credits issued to You.*
 - iii. All subscriptions ordered shall be automatically renewed upon the annual anniversary of the Effective Date of this Agreement unless (i) You notify Riskconnect of Your intent to reduce a subscription in accordance with this Section 8, or (ii) unless either party elects to terminate this Agreement in accordance with Section 7.
- b. **Riskconnect Applications.** While Your subscription to a Riskconnect Application contains solutions, modules, and features that may not be individually modified, You may remove Your subscription to a Riskconnect Application in accordance with Section 8(a) above; provided, however, removal of Your IRMS subscription is not permitted unless it is in accordance with a termination of this Agreement.
 - c. **Data Infrastructure.** You are afforded a certain quantity of Data Infrastructure included with Your IRMS subscription. It shall be Your System Administrator's responsibility to monitor Your own Data Infrastructure usage within the Riskconnect Service. The Riskconnect Service includes administrative features that permit Your System Administrator(s) to view and monitor Your utilization of data or file storage space in the Riskconnect Data Infrastructure. If You exceed the amount of data or file storage subscribed by You, You shall be charged for any resulting Data Infrastructure subscription fees. Provided that any such changes do not adversely impact Your Data Infrastructure limits or rights as agreed to in this Agreement, Riskconnect reserves the right to establish or modify its general practices and limits relating to data infrastructure pertaining to Your Data with thirty (30) days' notice of such modification.

9. PROFESSIONAL SERVICES, USER ACCEPTANCE, SUPPORT, AND UPGRADES.

9.1 **Professional Services.** You shall appoint a qualified member of Your staff who will operate as Your primary interface between You and Riskconnect and who will ensure that Your personnel interface with Riskconnect personnel in a manner conducive to facilitating Riskconnect's Professional Services or deliverables under this Agreement, including the timely evaluation and testing of Professional Services and project deliverables as set forth in Exhibit A (or any subsequent SOW, PCO, or addendum).

9.2 **User Acceptance.** You will have two (2) weeks from receipt of a deliverable by Riskconnect (herein, "Testing Period") to test and accept the deliverable. If You need to reasonably extend the Testing Period, the parties may mutually agree in writing to a new date for completion of testing by You. If You do not provide acceptance or rejection within the Testing Period, the applicable deliverable(s) shall be deemed to have been accepted. In the case of any rejection, You shall provide

Riskconnect reasonably detailed, written reasons for Your determination and Riskconnect shall use best efforts to correct critical errors (as determined by You) and use commercially reasonable efforts to correct all other errors reasonably requested by You and accepted by Riskconnect. In the event You reject deliverable(s) a second time and Riskconnect disagrees with such rejection, then the parties shall escalate the issue(s) to senior management of both parties for mutual resolution.

9.3 Support.

9.3.1 For the benefit of Your Users, Riskconnect shall provide the Riskconnect Service and Riskconnect's support services to You as set forth in **Exhibit C** (Uptime; Support Services & Upgrades) and You agree to pay for these Services as specified in the applicable SOW, Subscription Order, or PCO. If You exceed Your subscribed number of annual support hours in a given Subscription Term, then Riskconnect shall invoice You for those additional hours used at Riskconnect's current hourly rate, and You agree to pay in accordance with this Agreement.

9.3.2 **Data Transfer Protocols (DTPs).** Riskconnect may receive Your Data that may be sent from You or Your third parties in order to perform data interface services. Unless otherwise specified in writing, Riskconnect is responsible for the execution and verification of all implementation and ongoing data interfaces provided that the following DTPs are followed:

1. You shall be responsible for the delivery to Riskconnect of electronic files for data interfaces in generally accepted, standard, readable formats (e.g. CSV files or flat delimited files).
 - a. In the case of a spreadsheet load, You will prepare Your Data in an acceptable import format, including combining data into one single tab, one row per record, and removing any formatting (subtotals and titles). In the event Your Data in an Excel load is not in an acceptable format, Riskconnect will utilize budgeted service hours, or if You don't have budgeted service hours You can execute an order for the service hours needed to correct formatting of Your Data.
 - b. While Riskconnect's platform will enable You to improve the overall quality of Your Data, Riskconnect cannot be responsible for the quality of Your Data as it is presented to Riskconnect. Therefore, any work effort by Riskconnect on researching or cleaning up Your Data, consulting with You or Your data provider regarding data quality issues, or reloading Your Data due to its poor quality is billable to You outside of the scope of the applicable SOW/Addendum.
 - c. Control totals must be provided, financial data must balance to control totals, and claims must balance to transactions; all data in a given file must be of the same evaluation date.
2. With guidance from Riskconnect, You are responsible for making all arrangements with third parties to secure data for data interfaces to be performed by Riskconnect, and You are responsible for any fees associated with the request in order for Your third party to perform the work. Riskconnect will not be responsible for third party costs in generating or transmitting Your Data from or to Your data providers (e.g.) third party administrators (TPAs);
3. For each one-time implementation data interface to be performed by Riskconnect, You shall provide Riskconnect an initial file and a go-live file and the go-live file must be in the same layout and format as the initial file.

4. For ongoing feeds, files will be sent consistently within a specific, but reasonable timeframe window that supports automation.
5. You shall be responsible for the delivery of a data dictionary for each data interface performed by Riskconnect.
6. Tables and fields provided to Riskconnect for data interfaces must have consistently defined relationships (referential integrity). Tables must be received as merged (denormalized) to provide a single flat file for each component (i.e., Claim, Claim Transactions, and/or Location Hierarchy). Tables must not contain duplicate unique keys, and related tables/files must have valid foreign keys. Table structures and field formats must remain consistent in subsequent submissions.
7. You shall ensure all data transmitted by You or on Your behalf to or from Riskconnect or the Riskconnect Service to be encrypted using PGP or encryption.
8. If You choose to transmit data, or authorize a third party to transmit data, to or from Riskconnect that contains personal information subject to protection under applicable laws and regulations in a manner that is not compliant with Riskconnect's DTPs as set forth herein and/or provided to You subsequent to the Agreement and attached hereto (herein the "Non-Compliant Data"), then You agree that:
 - a. Riskconnect shall not be liable for and shall not be required to hold harmless, provide defense, or provide indemnification for any breach of Non-Compliant Data or for errors or omissions in the transmission of such Non-Compliant Data not caused by Riskconnect; and
 - b. Riskconnect shall not be required to make such Non-Compliant Data any more secure or compliant with the applicable laws than the form in which such Non-Compliant Data is received by Riskconnect; provided that Riskconnect treats the Non-Compliant Data in the same way that it treats all Your Data.

10. WARRANTIES AND DISCLAIMER OF WARRANTIES.

10.1 Riskconnect's Warranties. Riskconnect warrants that: (a) it has the right to grant the subscription(s) to use the Software as set out in this Agreement; (b) the Software will materially perform in conformity with this Agreement; (c) it has not knowingly included any viruses with the Software and the medium on which it was originally provided to You; and (d) support and services will be provided with reasonable skill and care conforming to generally accepted software industry standards.

10.2 Your Warranties. You represent and warrant that: (a) You and Your Users, where applicable, own all right, title, and interest in and to, or otherwise have the right to grant the use of Your Data and associated Intellectual Property Rights as set forth in this Agreement; (b) Your Data will not knowingly infringe upon a third party's intellectual property right, including, without limitation, copyright, patent, or trademark; and (c) You and Your Users shall not knowingly include any viruses or malware with Your Data.

10.3 Platform Continuity Warranty. The only warranty offered by Riskconnect's platform licensor, salesforce.com (herein "SFDC"), to You in connection with this Agreement is expressly provided in **Exhibit D** attached hereto and incorporated herein.

10.4 LICENSORS' WARRANTY DISCLAIMER. *NOTHING IN THIS SECTION SHALL LIMIT RISKONNECT'S WARRANTIES OR INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING THOSE THAT RISKONNECT MAKES AND/OR PROVIDES ON BEHALF OF RISKONNECT'S LICENSORS.* EXCEPT AS PROVIDED IN SECTION 10.3, RISKONNECT'S LICENSORS MAKE NO WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO WITH RESPECT TO THE PLATFORM SERVICE, AND/OR THE RISKONNECT SERVICE, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. RISKONNECT'S LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE RISKONNECT SERVICE. RISKONNECT'S LICENSORS DO NOT REPRESENT OR WARRANT THAT: (A) THE RISKONNECT SERVICE WILL BE AVAILABLE, SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE; (B) THE RISKONNECT SERVICE OR ANY OF THE PRODUCTS AND SERVICES OFFERED BY RISKONNECT'S LICENSORS WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS; (C) ANY DATA STORED USING THE RISKONNECT SERVICE WILL BE ACCURATE, RELIABLE, OR SECURE; (D) ERRORS OR DEFECTS IN THE RISKONNECT SERVICE WILL BE CORRECTED; OR (E) THE RISKONNECT SERVICE OR THE INFRASTRUCTURE USED BY RISKONNECT TO MAKE THE RISKONNECT SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, RISKONNECT'S LICENSORS DISCLAIM ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE PLATFORM SERVICE, THE RISKONNECT SERVICE, AND ANY OF THE PRODUCTS AND SERVICES OFFERED BY RISKONNECT'S LICENSORS, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

10.4 EACH PARTY WILL UNDERTAKE COMMERCIALY REASONABLE EFFORTS TO MITIGATE ANY LOSS OR CLAIM RELATED TO A BREACH OF WARRANTY BY THE OTHER PARTY.

10.5 THE ABOVE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE.

11. INDEMNIFICATION

11.1 Your Indemnification Obligations. Subject to Section 11.3 below, You shall defend, indemnify, and hold Riskconnect, its Licensors and each such party's parent organizations, subsidiaries, Affiliates, officers, directors and employees harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs) arising out of or in connection with: (i) a third party claim alleging that use of Your Data infringes the rights of, or has caused harm to, a third party; (ii) a third party claim alleging that a breach of any of Your representations and warranties; or (iii) a third party claim alleging Your use of Confidential Information or Intellectual Property Rights of Riskconnect or its Licensors is in violation of this Agreement.

You and Your respective insurers shall not be liable for and shall not be required to hold harmless, provide defense or indemnification for Riskconnect to the extent Riskconnect is required to indemnify You under Section 11.2 below.

11.2 Riskconnect's Indemnification Obligations. Subject to Section 11.3 below, Riskconnect shall defend, indemnify, and hold You and Your subsidiaries, Affiliates, officers, directors and employees harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs) arising out of or in connection with: (i) a third party claim alleging that the Riskconnect Service, Content, Software or Riskconnect Technology infringes or misappropriates the rights of, or has caused harm to, a third party; (ii) a third-party claim alleging a breach of any Riskconnect's representations and warranties in this Agreement; or (iii) a third-party claim alleging Riskconnect's use of Your Data is in violation of this Agreement.

Riskconnect and Riskconnect's respective insurers shall not be liable for and shall not be required to hold harmless, provide defense or indemnification for You to the extent You are required to indemnify Riskconnect under Section 11.1 above, or for errors and omissions caused by third parties that You utilize to transmit data to or from Riskconnect.

11.3 As an express condition of the foregoing indemnification obligations, the parties hereby agree that:

(i) the indemnified party shall promptly notify the indemnifying party in writing for any claim for which indemnification is sought;

(ii) the indemnified party shall cooperate with all reasonable requests of the indemnifying party (at the indemnifying party's expense) in defending or settling such claim.

(iii) the indemnifying party shall be allowed to control the defense and settlement of such claim;

(iv) the indemnifying party may not settle any claim that includes an admission of

liability, fault, negligence or wrongdoing on the part of the indemnified party unless:

(1) the indemnified party provides prior written consent, or

(2) unless the indemnifying party and the third party(ies) unconditionally release the indemnified party of all liability that is the subject of indemnification obligation and such settlement does not adversely affect the indemnified party's business;

(v) the indemnified party shall have the right, at its option and expense, to participate in the defense of any action, suit or proceeding relating to such a claim through counsel of its own choosing;

(vi) each indemnified party will undertake commercially reasonable efforts to mitigate any loss or liability resulting from an indemnification claim related to or arising out of this Agreement.

12. LIMITATION OF LIABILITY

12.1 EXCEPT FOR EACH PARTY'S CONFIDENTIALITY, INTELLECTUAL PROPERTY INFRINGEMENT OR INDEMNIFICATION OBLIGATIONS HEREUNDER: (a) IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY WITH RESPECT TO ANY CLAIM ARISING OUT OF THIS AGREEMENT EXCEED THE AMOUNTS ACTUALLY PAID BY YOU UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM; AND (b) IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY LOST PROFITS, REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12.2 TO THE EXTENT THAT ANY CLAIMS ARISE FROM EITHER PARTY'S CONFIDENTIALITY, INTELLECTUAL PROPERTY INFRINGEMENT OR INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT SHALL THE LIABLE PARTY'S AGGREGATE LIABILITY HEREUNDER EXCEED \$3,000,000.

12.3 THE ABOVE LIMITATIONS WILL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER THIS AGREEMENT.

12.4 THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY.

12.5 IN NO EVENT SHALL RISKONNECT'S LICENSORS HAVE ANY LIABILITY TO YOU OR ANY USER FOR ANY DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR DAMAGES BASED ON LOST PROFITS, HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12.6 THE FOREGOING DISCLAIMERS AND LIMITATIONS WILL APPLY TO THE EXTENT PERMITTED BY LAW.

13. ASSIGNMENT.

13.1 Neither party may assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the other party's prior written approval (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety without the other party's consent to (i) a parent or subsidiary or (ii) in connection with a merger, acquisition, corporate reorganization, change in control, or sale of all or substantially all of its assets.

13.2 Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. In the event of such a termination by You, Riskconnect will refund to You any prepaid fees covering the remainder of the applicable Subscription Term in which termination is exercised.

13.3 Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

13.4 Any purported assignment in violation of this section shall be void.

14. GENERAL PROVISIONS

14.1 Disputes; Mediation; Binding Arbitration; Governing Law; Emergency Relief. All claims and disputes arising under or relating to this Agreement between the parties shall first be resolved by mediation with written notice to the other party of its intent to mediate. In the event that mediation does not resolve the dispute within forty-five (45) days of said notice, all claims and disputes arising under or relating to this Agreement are to be settled by binding arbitration under Georgia law in Atlanta, Georgia unless another location is mutually agreeable to the parties. The arbitration shall be conducted on a confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration Association (AAA). Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys' fees. Any such arbitration shall be conducted by an arbitrator experienced in cloud-based web services and shall include a written record of the arbitration hearing. The parties reserve the right to object to any individual who shall be employed by or affiliated with a competing organization or entity. Judgment upon the award of arbitration may be entered in any court of competent jurisdiction. For emergency or interim relief, the parties also agree that the AAA Optional Rules for Emergency Measures of Protection shall apply to the proceedings.

14.2 Entire Agreement; Order of Precedence. This Agreement, together with the Statement of Work and any applicable Subscription Order(s), comprises the entire agreement between You and Riskconnect and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein. In the event of any inconsistencies between the Master Services Agreement and any SOW, PCO, or exhibit, the conflict shall be resolved in the following order of descending priority: (1) Master Services Agreement, (2) SOW, (3) Subscription Order, (4) PCO, and (5) any other applicable exhibit. No text or information set forth on any other purchase order, preprinted form or other document (not included in this Agreement) shall add to or vary the terms and conditions of this Agreement unless otherwise signed by authorized representatives of the parties (in the case of Riskconnect, this shall mean the CEO or CFO).

14.3 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect.

14.4 Relationship of the Parties. No joint venture, partnership, employment, or agency relationship exists between You and Riskconnect as a result of this Agreement or use of the Riskconnect Service.

14.5 Third Party Beneficiaries. There are no third party beneficiaries to this Agreement, except Salesforce.com shall be a third party beneficiary to this Agreement solely as it relates to the provisions herein that relate to the use of the Platform Service.

14.6 No Waiver of Rights. The failure of either party to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by either party in writing.

14.7 Export Control. The Riskconnect Service, Content, Software and Technology used to deliver the services hereunder may be subject to United States export control. Each party represents that it is not named on any U.S. government denied party list. You shall not permit Users to access or use the Riskconnect Service, Content, Software or Technology in a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.

14.8 Force Majeure. Neither party shall be liable to the other for any failure or delay in the performance of its obligations (except for required payments obligations above) for any cause that is beyond the reasonable control of such party, including, without limitation, acts of God, shortages of supplies, labor or materials, strikes and other labor disputes, storms, floods, acts of war or terrorism, failure of third party hardware, software, services or networks, failure of service providers (excluding Riskconnect's Licensors), utility blackouts or brownouts, failure of telecommunications or the internet, and actions by a governmental authority (such as changes in government codes, ordinances, laws, rules, regulations, or restrictions).

14.9 Surviving Provisions. The sections titled "Privacy & Security; Data; Confidential Information"; "License Grant & Restrictions"; "Account Information and Data", "Intellectual Property Ownership"; "Fees and Payment," "Delinquencies, Suspensions and Termination"; "Warranties and Disclaimer of Warranties," "Indemnification," "Limitation of Liability," Assignments"; and all provisions in "General Provisions" will survive any termination or expiration of this Agreement; provided however, all representations, warranties, rights of use, and license grants from either party to the other party herein terminate upon termination or expiration of this Agreement unless otherwise agreed in writing by duly authorized representatives of each party.

**The Parties, through their duly authorized representatives,
hereby agree to this Master Services Agreement and its accompanying exhibits
as of the later of the dates beneath the Parties' signatures below.**

For: Customer Name

For: Riskconnect, Inc.

Signature:

Name:

Title:

Date:

Signature:

Name: Patrick M. Henn

Title: Chief Financial Officer

Date:

This Cloud Services Agreement (CSA) and applicable Attachments and Transaction Documents (TDs) are the complete agreement regarding transactions under this CSA (together, the "Agreement") under which Client may order Cloud Services. Attachments typically contain additional terms that apply to similar types of offerings. TDs, such as service descriptions, order documents or statements of work, contain specific details related to an order for a Cloud Service and there may be more than one TD providing the details of an order. In the event of conflict, an Attachment prevails over this CSA and a TD prevails over both the CSA and any Attachment.

1. Cloud Services

- a. A Cloud Service is an IBM branded offering provided by IBM and made available via a network. Each Cloud Service is described in an Attachment or a TD. Cloud Services are designed to be available 24/7, subject to maintenance. Client will be notified of scheduled maintenance. Technical support and service level commitments, if applicable, are specified in an Attachment or TD.
- b. Client accepts an Attachment or TD by ordering, enrolling, using, or making a payment for the Cloud Service. When IBM accepts Client's order, IBM provides Client the authorizations specified in the TD. The term, including any renewal term, for a Cloud Service is described in an Attachment or TD.
- c. IBM will provide the facilities, personnel, equipment, software, and other resources necessary to provide the Cloud Services and generally available user guides and documentation to support Client's use of the Cloud Service. Client will provide hardware, software and connectivity to access and use the Cloud Service, including any required Client-specific URL addresses and associated certificates. An Attachment or TD may have additional Client responsibilities.
- d. Client may access a Cloud Service only to the extent of authorizations acquired by Client. Client is responsible for use of Cloud Services by any user who accesses the Cloud Service with Client's account credentials. A Cloud Service may not be used in any jurisdiction for unlawful, obscene, offensive or fraudulent Content or activity, such as advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive, or deceptive messages, viruses or harmful code, or violating third party rights. If there is a complaint or notice of violation, use may be suspended until resolved, and terminated if not resolved promptly. Client may not i) resell direct access to a Cloud Service to a third party outside Client's Enterprise; or ii) combine Cloud Services with Client's value add to create a commercially available Client branded solution for which Client charges a fee.

2. Content and Data Protection

- a. Content consists of all data, software, and information that Client or its authorized users provides, authorizes access to, or inputs to the Cloud Service. Use of the Cloud Service will not affect Client's existing ownership or license rights in such Content. IBM and its contractors, and subprocessors may access and use the Content solely for the purpose of providing and managing the Cloud Service, unless otherwise described in a TD.
- b. Client is responsible for obtaining all necessary rights and permissions to enable, and grants such rights and permissions to, IBM, and its contractors and subprocessors to use, provide, store and process Content in the Cloud Service. This includes Client making necessary disclosures and obtaining consent, if required, before providing individuals' information, including personal or other regulated information in such Content. If any Content could be subject to governmental regulation or may require security measures beyond those specified by IBM for an offering, Client will not input, provide, or allow such Content unless specifically permitted in the terms of the relevant TD or unless IBM has otherwise first agreed in writing to implement additional security and other measures.
- c. Upon request by either party, IBM, Client or their affiliates will enter into additional agreements as required by law in the prescribed form for the protection of personal or regulated personal data included in Content. The parties agree (and will ensure that their respective affiliates agree) that such additional agreements will be subject to the terms of the Agreement.
- d. IBM will return or remove Content from IBM computing resources upon the expiration or cancellation of the Cloud Service, or earlier upon Client's request. IBM may charge for certain activities performed at Client's request (such as delivering Content in a specific format). IBM does not archive Content, however some Content may remain in Cloud Service backup files until expiration of such files as governed by IBM's backup retention practices.
- e. Each Cloud Service is designed to protect Content as described in the Agreement. IBM's Data Security and Privacy Principles for IBM Cloud Services (DSP), at <http://www.ibm.com/cloud/data-security>, apply for generally available Cloud Service offerings or as described in the applicable TD. IBM will treat all Content as confidential by not disclosing Content except to IBM employees, contractors, and subprocessors, and only to the extent necessary to deliver the Cloud Service, unless otherwise specified in a TD. Specific security features and functions of a Cloud Service may be provided in an Attachment and TDs. Client is responsible to assess the suitability of each Cloud Service for Client's intended use and Content. By using the Cloud Service, Client acknowledges that it meets Client's requirements and processing instructions.
- f. Client acknowledges that i) IBM may modify the DSP from time to time at IBM's sole discretion and ii) such modifications will supersede prior versions. The intent of any modification to the DSP will be to i) improve or clarify existing commitments, ii) maintain alignment to current adopted standards and applicable laws, or iii) provide additional commitments. No modification to the DSP will materially degrade the security of a Cloud Service.

3. Changes

- a. IBM may modify a Cloud Service, without degrading its functionality or security features.

- b. IBM may withdraw a Cloud Service on 12 months' notice, unless otherwise stated in a TD. IBM will continue to provide the Cloud Service for the remainder of Client's unexpired term or work with Client to migrate to another IBM offering.
- c. Since this CSA may apply to many future orders, IBM may modify this CSA by providing Client at least three months' written notice. Changes are not retroactive; they apply, as of the effective date, only to new orders, ongoing Cloud Services that do not expire, and renewals. For transactions with a defined renewable contract period, Client may request that IBM defer the change effective date until the end of the current contract period. Client accepts changes by placing new orders or continuing use after the change effective date or allowing transactions to renew after receipt of the change notice. Except as provided above, all changes to the Agreement must be in writing accepted by both parties.

4. Warranties

- a. IBM warrants that it provides Cloud Services using commercially reasonable care and skill in accordance with the applicable Attachment or TD. The warranty for a Cloud Service ends when the Cloud Service ends.
- b. **IBM does not warrant uninterrupted or error-free operation of a Cloud Service or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access. These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose. IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, failure to comply with instructions provided by IBM, or if otherwise stated in an Attachment or TD. Non-IBM services are sold under the Agreement as-is, without warranties of any kind.** Third parties may provide their own warranties to Client.

5. Charges, Taxes, and Payment

- a. Client agrees to pay all applicable charges specified for a Cloud Service, charges for use in excess of authorizations, and any late payment fees. Charges are exclusive of any customs or other duty, tax, and similar levies imposed by any authority resulting from Client's acquisitions under the Agreement and will be invoiced in addition to such charges. Amounts are due upon receipt of the invoice and payable within 30 days of the invoice date to an account specified by IBM. Prepaid Services must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid. IBM may change charges on thirty days' notice or as specified in a TD. Where taxes are based upon the location(s) receiving the benefit of the Cloud Service, Client has an ongoing obligation to notify IBM of such location(s) if different than Client's business address listed in the applicable Attachment or TD.
- b. Client agrees to: i) pay withholding tax directly to the appropriate government entity where required by law; ii) furnish a tax certificate evidencing such payment to IBM; iii) pay IBM only the net proceeds after tax; and iv) fully cooperate with IBM in seeking a waiver or reduction of such taxes and promptly complete and file all relevant documents.

6. Liability and Indemnity

- a. IBM's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the service that is the subject of the claim, regardless of the basis of the claim. IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings. These limitations apply collectively to IBM, its affiliates, contractors, subprocessors, and suppliers.
- b. The following amounts are not subject to the above cap: i) third party payments referred to in the paragraph below; and ii) damages that cannot be limited under applicable law.
- c. If a third party asserts a claim against Client that an IBM Service acquired under the Agreement infringes a patent or copyright, IBM will defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM, provided that Client promptly (i) notifies IBM in writing of the claim, (ii) supplies information requested by IBM, and (iii) allows IBM to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.
- d. IBM has no responsibility for claims based on non-IBM products and services, items not provided by IBM, or any violation of law or third party rights caused by Client's Content, materials, designs, or specifications.

7. Termination

- a. IBM may suspend, revoke or limit Client's use of a Cloud Service if IBM determines there is a material breach of Client's obligations, a security breach, or violation of law. If the cause of the suspension can reasonably be remedied, IBM will provide notice of the actions Client must take to reinstate the Cloud Service. If Client fails to take such actions within a reasonable time, IBM may terminate the Cloud Service. Failure to pay is a material breach.
- b. Either party may terminate this CSA: i) without cause on at least one month's notice to the other after expiration or termination of its obligations under the Agreement; or ii) immediately for cause if the other is in material breach of the Agreement, provided the one who is not complying is given notice and reasonable time to comply. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to successors and assignees. Termination of this CSA does not terminate TDs, and provisions of this CSA as they relate to such TDs remain in effect until fulfilled or otherwise terminated in accordance with their terms.
- c. Client may terminate a Cloud Service on one month's notice: (i) at the written recommendation of a government or regulatory agency following a change in either applicable law or the Cloud Services; (ii) if IBM's modification to the computing environment used to provide the Cloud Service causes Client to be noncompliant with applicable laws; or (iii) if IBM notifies Client of a modification that has a material adverse effect on Client's use of the Cloud Service, provided that IBM will have 90 days to work with Client to minimize such effect. In the event of such termination, IBM shall refund a portion of any prepaid

amounts for the applicable Cloud Service for the period after the date of termination. If the Agreement is terminated for any other reason, Client shall pay to IBM, on the date of termination, the total amounts due per the Agreement. Upon termination, IBM may assist Client in transitioning Client's Content to an alternative technology for an additional charge and under separately agreed terms.

8. Governing Laws and Geographic Scope

- a. Each party is responsible for complying with: i) laws and regulations applicable to its business and Content; and ii) import, export and economic sanction laws and regulations, including defense trade control regime of any jurisdiction, including the International Traffic in Arms Regulations and those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. Client is responsible for its use of IBM and non-IBM products and services.
- b. Both parties agree to the application of the laws of the State of New York, United States, without regard to conflict of law principles. The rights and obligations of each party are valid only in the country of Client's business address. If Client or any user exports or imports Content or use of any portion of the Cloud Service outside the country of Client's business address, IBM will not serve as the exporter or importer. If any provision of the Agreement is invalid or unenforceable, the remaining provisions remain in full force and effect. Nothing in the Agreement affects statutory rights of consumers that cannot be waived or limited by contract. The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under the Agreement.

9. General

- a. IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any responsibility for Client's business or operations. Each party is responsible for determining the assignment of its personnel, and all contractors and subprocessors, and for their direction, control, and compensation.
- b. IBM maintains a robust set of business conduct and related guidelines covering conflicts of interest, market abuse, anti-bribery & corruption, and fraud. IBM and its personnel comply with such policies and require contractors and subprocessors to have similar policies.
- c. Account Data is information Client provides to IBM, other than Content, about Client or its users that IBM needs to enable Client's use of a Cloud Service or information concerning such use. IBM, its contractors and subprocessors may process, store and use Account Data wherever they do business to enable product features, administer use, personalize experience, and otherwise support or improve use of the Cloud Service as described in IBM's Online Privacy Statement.
- d. IBM Business Partners who use or make available IBM Cloud Services are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings.
- e. Neither party may assign the Agreement, in whole or in part, without the prior written consent of the other. Assignment of IBM rights to receive payments or assignment by IBM in conjunction with the sale of the portion of IBM's business that includes a service is not restricted.
- f. This CSA applies to IBM and Client and their respective Enterprise companies who avail themselves of the CSA. The parties shall coordinate the activities of Enterprise companies under the Agreement. Enterprise companies include (i) companies within the same country that Client or IBM control (by owning greater than 50% of the voting shares), and (ii) any other entity that controls, is controlled by or is under common control with Client or IBM and has signed a participation agreement.
- g. All notices under the Agreement must be in writing and sent to the business address specified for the Agreement, unless a party designates in writing a different address. The parties consent to the use of electronic means and facsimile transmissions for communications as a signed writing. Any reproduction of the Agreement made by reliable means is considered an original. The Agreement supersedes any course of dealing, discussions or representations between the parties.
- h. No right or cause of action for any third party is created by the Agreement or any transaction under it. Neither party will bring a legal action arising out of or related to the Agreement more than two years after the cause of action arose. Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control. Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations. Where approval, acceptance, consent, access, cooperation or similar action by either party is required, such action will not be unreasonably delayed or withheld.
- i. IBM may use personnel and resources in locations worldwide, including third party contractors and subprocessors to support the delivery of the Cloud Services. IBM may transfer Content, including personally identifiable information, across country borders. A list of countries where Content may be processed for a Cloud Service is available at www.ibm.com/cloud/datacenters or as described in the Attachment or TD. IBM is responsible for the obligations under the Agreement even if IBM uses a third party contractor or subprocessors unless otherwise set forth in a TD. IBM will require subprocessors with access to Content to maintain technical and organizational security measures that will enable IBM to meet its obligations for a Cloud Service. A current list of subprocessors and their roles will be provided upon request.
- j. IBM may offer additional customization, configuration or other services to support Cloud Services, as detailed in a TD.

Agreed to:

Client Company Name:

Agreed to:

International Business Machines Corporation

By _____	By _____
Authorized signature	Authorized signature
Title:	Title:
Name (type or print):	Name (type or print):
Date:	Date:
Client number:	Agreement number:
Enterprise number:	
Client address:	IBM address: