

**Request for Proposals for
Data Communications**

Issued by the **State of Montana**

Solicitation Number: SPB-RFP-2025-0563LS



**Master Agreement Number SPSD26-0563LS_IBM
for
Data Communications
between
the State of Montana
and
International Business Machines Corporation**

This Master Agreement is entered into by the State of Montana ("Lead Entity") and the following contractor (each a "Party" and collectively the "Parties") as a result of Solicitation Number SPB-RFP-2025-0563LS (the "RFP") for the purpose of providing Data Communications through the RFXPremier cooperative purchasing program:

International Business Machines Corporation ("Contractor")
1 Orchard Rd
Armonk, NY 10504

MASTER AGREEMENT CONTACTS

Contractor's contact for this Master Agreement is:

Urania Davis
US Federal & National Market, Public Sector
Program Manager
Urania.Davis1@ibm.com
919.486.6625

Lead Entity's contact for this Master Agreement is:

Grace Waring
Strategic Sourcing Manager
Grace.Waring@mt.gov
406.444.2516

TERM. This Master Agreement is effective as of the date of the last signature below, whichever is later, and will terminate on 09.30.2033 unless terminated sooner or extended or renewed in accordance with the terms set forth herein. Renewals totaling up to 3 years following the initial term may be exercised upon mutual agreement by the Parties.

ATTACHMENTS. This Master Agreement includes the following attachments:

- Attachment 1: Supporting Materials
- Attachment 2: Scope of Work
- Attachment 3: Cost Proposal

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SIGNATURE. The undersigned for each Party represents and warrants that this Master Agreement is a valid and legal agreement binding on the Party and enforceable in accordance with the Master Agreement’s terms and that the undersigned is duly authorized and has legal capacity to execute and deliver this Master Agreement and bind the Party hereto.

IN WITNESS WHEREOF, the Parties have executed this Master Agreement.

CONTRACTOR:

Signed by:
Urania Davis
7D4E3749C9A544A...

Signature

Urania Davis

Printed Name

Public Sector Program Manager

Title

9/30/2026

Date

LEAD ENTITY:

Signed by:
Molly McLoughlin
41996B494C8C46F...

Signature

Molly McLoughlin

Printed Name

Chief Procurement Officer

Title

9/30/2026

Date

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MASTER AGREEMENT

RFXPREMIER MASTER AGREEMENT TERMS AND CONDITIONS

1. Definitions

- 1.1 Acceptance** means acceptance of goods and services as set forth in Section 9 of this Master Agreement.
- 1.2 Contractor** means a party to this Master Agreement, whether a person or entity, that itself or through Fulfillment Partners delivers Products or performs Services under the terms set forth in this Master Agreement.
- 1.3 Eligible Entity** means all states (as well as the District of Columbia and US territories), cities, counties, districts, other political subdivisions of any State, Institutions of Higher Education, K-12, quasi-governmental entities, service districts, healthcare institutions, transportation districts, tribes/tribal organizations, or nonprofit organizations.
- 1.4 Embedded Software** means one or more software applications which permanently reside on a computing device owned by the Purchasing Entity, and which are not otherwise subject to a term license. The Purchasing Entity's license to use such Software applications will be subject to the terms and conditions of Contractor Supporting Materials attached to the Order and incorporated in the Order by reference.
- 1.5 Fulfillment Partner** means a third-party contractor and authorized by Contractor, and approved by a Participating Entity under a Participating Addendum, or other means, who may to the extent authorized by Contractor, fulfill any of the requirements of this Master Agreement including but not limited to providing Products or Services under this Master Agreement and billing Purchasing Entity for such Products or Services. Contractor may, upon written notice to the Participating Entity, add or delete authorized Fulfillment Partners as necessary at any time during the contract term. Fulfillment Partner has no authority to amend this Master Agreement or to bind Contractor to additional terms and conditions.
- 1.6 Intellectual Property** means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.
- 1.7 Lead Entity** means the Entity administering any resulting Master Agreement(s) who is a party to this Master Agreement.
- 1.8 Master Agreement** means the underlying agreement consisting of this Attachment D and all related attachments executed by and between the Lead Entity, acting in cooperation with RFXPremier, and the Contractor, as now or hereafter amended.
- 1.9 RFXPremier** is a division of the Procurement Professionals Alliance ("PPA"). RFXPremier facilitates administration of the PPA cooperative group contracting consortium for the benefit of states (as well as the District of Columbia and US territories), cities, counties, districts, other political subdivisions of any State, Institutions of Higher Education, K-12, quasi-governmental entities, service districts, healthcare institutions, transportation districts, tribes/tribal

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- organizations, or nonprofit organizations. RFXPremier is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports, as well as other contract administration functions as assigned by the Lead Entity.
- 1.10 Order or Purchase Order** means any purchase order, sales order, or other document used by a Purchasing Entity to order the Products or Services as authorized under the Master Agreement and a Participating Addendum, if applicable, and accepted or processed by the Contractor. Each Order or Purchase Order includes and incorporates by reference the Master Agreement and Participating Addendum, if applicable. An accepted Order or Purchase Order may include Supporting Materials, provided that Supporting Materials are subject to the Order of Precedence listed in Section 3.1 - Order.
- 1.11 Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any additional Participating Entity-specific language or other requirements (*e.g.*, ordering procedures specific to the Participating Entity, entity-specific terms and conditions, etc.).
- 1.12 Participating Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, Institution of Higher Education, K-12, or a nonprofit organization under the laws of some states properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum.
- 1.13 Product or Products and Services** means any equipment, Software (including Embedded Software and Cloud Software), service, or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Product includes goods and services supplied or created by the Contractor pursuant to this Master Agreement, but exclude any Third-Party Products as defined in Section 14.3 (Third-Party Goods and Services) below.
- 1.14 Published Specifications** mean the applicable user manual, acceptable use policies, privacy and product data sheets, and other corresponding documents published by Contractor that are customarily available to end users of the Product(s).
- 1.15 Purchasing Entity** means a Participating Entity that 1) issues a Purchase Order against the Master Agreement or 2) executes a Participating Addendum and becomes financially committed to the purchase.
- 1.16 Supporting Materials** means materials and documents which the parties identify as incorporated in an Order or Purchase Order either by attachment or reference. Supporting Materials may include (as examples) product lists, hardware or software specifications, standard or negotiated service descriptions, data sheets and their supplements, supplementary terms, policies, and statements of work (SOWs), published warranties and service level agreements, user agreements, and license agreements, and may be available to Participating Entity in hard copy or by accessing a designated Contractor website.
- 1.17 Software** means any and all computer programs, applications, code, and related documentation provided by Contractor under this Master Agreement, and includes the following categories: (a) "Embedded Software" as defined in Section 1.4; (b) "Cloud Software" meaning software hosted by or on behalf of Contractor and made available to Purchasing Entity on a subscription or service basis over a network, without installation on Purchasing Entity's computing devices; (c) "On-Premises Software" meaning software licensed for installation and use on computing

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devices owned or controlled by Purchasing Entity, other than Embedded Software; and (d) "Contractor Software" meaning any proprietary software owned by or licensed to Contractor, including tools, libraries, frameworks, and pre-existing code, that Contractor uses in the performance of this Master Agreement but does not deliver to Purchasing Entity as a standalone deliverable. For the avoidance of doubt, (i) Cloud Software and On-Premises Software are subject to the license terms set forth in Contractor's Supporting Materials; (ii) Contractor Software is not transferred or conveyed to any Purchasing Entity under this Master Agreement; and (iii) no Software shall be deemed a "Product" for purposes of title transfer under Section 11.1 (Conveyance of Title).

2. Term of Master Agreement

- 2.1 Initial Term.** The initial term of this Master Agreement is for seven (7) years. The term of this Master Agreement may be amended beyond the initial term for three (3) additional years at the Lead Entity's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance. The additional years may be in increments of three (3) 12-month terms. This Master Agreement will not exceed ten (10) years total. The Lead Entity may, prior to execution, adjust the effective date or duration of the initial term or renewal period of any Master Agreement for the purpose of making the Master Agreement coterminous with others.
- 2.2 Amendment Limitations.** The terms of this Master Agreement will not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written agreement of the Lead Entity and Contractor.
- 2.3 Amendment Term.** The term of this Master Agreement may be amended to extend past the initial term and stated renewal periods for a reasonable period by assigning the Master Agreement to another third-party to assume the obligations of Lead Entity (the "New Lead Entity"), per Section 14.4.2, if in the judgment of the New Lead Entity a follow-on competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection will not be deemed to limit the authority of a Lead Entity under the applicable laws, rules and regulations to otherwise negotiate contract extensions.

3. Order of Precedence

- 3.1 Order.** Any Order placed under this Master Agreement will consist of the following documents:
- 3.1.1** A Participating Entity's Participating Addendum ("PA");
 - 3.1.2** RFXPremier Master Agreement, including all attachments thereto;
 - 3.1.3** A Purchase Order or Scope of Work/Specifications issued against the Master Agreement, or issued against a Participating Addendum;
 - 3.1.4** Supporting Materials accepted by a Purchasing Entity as part of an Order or Purchase Order;
 - 3.1.5** The Solicitation or, if separately executed after award, the Lead Entity's bilateral agreement that integrates applicable provisions;

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- 3.1.6** Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead Entity.
- 3.2** **Conflict.** These documents will be read to be consistent and complementary. Any conflict among these documents will be resolved by giving priority to these documents in the order listed above. Contractor Supporting Materials that apply to this Master Agreement are only those that are expressly accepted by the Purchasing Entity and must be in writing and attached to an Order or Purchase Order as an Exhibit or Attachment (including hyperlinks therein).
- 3.3** **Participating Addenda.** Participating Addenda will not be construed to diminish, modify, or otherwise derogate any provisions in this Master Agreement between the Lead Entity and Contractor. The term of a Participating Addendum will not exceed the term of this Master Agreement, except when a Participating Entity determines an extension of its Participating Addendum is necessary to avoid a lapse in contract coverage and is permitted by law.
- 4. Participants and Scope**
- 4.1** **Eligibility for Participation.** Any Eligible Entity may utilize this Master Agreement as a Participating Entity or Purchasing Entity.
- 4.2** **Requirement for a Participating Addendum.** Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed.
- 4.3** **Applicability of Master Agreement.** The Master Agreement is applicable to any Order issued against it by a Purchasing Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum, subject to Section 3. For any Order submitted directly against the Master Agreement by a Purchasing Entity that is not subject to a Participating Addendum, such Order shall be subject to the terms of Contractor Supporting Materials by default unless agreed in writing otherwise by such Purchasing Entity and Contractor. For the purposes of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Purchasing Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the written consent of the Purchasing Entity and Contractor, may be included in the Purchase Order used by the Purchasing Entity to place the Order. For the avoidance of doubt, any contingencies, or additional or conflicting terms in a Purchase Order or Order are deemed rejected by Contractor unless Contractor has expressly agreed to such terms in signed writing. Mere acceptance or processing of a Purchase Order or Order containing such terms shall not constitute express consent.
- 4.4** **Obligated Entities.** Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities: i) within the scope of those Participating Addenda; or ii) who have issued a Purchase Order against the Master Agreement. Participating Entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Participating Entities incur no financial obligations on behalf of other Purchasing Entities.

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4.5 [Reserved]

4.6 Eligibility for a Participating Addendum or Order. All eligible entities may sign their own Participating Addendum or Order. In all instances, the entity must ensure that they have the requisite procurement authority to execute a Participating Addendum.

4.7 Prohibition on Resale. Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead Entity, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products purchased under this Master Agreement. Absent any such condition or explicit permission, this limitation does not prohibit payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

4.8 Individual Customers. Except as may otherwise be agreed to by the Purchasing Entity and Contractor, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead Entity has in the Master Agreement and as the Participating Entity has in the Participating Addendum, including but not limited to any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

4.9 Release of Information. Throughout the duration of this Master Agreement, Contractor must secure from the Lead Entity prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan.

4.10 No Representations. The Contractor shall not make any representations of RFXPremier, the Lead Entity, any Participating Entity, or any Purchasing Entity's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent.

5. RFXPremier Provisions

5.1 Applicability. RFXPremier is not a party to the Master Agreement. The terms set forth in Section 5 are for the benefit of RFXPremier as a third-party beneficiary of this Master Agreement.

5.2 Administrative Fees

5.2.1 RFXPremier Fee. Contractor shall pay to RFXPremier, or its assignee, a RFXPremier Administrative Fee of four tenths of one percent (0.4% or 0.004) no later than sixty (60) days following the end of each calendar quarter. The RFXPremier Administrative Fee must be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The RFXPremier Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with a vendor's response to the Lead Entity's solicitation. After the contract

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has been established for 18 months, RFXPremier may seek to negotiate a higher administrative fee with the Contractor annually.

- 5.2.2 Entity Imposed Fees.** Some Participating Entities may require an additional fee be paid by Contractor directly to the entity on purchases made on that entities Participating Addendum. For all such requests, the fee rate or amount, payment method, and schedule for such reports and payments will be incorporated into the applicable Participating Addendum. Unless agreed to in writing by the Participating Entity, **Contractor may not adjust the Master Agreement pricing to include the entity's fee for purchases made by Purchasing Entities on the Participating Addendum. No such agreement will affect the RFXPremier Administrative Fee percentage or the prices paid by Purchasing Entities outside the jurisdiction of the Participating Entity requesting the additional fee.**
- 5.2.3 Interest on Late Payment.** If the Contractor does not pay the RFXPremier Administrative Fee within sixty (60) days following the end of each calendar quarter as required by Section 5.2.1, then Contractor shall accrue interest on the unpaid amounts at the rate of 1% per month.
- 5.2.4 Administrative Fee Updates.** RFXPremier reserves the right to reasonably update the RFXPremier Administrative Fee. If the RFXPremier Administrative Fee is updated, any renewals exercised shall be contingent upon Contractor's acceptance of the updated RFXPremier Administrative Fee.
- 5.3 RFXPremier Summary and Detailed Usage Reports**
- 5.3.1 Sales Data Reporting.** In accordance with this section, Contractor shall report to RFXPremier all Orders under this Master Agreement for which Contractor has invoiced the ordering entity or individual, including Orders invoiced to Participating Entity or Purchasing Entity employees for personal use if such use is permitted by this Master Agreement and the applicable Participating Addendum ("Sales Data"). Timely and complete reporting of Sales Data is a material requirement of this Master Agreement. Reporting requirements, including those related to the format, contents, frequency, or delivery of reports, may be updated by RFXPremier with reasonable notice to Contractor and without amendment to this Master Agreement. RFXPremier shall have exclusive ownership of any media on which reports are submitted and shall have a perpetual, irrevocable, non-exclusive, royalty free, and transferable right to lawfully display, modify, copy, and otherwise use reports, data, and information provided under this section.
- 5.3.2 Summary Sales Data.** "Summary Sales Data" is Sales Data reported as cumulative totals by state. Contractor shall, using the reporting tool or template provided by RFXPremier, report Summary Sales Data to RFXPremier for each calendar quarter no later than thirty (30) days following the end of the quarter. If Contractor has no reportable Sales Data for the quarter, Contractor shall submit a zero-sales report.
- 5.3.3 Detailed Sales Data.** "Detailed Sales Data" is Sales Data that includes for each Order all information required by the Solicitation or by RFXPremier, including customer information, Order information, and line-item details. Contractor shall, using the reporting tool or template provided by RFXPremier, report Detailed Sales Data to

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RFxPremier for each calendar quarter no later than thirty (30) days following the end of the quarter. Detailed Sales Data shall be reported in the format provided in the Solicitation or provided by RFxPremier. The total sales volume of reported Detailed Sales Data shall be consistent with the total sales volume of reported Summary Sales Data.

- 5.3.4 Sales Data Crosswalks.** Upon request by RFxPremier, Contractor shall provide to RFxPremier tables of customer and Product information and specific attributes thereof for the purpose of standardizing and analyzing reported Sales Data ("Crosswalks"). Customer Crosswalks must include a list of existing and potential Purchasing Entities and identify for each the appropriate customer type as defined by RFxPremier. Product Crosswalks must include Contractor's part number or SKU for each Product in Offeror's catalog and identify for each the appropriate Master Agreement category (and subcategory, if applicable), manufacturer part number, product description, eight-digit UNSPSC Class Level commodity code, and (if applicable) EPEAT value and Energy Star rating. Crosswalk requirements and fields may be updated by RFxPremier with reasonable notice to Contractor and without amendment to this Master Agreement. Contractor shall work in good faith with RFxPremier to keep Crosswalks updated as Contractor's customer lists and product catalog change.
- 5.3.5 Executive Summary.** Contractor shall, upon request by RFxPremier, provide RFxPremier with an executive summary that includes but is not limited to a list of states with an active Participating Addendum, states with which Contractor is in negotiations, and any Participating Addendum roll-out or implementation activities and issues. RFxPremier and Contractor will determine the format and content of the executive summary.
- 5.4 RFxPremier Cooperative Program Marketing, Training, and Performance Review**
- 5.4.1 Staff Education.** Contractor shall work cooperatively with RFxPremier personnel. Contractor shall present plans to RFxPremier for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of RFxPremier procurements, the master agreement and participating addendum process, and the manner in which eligible entities can participate in the Master Agreement.
- 5.4.2 Onboarding Plan.** Upon request by RFxPremier, Contractor shall, as Participating Addendums are executed, provide plans to launch the program for the Participating Entity. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the scope and terms of the Master Agreement as available to the Participating Entity and eligible Purchasing Entities.
- 5.4.3 Annual Contract Performance Review.** Contractor shall participate in an annual contract performance review with the Lead Entity and RFxPremier, which may at the discretion of the Lead Entity be held in person and which may include a discussion of marketing action plans, target strategies, marketing materials, Contractor reporting, and timeliness of payment of administration fees.
- 5.4.4 Use of RFxPremier Logo.** The RFxPremier and PPA logos may not be used by Contractor in sales and marketing until a separate logo use agreement is executed with PPA.

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- 5.4.5 Obligation to Act in Good Faith.** The parties acknowledge that this Master Agreement and its terms and pricing have been negotiated for the benefit of the parties, RFXPremier, Participating Entities, and Purchasing Entities. Apart from a Participating Addendum or Order, Contractor shall not intentionally induce a potential Participating Entity or Purchasing Entity to enter into a separate agreement, the pricing and terms of which are derived from this Master Agreement, for the purpose of avoiding compliance with Contractor's obligations under Section 5. Nothing in this Section 5.4.5 shall prohibit Contractor from contracting with an entity with substantially similar pricing and terms if such pricing and terms are independently negotiated with the entity or are consistent with pricing and terms ordinarily offered by Contractor to public sector customers.
- 5.5 RFXPremier eMarketPlace.** RFXPremier Cooperative may provide an eMarketPlace solution for public entities to access a central online platform to view and/or purchase the goods, services, and solutions available from RFXPremier's cooperative Master Agreements. If RFXPremier offers such an eMarketPlace, Contractor agrees to cooperate in good faith with PPA, and any third party acting as an agent on behalf of PPA, to integrate Contractor's industry presence into the eMarketPlace. Specific terms of this integration shall be negotiated at the time of implementation of any eMarketPlace.
- 5.6 Cancellation.** In consultation with RFXPremier, the Lead Entity may, in its discretion, cancel the Master Agreement or not exercise an option to renew, when utilization of Contractor's Master Agreement does not warrant further administration of the Master Agreement. The Lead Entity may also exercise its right to not renew the Master Agreement if the Contractor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than two years after execution of the Master Agreement. This subsection does not limit the discretionary right of either the Lead Entity or Contractor to cancel the Master Agreement or terminate for default subject to the terms herein. This subsection also does not limit any right of the Lead Entity to cancel the Master Agreement under applicable laws.
- 5.7 Canadian Participation.** Subject to the approval of Contractor, any Canadian provincial government or provincially funded entity in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, or Saskatchewan, and territorial government or territorial government funded entity in the Northwest Territories, Nunavut, or Yukon, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use Contractor's Master Agreement.
- 5.8 Additional Agreement with PPA.** Upon request by RFXPremier, awarded Contractor shall enter into a direct contractual relationship with PPA related to Contractor's obligations to RFXPremier under the terms of the Master Agreement, the terms of which shall be the same or similar (and not less favorable) than the terms set forth in the Master Agreement.
- 6. Pricing, Payment & Leasing**
- 6.1 Pricing.** The discounts contained in this Master Agreement or offered under this Master Agreement represent the not-to-exceed discount to any Purchasing Entity.
- 6.1.1** All discounts and rates must be guaranteed for the initial term of the Master Agreement.

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- 6.1.2 Following the initial term of the Master Agreement, any request for a discount or rate adjustment must be for an equal guarantee period and must be made at least 45 days prior to the effective date.
 - 6.1.3 Requests for a discount or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement will not be effective unless approved in writing by the Lead Entity.
 - 6.1.4 No retroactive adjustments to discounts or rates will be allowed.
 - 6.2 **Payment.** Unless otherwise agreed upon in a Participating Addendum or Order, Payment after Acceptance will be made within thirty (30) days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum or Order, or otherwise prescribed by applicable law. Payments will be remitted in the manner specified in the Participating Addendum or Order. Payments may be made via a purchasing card with no additional charge.
 - 6.3 **Leasing or Alternative Financing Methods.** The procurement and other applicable laws of some Purchasing Entities may permit the use of leasing or alternative financing methods for the acquisition of Products under this Master Agreement. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Purchasing Entity.
- 7. Ordering**
- 7.1 **Order Numbers.** Master Agreement order and purchase order numbers must be clearly shown on all acknowledgments, packing slips, invoices, and on all correspondence.
 - 7.2 **Quotes.** Purchasing Entities may define entity-specific or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an “as needed” basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity’s rules and policies. The Purchasing Entity may in its sole discretion determine which contracted vendors (including Fulfillment Partners) should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost, and other factors considered.
 - 7.3 **Applicable Rules.** Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor and Contractor Fulfillment Partners, as applicable, are expected to become familiar with the Purchasing **Entity’s** rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.
 - 7.4 **Required Documentation.** Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.
 - 7.5 **Term of Purchase.** Orders may be placed with Contractor or Contractor Fulfillment Partners and accepted or rejected by Contractor or Contractor Fulfillment Partners during the term of the Master Agreement and Participating Addendum. All Orders must be consistent with the terms of this Master Agreement and applicable Participating Addendum.

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- 7.5.1 Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement.
 - 7.5.2 Notwithstanding the previous, Orders must also comply with the terms of the applicable Participating Addendum, which may further restrict the period during which Orders may be placed or delivered.
 - 7.5.3 Provided that Purchasing Entities pay for ordered goods or services performed, the financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon entity funds for that purpose being appropriated, budgeted, and otherwise made available.
 - 7.5.4 Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor shall perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation, or termination of this Master Agreement, or in any manner inconsistent with this Master Agreement's terms.
 - 7.5.5 Orders for any separate indefinite quantity, task order, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.
 - 7.6 **Order Form Requirements.** All Orders pursuant to this Master Agreement, at a minimum, must include:
 - 7.6.1 The services or supplies being delivered;
 - 7.6.2 A shipping address and other delivery requirements, if any;
 - 7.6.3 A billing address;
 - 7.6.4 Purchasing Entity contact information;
 - 7.6.5 Pricing consistent with this Master Agreement and applicable Participating Addendum and as may be adjusted by agreement of the Purchasing Entity and Contractor;
 - 7.6.6 A not-to-exceed total for the products or services being ordered; and
 - 7.6.7 The Master Agreement number or the applicable Participating Addendum number, provided the Participating Addendum references the Master Agreement number.
 - 7.7 **Communication.** All communications concerning administration of Orders placed must be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.
 - 7.8 **Contract Provisions for Orders Utilizing Federal Funds.** Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

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8. Shipping and Delivery

- 8.1 Shipping Terms.** Unless otherwise agreed upon in a Participating Addendum or Order, all deliveries will be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor or Fulfillment Partner.
- 8.1.1** Notwithstanding the above, responsibility and liability for loss or damage will remain the Contractor's until final inspection and acceptance when responsibility will pass to the Purchasing Entity except as to latent defects, fraud, and Contractor's warranty obligations.
- 8.2 Minimum Shipping.** The minimum shipment amount, if any, must be contained in the Master Agreement. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered will be shipped without charge.
- 8.3 Inside Deliveries.** To the extent applicable, all deliveries will be "Inside Deliveries" as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a delivery to a location other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Costs to repair any damage to the building interior (*e.g.*, scratched walls, damage to the freight elevator, etc.) caused by Contractor or Contractor's carrier will be the responsibility of the Contractor. Immediately upon becoming aware of such damage, Contractor shall notify the Purchasing Entity placing the Order.
- 8.4 Packaging.** All products must be delivered in the manufacturer's standard package. Costs must include all packing and/or crating charges. Cases must be of durable construction, in good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipping carton must be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.

9. Inspection and Acceptance

- 9.1 Laws and Regulations.** Any and all Products offered and furnished must comply fully with all applicable Federal, State, and local laws and regulations.
- 9.2 Applicability.** Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section 9 will apply. This section is not intended to limit rights and remedies under the applicable commercial code.
- 9.3 Inspection.** All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead Entity, or to any other authorized agent or official of the Lead Entity or other Participating or Purchasing Entity, at reasonable times, to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement.
- 9.3.1** Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantially impairs value) latent or hidden defects subsequently revealed when goods are put to use.
- 9.3.2** Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense

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incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

- 9.4 Failure to Conform.** Unless otherwise agreed upon in a Participating Addendum or Order, if any services do not conform to contract requirements as agreed, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements as agreed, at no increase in Order amount. When defects cannot be corrected by re- performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect the reduced value of services performed. Please also refer to Section 9.5 Acceptance and Section 10 Warranty.
- 9.5 Acceptance Testing.** Purchasing Entity may establish a process, in keeping with industry standards, to ascertain whether the Product meets the standard of performance or specifications prior to Acceptance by the Purchasing Entity.
- 9.5.1** The Acceptance Testing period will be thirty (30) calendar days, unless otherwise specified, starting from the day after the Product is delivered or, if installed by Contractor, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing.
- 9.5.2** If the Product does not meet the standard of performance or specifications during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met.
- 9.5.3** Upon rejection, the Contractor will have fifteen (15) calendar days to cure. If after the cure period, the Product still has not met the standard of performance or specifications, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor.
- 9.5.4** Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section.
- 9.5.5** No Product will be deemed Accepted and no charges will be paid until the standard of performance or specification is met.

10. Warranty

- 10.1 Applicability.** Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section 10 will apply.
- 10.2 Warranty of Products.** The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects that materially affects the performance of the Product, (f) the Product is free and clear of any liens or encumbrances, Contractor has full legal title to the Product, and that no other person or entity has any right, title, or interest in the Product which the rights

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granted to the Participating Entity, (g) the Product complies with all applicable health and safety standards, including Occupational Safety and Health Administration (OSHA) health and safety standards.

- 10.3 Warranty of Services.** The Contractor warrants that the Services provided conform to the Contract requirements, including all descriptions, specifications and attachments made a part of this Contract. The Participating Entity's acceptance of Services provided by Contractor shall not relieve Contractor from its obligations under this warranty. In addition to its other remedies under this Contract, at law, or in equity, State may require Contractor to promptly correct, at Contractor's expense, any Services failing to meet Contractor's warranty herein. Services corrected by Contractor shall be subject to all the provisions of this Contract in the manner and to the same extent as Services originally furnished.
- 10.4 Breach of Warranty.** Upon breach of a warranty, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product or Service whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product or Service proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made.
- 10.5 Rights Reserved.** The rights and remedies of the parties under a warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.
- 10.6 Warranty Period Start Date.** The warranty period will begin upon Acceptance, as set forth in Section 9.

11. Product Title

- 11.1 Conveyance of Title.** Unless otherwise agreed upon in a Participating Addendum or Order, upon Acceptance by the Purchasing Entity, Contractor or Contractor's Fulfillment Partner (when an Order is fulfilled by Contractor's Fulfillment Partner) shall convey to Purchasing Entity title to the Product, except for any portion of the Product which is provided subject to a nonexclusive subscription license or is Embedded Software, free and clear of all liens, encumbrances, or other security interests.
- 11.2 Embedded Software.** If there is a transfer of title to the Product as contemplated in Section 11.1 (Conveyance of Title) above, such transfer must include a license to use any Embedded Software in the Product which shall be subject to the terms of Contractor's Supporting Materials. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license will be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee. Notwithstanding the foregoing, any sale or transfer permitted by this subsection must be consistent with license rights granted for the use of the Embedded Software.
- 11.3 License of Pre-Existing Intellectual Property.** Except for Software, Products and any portion of the Product which is provided subject to a nonexclusive subscription license or which is Embedded Software, Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce, transfer with any sale of tangible media or Product, perform, display, and dispose of the Intellectual Property associated

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- with such Product, and its derivatives, used or delivered under this Master Agreement with respect to such Product, but not created under it ("Pre-existing Intellectual Property"). Contractor grants to Purchasing Entity a license to Software pursuant to the license terms and restrictions set forth in Contractor's Supporting Materials. The license shall be subject to owner and 3rd party rights in Pre-existing Intellectual Property. The Contractor shall be responsible for ensuring that this license is consistent with any third-party rights in the Pre-existing Intellectual Property. Notwithstanding the foregoing, any sale or transfer permitted by this section or Section 11.1 (Conveyance of Title) must be consistent with license rights granted for the use of the Software. For the avoidance of doubt, to the extent any Pre-existing Intellectual Property is subject to Contractor's standard commercial terms such commercial terms shall govern the Purchasing Entity's use of Pre-existing Intellectual Property.
- 11.4** Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section 11 will apply.
 - 11.5** No Ownership in Contractor Software. Notwithstanding anything to the contrary, in no event shall Purchasing Entity receive ownership or title rights to any Contractor Software or cloud services or Pre-existing Intellectual Property.
 - 11.6** Purchasing Entity Data. Except in an aggregated and anonymized format that does not identify the Purchasing Entity or individual users, Purchasing Entity retains full right and title to its data.

12. Indemnification

- 12.1 General Indemnification.** The Contractor shall defend, indemnify and hold harmless PPA, RFXPremier, the Lead Entity, Participating Entities, and Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from any act, error, or omission of the Contractor, its employees or subcontractors, at any tier, relating to performance under this Master Agreement. If the Contractor fails to pursue the defense or settlement of the third-party claim, the Indemnified Party may assume the defense or settlement of the third-party claim and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in relation to the third-party claim as finally awarded by a court of competent jurisdiction or as mutually agreed in a settlement approved by both the Indemnified Party and Contractor.

The foregoing indemnification obligations are conditioned upon the Indemnified Party promptly notifying the Contractor in writing of the claim, suit, or proceeding for which the Contractor is obligated under this Subsection, cooperating with, assisting, and providing information to the Contractor as reasonably required, and granting the Contractor the exclusive right to defend or settle such claim, suit or proceeding; provided that any such settlement or compromise includes a release of the Indemnified Party from all liability arising out of such claim, suit or proceeding.

- 12.2 Intellectual Property Indemnification.** The Contractor shall defend, indemnify and hold harmless PPA, RFXPremier, the Lead Entity, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use infringes Intellectual Property rights of another person or entity ("Intellectual Property Claim").

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- 12.2.1** The Contractor's obligations under this Section 12.2 will not extend to any Intellectual Property Claim based on:
- 12.2.1.1** a combination of the Product or Service with any other product, system, or method, unless the other product, system, or method is (a) provided by the Contractor or the Contractor's subsidiaries or affiliates; (b) specified by the Contractor to work with the Product or Service; (c) reasonably required to use the Product or Service in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or (d) reasonably expected to be used in combination with the Product or Service and Contractor is aware of the possibility of such use; or
 - 12.2.1.2** Contractor's compliance with any designs, specifications, requirements, or instructions by any Indemnified Party or a third party on Indemnified Party's behalf; or
 - 12.2.1.3** the alteration or modification of the Contractor's Product by anyone other than Contractor or Contractor's Fulfillment Partner; or
 - 12.2.1.4** the amount or duration of use made of Contractor's Product or Services offered by Indemnified Party to external or internal Purchasing Entity, or revenue earned by the Indemnified Party; or
 - 12.2.1.5** use of a Product not in accordance with or in violation of this Agreement or the Published Specifications; or
 - 12.2.1.6** failure to use: (a) the most recent version of a Product or Service; or (b) an equally compatible and functionally equivalent non-infringing version of a Product or Service provided by Contractor to address such an Intellectual Property Claim.
 - 12.2.1.7** The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. If the Indemnified Party fails to provide reasonable notice-and that failure prejudices Contractor's ability to defend, settle, or respond to the claim, then Contractor's obligation to defend, indemnify, or hold harmless the Indemnified Party with respect to that Intellectual Property Claim will be reduced to the extent Contractor has been prejudiced. In addition, such failure to provide reasonable notice shall relieve Contractor of any obligation to reimburse for Indemnified Party's attorneys' fees incurred prior to notification. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of the Intellectual Property Claim. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible.
- 12.2.2** The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of the Intellectual

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Property Claim and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in relation to the Intellectual Property Claim as finally awarded by a court of competent jurisdiction or as mutually agreed in a settlement approved by both the Indemnified Party and Contractor.

12.2.3 Unless otherwise set forth herein or in a Participating Addendum, Order, or Contractor Supporting Materials incorporated in an Order, Section 12.2 is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

12.2.4 If such an Intellectual Property Claim has occurred, or in the Contractor's opinion is likely to occur, the Contractor shall either procure for the Participating Entity the right to continue using the materials or Products or Services or replace or modify materials or Products or Services to make them non-infringing and functionally equivalent. If an option satisfactory to the Participating Entity is not reasonably available, the Participating Entity shall return the materials or Products to the Contractor and stop using the infringing Services, upon written request of the Contractor and at the Contractor's expense, and Contractor shall refund to the Indemnified Party the remaining net book value of the Contractor's Product and a prorated amount for the remaining Services. The refund shall be determined in accordance with generally accepted accounting principles.

12.3 Limitation of Liability

12.3.1 General Limitation of Liability. Except as provided in Section 12.3.2, notwithstanding anything else herein, all liability of Contractor and its suppliers to any Purchasing Entity or Participating Entity (and any Purchasing Entity under the Participating Entity) for claims arising under this Master Agreement, the applicable Participating Addendum, or otherwise shall be limited to the greater of (i) five million dollars (\$5,000,000.00) or (ii) the money paid to Contractor by the Participating Entity under this Master Agreement in the twelve (12) month period prior to the event or circumstances that first gave rise to such liability. This limitation of liability is cumulative and not per incident.

12.3.2 Exception to General Limitation of Liability. The limitation of liability in Section 12.3.1 does not apply to: (i) liability for damage or loss caused by injury to persons or tangible property; (ii) Contractor's liabilities and obligations under Section 12.2; or (iii) matters for which liability cannot be excluded or limited under applicable law.

12.3.3 Limitation on Indirect Damages. To the extent permitted by applicable law, except as provided in Section 12.3.4, neither Party shall be liable for any special, indirect, incidental, punitive, exemplary, reliance, or consequential damages of any kind (including but not limited to loss of business, goodwill, data, profits, or use or for the cost of procuring substitute products, services or other goods), arising out of or relating to the Products or Services to which this Agreement relates, regardless of

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the theory of liability and whether or not each Party was advised of the possibility of such damage or loss.

- 12.3.4 Exception to Limitation on Indirect Damages.** Contractor's liability for a breach of system security or unauthorized disclosure of Confidential Information are not subject to the limitation on indirect damages in Section 12.3.3. Notwithstanding the foregoing, in no event shall Contractor be liable for greater than ten million dollars (\$10,000,000), in the aggregate, for indirect damages related to breach of system security or unauthorized disclosure of Confidential Information under this Master Agreement.

13. Insurance

- 13.1 Term.** Unless otherwise agreed to between Contractor and Participating Entity, Contractor shall acquire maintain such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.
- 13.2 Class.** Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.
- 13.3 Coverage.** Unless otherwise agreed to between Contractor and Participating Entity, coverage must be written on an occurrence basis. The minimum acceptable limits will be as indicated below:
- 13.3.1** Contractor shall maintain Commercial General Liability insurance covering premises operations, products and completed operations, blanket contractual liability, third party bodily injury (including death), advertising liability, and third party property damage, with a limit of not less than \$1 million per occurrence and \$2 million general aggregate.
- 13.3.2** Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.
- 13.4 Notice of Cancellation.** Contractor shall pay premiums on all insurance policies. Unless otherwise agreed to between Contractor and Participating Entity, Contractor shall provide notice to a Participating Entity within 30 days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.
- 13.5 Notice of Endorsement.** Prior to commencement of performance, Contractor shall provide to the Lead Entity a written endorsement to the Contractor's Commercial General Liability insurance policy or other insurance industry standard documentary evidence acceptable to the Lead Entity that (1) provides that written notice of cancellation will be delivered in accordance with the policy provisions, and (2) provides that the Contractor's Commercial General Liability

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insurance policy will be primary, with any liability insurance of any Participating Entity as secondary and noncontributory.

- 13.6 Participating Entities.** Unless otherwise agreed to between Contractor and Participating Entity, Contractor shall provide to Participating Entities the same insurance obligations and documentation as those specified in Section XIII, except the endorsement or documentation is provided to the applicable Participating Entity.
- 13.7 Furnishing of Certificates.** Unless otherwise agreed to between Contractor and Participating Entity, Contractor shall furnish to the Lead Entity copies of certificates of insurance for all required insurance applicable to this Master Agreement in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance will be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead Entity, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.
- 13.8 Disclaimer.** Insurance coverage and limits will not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

14. General Provisions

14.1 Records Administration and Audit

- 14.1.1** The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as will adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead Entity, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. The Lead Entity may terminate this Master Agreement, without incurring any liability, for the Contractor's refusal to allow access as required by this section. This right will survive for a period of six (6) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Master Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.
- 14.1.2** Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead Entity, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of fees found as a result of the examination of the Contractor's records.
- 14.1.3** The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement that requires the Contractor to self-audit

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contract obligations and that permits the Lead Entity to review compliance with those obligations.

14.2 Confidentiality, Non-Disclosure, and Injunctive Relief

14.2.1 Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients.

14.2.1.1 Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information").

14.2.1.2 Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information.

14.2.1.3 Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity; or (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

14.2.2 Non-Disclosure. Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement.

14.2.2.1 Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information.

14.2.2.2 Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead Entity immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends

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to violate the terms of Section 14.2 of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person.

- 14.2.2.3** Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. In the event it is not possible or practicable to return such information, Contractor may, at Purchasing Entity's option, destroy such Confidential Information utilizing industry standard processes, or shall maintain possession of such Confidential Information and maintain its confidentiality for as long as necessary.
- 14.2.2.4** If applicable law, regulation, or document retention policy prevents Contractor from destroying or returning all or part of the Confidential Information, Contractor will maintain the security and confidentiality of all such retained Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits, and evidence of the performance of this Master Agreement.
- 14.2.2.5** Contractor may publicize the Contract term, scope and price without prior written approval. However, Contractor may not use the Montana State seal, any State logo, or claim any State endorsement as to the Contract without prior written approval by the State of Montana.
- 14.2.3** **Injunctive Relief.** Contractor acknowledges that Contractor's breach of Section 14.2 may cause irreparable injury to the Purchasing Entity that cannot be adequately compensated in monetary damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.
- 14.2.4** **Purchasing Entity Law.** These provisions will be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.
- 14.2.5** **RFxPremier.** Subject to public information laws, the rights granted to Purchasing Entities and Contractor's obligations under this section will also extend to RFxPremier's Confidential Information, including but not limited to Participating Addenda, Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line-item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead Entity, a Participating Entity, or any governmental entity exercising an audit,

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inspection, or examination pursuant to this Master Agreement. To the extent permitted by law, Contractor shall notify the Lead Entity of the identity of any entity seeking access to the Confidential Information described in this subsection.

14.2.6 Public Information. This Master Agreement and all related documents are subject to disclosure pursuant to the Lead Entity's public information laws. Under Montana public information laws, this Contract, referenced documents, including pricing documents, are all deemed public information.

14.3 Third-Party Products. Third Party Product is a good sold by the Contractor that is manufactured by another company. Third Party Products are intended to enhance or supplement a Contractor's own product line and are not intended to represent more than one-quarter (25%) of total sales under this Master Agreement. Terms and conditions and markup on Third Party Products shall be communicated with the Purchasing Entity.

Contractor must provide or facilitate the warranty service and maintenance for all Third-Party Products on the Master Agreement either directly or pass-through from the manufacturer. The Lead Entity may limit the sale of Third-Party Products during the life of the Master Agreement should Third-Party Product sales be determined to consistently exceed one-quarter (25%) of the total sales under this Master Agreement. Such limitations may take the form of any action the Lead Entity so chooses, up to and including non-renewal or cancellation of the Master Agreement.

14.4 Assignment/Subcontracts

14.4.1 Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead Entity. Notwithstanding the foregoing, Contractor may, with prior written consent from Participating Entities, which consent shall not be unreasonably withheld, enter into subcontracts with third parties as Fulfillment Partners. Fulfillment Partners are Subcontractors who may provide products and services under this Master Agreement at the price discounts established in this Master Agreement and bill Purchasers directly for such products and services. In addition, Contractor may, without permission, utilize subcontractors to perform Services sold under this Master Agreement and provide cloud-based Products and Services. Contractor may, upon written notice to the Participating Entity, add or delete authorized Fulfillment Partners as necessary, at any time during the term. For clarity, Fulfillment Partners have no authority to amend this Master Agreement or to bind Contractor to any additional terms or conditions.

14.4.2 The Lead Entity reserves the right to assign any rights or duties, including written assignment of contract administration duties, to RFXPremier and other third parties.

14.5 Changes in Contractor Representation. The Contractor must, within thirty (30) calendar days, notify the Lead Entity in writing of any changes in the Contractor's key administrative personnel managing the Master Agreement. The Lead Entity reserves the right to approve or reasonably reject changes in key personnel, as identified in the Contractor's proposal. The Contractor shall propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

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- 14.6 Independent Contractor.** Contractor is an independent contractor. Contractor has no authorization, express or implied, to bind the Lead Entity, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and shall not to hold itself out as agent except as expressly set forth herein or as expressly set forth in an applicable Participating Addendum or Order.
- 14.7 Termination.** Unless otherwise set forth herein, this Master Agreement may be terminated by either party upon sixty (60) days' written notice prior to the effective date of the termination. Further, any Participating Entity may terminate its participation upon thirty (30) days' written notice, unless otherwise limited or stated in an applicable Participating Addendum. Termination may be in whole or in part. Any termination under this provision will not affect Orders outstanding at the time of termination and the rights and obligations attending thereto, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment under any then-outstanding Orders in accordance with Section 7.53 herein, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Termination of the Master Agreement due to Contractor default may be immediate.
- 14.8 Force Majeure.** Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, unusually severe weather, other acts of God, or acts of war which are beyond that party's reasonable control. Either party may terminate this Master Agreement upon determining such delay or default by the other party will reasonably prevent successful performance of the Master Agreement.
- 14.9 Defaults and Remedies**
- 14.9.1** The occurrence of any of the following events may be an event of default under this Master Agreement:
- 14.9.1.1** Nonperformance of material contractual requirements;
 - 14.9.1.2** A material breach of any material term or condition of this Master Agreement;
 - 14.9.1.3** Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading;
 - 14.9.1.4** Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
 - 14.9.1.5** Any material default specified in another section of this Master Agreement.
- 14.9.2** Upon the occurrence of an event of material default, the Lead Entity shall issue a written notice of such material default, identifying the nature of the material default, and providing a period of time specified by the Lead Entity but in no event shorter than thirty (30) calendar days in which Contractor shall have an opportunity to cure the material default. The Lead Entity shall not be required to provide

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advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead Entity, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure will not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

- 14.9.3** If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead Entity shall have the right to exercise any or all of the following remedies:
- 14.9.3.1** Any remedy provided by law;
 - 14.9.3.2** Termination of this Master Agreement and any related Contracts or portions thereof;
 - 14.9.3.3** Assessment of liquidated damages as provided in a Participating Addendum or Order under this Master Agreement;
 - 14.9.3.4** Suspension of Contractor from being able to respond to future bid solicitations;
 - 14.9.3.5** Suspension of Contractor's performance; and
 - 14.9.3.6** Withholding of payment until the default is remedied, if applicable to an Order under the Participating Addendum
- 14.9.4** Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in an Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions will be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.
- 14.9.5** If this Contract is not renewed at the end of this term, if the Contract is otherwise terminated before project completion, or if particular work on a project is terminated for any reason, Contractor shall provide transition assistance for a reasonable, mutually agreed period of time after the expiration or termination of this Contract or particular work under this Contract. The purpose of this assistance is to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the Participating Entity or its designees. The parties agree that such transition assistance is governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to such transition assistance. State shall pay Contractor for any resources, Products, or Services utilized in performing such transition assistance at the most current Contract rates. If the Participating

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Entity terminates a project or this Contract for cause, then State may offset the cost of paying Contractor for the additional resources Contractor utilized in providing transition assistance with any damages the Participating Entity may have sustained as a result of Contractor's breach.

- 14.10 Waiver of Breach.** Failure of the Contractor, Lead Entity, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies will not operate as a waiver under this Master Agreement, any Participating Addendum, or any Purchase Order. Any waiver by the Contractor, Lead Entity, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Contractor, Lead Entity or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order will not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, any Participating Addendum, or any Purchase Order.
- 14.11 Debarment.** The Contractor certifies that neither it nor its executive officers and directors are presently debarred, suspended, proposed for debarment, or declared ineligible from participation in public procurement or contracting by any United States federal or state governmental department or agency with jurisdiction over the Products and Services provided under this Master Agreement. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, Contractor shall provide a written explanation for review by the Lead Entity. For the avoidance of doubt, this certification is limited to debarment actions by United States governmental authorities and does not extend to actions by foreign governments or international bodies. As a publicly traded company, Contractor's certification regarding its principals is limited to its executive officers and members of its board of directors, as such terms are understood under U.S. securities laws.
- 14.12 No Waiver of Sovereign Immunity**
- 14.12.1** In no event will this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead Entity, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.
- 14.12.2** This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.
- 14.13 Governing Law and Venue**
- 14.13.1** The procurement, evaluation, and award of the Master Agreement will be governed by and construed in accordance with the laws of the Lead Entity sponsoring and administering the procurement. The construction and effect of the Master Agreement after award will be governed by the law of the state serving as Lead

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- Entity. The construction and effect of any Participating Addendum or Order against the Master Agreement will be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's state.
- 14.13.2** Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the state serving as Lead Entity. Venue for any claim, dispute or action concerning the terms of the Master Agreement will be in the state serving as Lead Entity. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum will be in the Purchasing Entity's state.
- 14.13.3** If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead Entity for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead Entity is a party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.
- 14.14 Assignment of Antitrust Rights.** Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action to the extent the assignment is necessary for the Participating Entity to overcome a federal or state government's bar on indirect purchases.
- 14.15 Survivability.** Unless otherwise explicitly set forth in a Participating Addendum or Order, the terms of this Master Agreement as they apply to the Contractor, Participating Entities, and Purchasing Entities, including but not limited to pricing and the reporting of sales and payment of administrative fees to RFxPremier, shall survive expiration of this Master Agreement and shall continue to apply to all Participating Addenda and Orders until the expiration thereof.
- 14.16 Compliance with Law.** Both parties agree to comply with the laws and regulations applicable to their respective business and, with respect to Contractor as an IT provider, those laws and regulations applicable to its general provision of the Products and Services under this Master Agreement, without regard to any entity's particular use of such Products or Services.
- 14.17 Severability.** If any provision of this Master Agreement is deemed by a court or other tribunal of competent jurisdiction to be invalid or unenforceable, the remaining terms of this Master Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.
- 14.18 Entire Agreement.** This Master Agreement, along with any attachment or exhibit hereto, contains the entire understanding of the parties hereto with respect to the Master Agreement unless a term is modified in an Order or Participating Addendum with a Participating Entity. Except as otherwise expressly set out in this Master Agreement, any amendment of any provision of this Master Agreement will be effective only if in writing and signed by duly authorized representatives of both parties.

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Attachment 1

SUPPORTING MATERIALS



International Passport Advantage Agreement

This International Passport Advantage Agreement (IPAA) and its applicable Attachment(s) and Transaction Document(s) (TD(s)) are the complete agreement regarding each transaction under this IPAA (together the Agreement) under which Client may order Eligible Products (EPs) from IBM or IBM Business Partners. EPs are IBM and Non-IBM offerings such as Programs, Appliances, or Services made available to Client by IBM. Services include but are not limited to Support Offerings, Cloud Services, or other Services IBM provides, such as customization, configuration, or other services to support EPs, as detailed in an Attachment or TD.

TDs provide the specifics of transactions, such as charges, and a description of and information about the applicable EPs. Examples of TDs include terms of use, service descriptions, quotes, and Proofs of Entitlement (PoEs). There may be more than one TD applicable to a transaction.

Attachments provide supplemental terms that apply across certain types of EPs.

The IPAA is an international agreement, and the Part 2 – Country Required Terms modify the Part 1 – Global Terms as applicable for a specified country.

Subject to Section 9, in the event of conflict, an Attachment prevails over this IPAA, and a TD prevails over any Attachment and this IPAA.

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Part 1 – Global Terms

1. IPAA Acceptance

- a. The Client Originating Company (identified as the Originating Site in the IPAA Enrollment Form) and each of its participating Enterprise companies (identified as an Additional Site in the IPAA Enrollment Form) (together, the Client) accept this IPAA by submitting an IPAA Enrollment Form to IBM or Client's chosen IBM Business Partner.
- b. The IBM Originating Company that accepts the Client Originating Company's orders and the Client Originating Company agree to coordinate the activities of their own Enterprise under this IPAA. The Client Originating Company is responsible for compliance with the terms by all Client Sites assigned a Passport Advantage Site Number (each, a Site) under this IPAA.
- c. Enterprise means the set of legal entities that, by more than 50%, owns, are owned by, or are under common ownership with the Client Originating Company.
- d. This IPAA is effective on the date IBM accepts the initial order under this IPAA and remains in effect until the Client Originating Company or the IBM Originating Company terminates it as described in this IPAA. IBM accepts Client's orders by: i) sending a TD that includes the level of authorized use; ii) making a Program or Cloud Service available; iii) shipping an Appliance; or iv) providing the Services.

2. Content and Data Protection

- a. Content consists of all data, software, and information that Client or its authorized users provide, authorize access to, or inputs to the Cloud Services or information or data Client may provide, make available or grant access to, in connection with IBM providing the Cloud Services or other Services. Client grants the rights and permissions to IBM, its affiliates, and contractors of either, to use, provide, store, and otherwise process Content solely for the purpose of providing the Cloud Services or other Services. As between IBM and Client, use of the Cloud Services or other Services will not affect Client's ownership or license rights in Content.
- b. IBM, its affiliates, and their respective contractors may access and use the Content solely for the purpose of providing and managing the IBM Cloud Services or other IBM Services. IBM will treat all Content as confidential by only disclosing the Content to IBM employees and contractors to the extent necessary to provide the IBM Cloud Services or other IBM Services.
- c. Client is responsible for obtaining all necessary rights and permissions to permit processing of Content in the Cloud Services or for IBM to perform other Services. Client will make disclosures and obtain consent required by law before Client provides, authorizes access to, or inputs individuals' information, including personal or other regulated data, for processing in the IBM Cloud Services or use by IBM in providing the other Services.
- d. If any Content could be subject to governmental regulation or may require security measures beyond those specified by IBM for the Cloud Services or to provide other Services, Client will not provide, allow access to, or input the Content for processing in the Cloud Services or provide or allow access of Content to IBM to provide other Services unless specifically permitted in the applicable TD or unless IBM has first agreed in writing to implement additional security and other measures. Client is responsible for adequate back-up of Content on Client managed systems prior to providing or allowing access of Content to IBM to provide other Services.
- e. IBM Data Security and Privacy Principles (DSP), at <http://ibm.com/terms/?id=z126-7745>, apply for generally available, standard IBM Cloud Services and other IBM Services as identified in a TD. At IBM's discretion, IBM may change the DSP from time to time and the change will be effective when published or on the specified effective date. The intent of any change will be to improve and clarify existing commitments and maintain alignment to current adopted operational and security standards or applicable laws. The intent is not to degrade the security or functionality.
- f. The specific security features and functions of an IBM Cloud Service or other IBM Services will be described in the applicable Attachment and/or TD(s). Client is responsible for selecting, ordering, enabling, or using available data protection features appropriate to support Client's use of Cloud Services. Client is responsible for assessing the suitability of the Cloud Services for the Content and Client's intended use of Content with Services IBM will provide. Client acknowledges that the use of Cloud Services and other Services meets Client's requirements and processing instructions required to comply with applicable laws.

- g. IBM's Data Processing Addendum (DPA) is found at <http://www.ibm.com/dpa>. The DPA and applicable DPA Exhibit(s) apply to IBM's processing of personal data on behalf of the Client.
- h. For IBM Cloud Services with self-managed features, Client can remove Content at any time. Otherwise, IBM will return or remove Content from IBM computing resources upon the expiration or cancellation of the IBM Cloud Services or other IBM Services, 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 backup files until expiration of such files as governed by IBM's backup retention practices.

3. Warranties

- a. IBM warrants an IBM Program as set forth in its applicable IBM license agreement.
- b. IBM warrants it provides Services using commercially reasonable care and skill as described in the Agreement. The warranty for Services ends when the Services end.
- c. IBM warrants that an IBM Machine component of an Appliance used in its specified operating environment conforms to its specifications. A Machine is a hardware device including its features, upgrades, and accessories. The warranty period is specified in the applicable Attachment or TD.
- d. If an Appliance does not function as warranted during its warranty period and IBM is unable to repair or replace it with a functionally equivalent Appliance, Client may return it to IBM or the IBM Business Partner for a refund of the amount Client paid (for recurring charges, up to twelve months' charges) and Client's license or right to use such Appliance terminates.
- e. 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 does not warrant uninterrupted or error-free operations of an EP or that IBM will correct all defects or prevent third-party disruptions or unauthorized third-party access to an EP. IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, or failure to comply with written instructions provided by IBM. Non-IBM EPs and preview products, or identified non-warranted IBM EPs are sold under the Agreement as-is, without warranties of any kind. Third parties may provide their own warranties to Client for Non-IBM EPs.

4. Charges, Taxes, Payment, and Verification

- a. Client's right to use an EP is contingent on Client paying applicable charges as specified in the Agreement under which Client acquired the entitlements.
- b. Client agrees to pay all applicable charges for acquired entitlements and any charges for use of excess authorizations. Charges are exclusive of any customs or other duty, tax, and similar levies imposed by any authority resulting from Client's acquisitions of entitlements 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 and if not paid within 30 days, late payment fees may apply. Client is responsible to properly acquire additional entitlements in advance to increase its use. Prepaid EPs 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 except as specified in this Agreement. IBM may pro-rate charges for select EPs to align with a common date such as Anniversary dates.
- c. In the event that an withholding or deduction for or on account of tax is required under any law or regulation of any governmental entity or authority, domestic or foreign to be made by Client in respect of any charge, Client shall increase the sum payable by the amount necessary to ensure IBM receives an amount equal to the sum it would have received had no withholdings or deductions been made. Client is responsible to pay any withholding tax directly to the appropriate government entity where required by law.
- d. If Client imports, exports, transfers, accesses, or uses an EP across a border, Client agrees to be responsible for and pay authorities any custom, duty, tax, or similar levy assessed by the authorities. This excludes those taxes based on IBM's net income.
- e. Client's obligation to pay EP charges due under this Agreement is absolute and unconditional and not subject to setoff or delay. Neither IBM nor IBM's affiliates and subsidiaries make any representation regarding Client's accounting treatment of such payments; IBM may account for receivables as financing receivables for United States reporting purposes.

4.1 License Verification

- a. For all Programs at all Sites and for all environments, Client annually will: i) provide a report of deployed Programs, in a format, equivalent to the reporting template under License Verification annual reporting at http://www.ibm.com/about/software-licensing/us-en/sam/client_responsibilities, or as otherwise requested by IBM, using records, system tools output, and other system information; ii) provide supporting documentation (collectively, Deployment Data); and iii) retain this information for a minimum of 2 years. Upon request from IBM, Client will provide this information within 30 days of the request.
- b. Upon reasonable notice, IBM and its independent auditors may verify Client's compliance with the Agreement at all Sites and for all environments that Client uses (for any purpose) Programs. Verification will be conducted in a manner that minimizes disruption to Client's business. Verification may be conducted on Client's premises, during normal business hours. IBM will have a written confidentiality agreement in place with the independent auditor. In addition to providing Deployment Data described above, Client agrees to provide to IBM and its auditors additional accurate information and Deployment Data upon request.
- c. Client will promptly order and pay at IBM's then current prices for: i) any deployments in excess of authorizations indicated on or by any annual report or verification; ii) applicable S&S for such excess deployments for the lesser of the duration of such excess use or two years; and iii) any additional charges and other liabilities determined as a result of such verification, including but not limited to taxes, duties, and regulatory fees.

4.2 Volume Pricing

- a. IBM assigns each EP a point value, which may be zero, and can be changed by IBM. A Relationship Suggested Volume Pricing (RSVP) level is determined by aggregating points for all EPs ordered during Client's Passport Advantage Program Term (PA Program Term). The point value of Client's initial EP order determines Client's initial RSVP level. Client may attain a higher RSVP level by placing additional EP orders. The higher RSVP level will apply to orders placed after the higher RSVP level is attained. A Suggested Volume Pricing (SVP) level is also calculated for each order and is based on the point value for that order. If the SVP level for an order is higher than Client's current RSVP level, the SVP level will apply to that order.
- b. The initial PA Program Term commences with Client's first order after enrollment and continues until the last day of the twelfth full month thereafter (i.e., the initial PA Program Term includes 12 full months, plus if the order was not placed on the first day of a month, the remainder of the first month). On the first day of the month following the end of the prior PA Program Term (the Anniversary), the next 12-month PA Program Term begins. For each PA Program Term after the initial PA Program Term, Client's RSVP level is reset on the Anniversary, based on EPs acquired by all active Sites during the prior PA Program Term. The RSVP level for a new PA Program Term will not be lowered by more than one level below Client's RSVP level at the end of the prior PA Program Term.

RSVP/SVP Level Table

RSVP/SVP Level	BL	D	E	F	G	H
Points	<500	500	1,000	2,500	5,000	10,000

- c. Client's Sites enrolled as a Government Site or Academic Volume Option Site on the IPAA Enrollment Form receive applicable discounted pricing and the above Section 4.2 terms do not apply. To receive Academic Volume Option pricing, EPs must be used for academic or administrative purposes only and may not be used for commercial purposes.

5. Liability and Intellectual Property Protection

- 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 EP 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, and suppliers.

- b. The following amounts are not subject to the above cap: i) third-party payments related to infringement claims described in the paragraph 5(c) below; and ii) damages that cannot be limited under applicable law.
- c. If a third party asserts a claim against Client that an IBM EP 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. To obtain IBM's defense against and payment of infringement claims, Client must promptly: i) notify IBM in writing of the claim; ii) supply information requested by IBM; and iii) allow IBM to control, and reasonably cooperate in, the defense and settlement, including mitigation efforts. IBM's defense and payment obligations for infringement claims extend to claims of infringement based on open-source code that IBM selects and embeds in an IBM EP.
- d. IBM has no responsibility for claims based on: i) Non-IBM EPs; ii) items not provided by IBM; iii) IBM's proper use of any Client required third-party products or services related to the administration of the transaction; iv) any violation of law or third-party rights caused by Content, or any Client materials, designs, specifications; or v) Client's use of a non-current version or release of an IBM EP when an infringement claim could have been avoided by using a current version or release.

6. Termination

- a. Either party may terminate: i) this IPAA without cause on at least 30 days' notice to the other after expiration or termination of its obligations under each Agreement; or ii) immediately for cause if the other is in material breach of an Agreement, provided the non-complying party is given notice and reasonable time to comply. Termination of this IPAA does not terminate transactions in effect and not affected by the cause of a material breach and provisions of the Agreement, as they relate to such transactions, remain in effect until fulfilled or otherwise terminated in accordance with the Agreement terms. Upon any termination of Client's license to use a Program, Client will promptly destroy all copies of such Program.
- b. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled and apply to successors and assignees.
- c. Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations. Client's failure to pay, or Client providing inaccurate or fraudulent account or payment information to acquire EPs, is a material breach.
- d. This IPAA is terminated if for 24 consecutive months: i) Client has not placed an order; and ii) there are no continuous Services in effect.

7. Governing Laws and Geographic Scope

- a. Both parties agree to the application of the laws of the country where the transaction is performed (or for IBM or Non-IBM Cloud Services, the laws of the country of Client's business address), without regard to conflict of law principles. Any disputes will be brought before a court of competent jurisdiction within such country.
- b. The rights and obligations of each party are valid only in the country where the transaction is performed (or for IBM or Non-IBM Cloud Services the country of Client's business address) or, if IBM agrees, the country where the IBM EP or Non-IBM EP is placed in productive use, except all licenses are valid as specifically granted.
- c. Each party is also 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 the defense trade control regime of the United States of America and any applicable jurisdiction that prohibit or restrict the import, export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. IBM will not serve as Client's exporter or importer, except as required by data protection laws, for: i) any Content; ii) use of any portion of a Cloud Service from a country outside Client's business address.
- d. 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.

8. General Terms

- a. EPs are for use within Client's Enterprise only. Client may not assign, resell, rent, lease, or transfer an EP to a third party. Any attempt to do so is void. Lease-back financing of Appliances is permitted. EPs may not be used to provide commercial hosting or other commercial information technology services to third parties.
- b. IBM may withdraw on 12 months' notice Term Licenses, S&S, Selected Support, Cloud Services, or Appliance Services. IBM will continue to provide the withdrawn offering for the remainder of Client's unexpired term or work with Client to migrate to another generally available IBM offering. Non-IBM EPs may be discontinued at any time if the third party discontinues, or IBM no longer makes available such Non-IBM EPs.
- c. IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform or take responsibility for any of Client's regulatory, business, or operational obligations. Client is responsible for its use of IBM EPs and Non-IBM EPs. IBM is acting as an information technology provider only. IBM's direction, suggested usage, guidance, or Client's use of an IBM EP does not constitute medical, clinical, legal, accounting, or other licensed professional advice. Client should obtain its own expert advice. Each party is responsible for determining the assignment, direction, control, and compensation of its and its affiliates personnel and their respective contractors.
- d. For Programs IBM provides to Client in tangible form, IBM fulfills its shipping and delivery obligations upon the delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by Client and IBM.
- e. Client may not use IBM EPs or Non-IBM EPs if failure or interruption of the IBM EPs or Non-IBM EPs could lead to death, serious bodily injury, or property or environmental damage.
- f. Parties will not disclose confidential information to employees or contractors of the other party without a separate, signed confidentiality agreement. If confidential information is exchanged in connection with the Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this IPAA. This paragraph does not apply to Content provided in the use of an IBM Cloud Services or Non-IBM Cloud Service.
- g. IBM will notify Client of any modifications to this IPAA by posting a notice on Client's Passport Advantage Online portal and IBM Terms at <http://www.ibm.com/terms>. Client is responsible to subscribe within IBM Terms to receive notices for the IPAA modifications. For existing Clients, the effective date of new IPAA terms will be 90 days following the document publish date and changes are not retroactive. Changes will apply, as of the effective date, and Client accepts changes by: i) placing new orders; ii) continuing to use ongoing or continuous Cloud Services; or iii) renewing EPs after the effective date of the new IPAA terms.
- h. IBM maintains a robust set of business conduct and related guidelines covering conflicts of interest, market abuse, anti-bribery and corruption, and fraud. IBM and its personnel comply with such policies and require contractors to have similar policies.
- i. IBM, its affiliates, and their respective contractors require use of business contact information and certain account usage information. This information is not Content. Business contact information is used to communicate and manage business dealings with the Client. Examples of business contact information include name, business telephone, address, email, user ID, and tax registration number(s). Account usage information is required to enable, provide, manage, support, administer, and improve EPs. Examples of account usage information include reported errors and digital information gathered using tracking technologies, such as cookies and web beacons during use of the EPs. The IBM Privacy Statement at <http://www.ibm.com/privacy> provides additional details with respect to IBM's collection, use, and handling of business contact and account usage information. When Client provides information to IBM and notice to, or consent by, the individuals is required for such processing, Client will notify the individuals and obtain their consent.
- j. IBM Business Partners who use or make available IBM EPs or Non-IBM EPs are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings. If IBM notifies Client their current IBM Business Partner will no longer resell an IBM EP, Client may select to acquire the EP directly from IBM or another authorized IBM Business Partner as available.

- k. IBM may offer Non-IBM EPs, or an IBM EP may enable access to Non-IBM EP, that may require acceptance of third-party terms presented to the Client. Linking to or use of Non-IBM EPs constitutes Client's agreement with such third-party terms. Third-party terms and privacy practices govern use of Content Client may provide, grant access to or input to a Non-IBM Cloud Service or other Non-IBM Service. IBM is not a party to any third-party agreement and is not responsible for Non-IBM EPs. Access to Non-IBM EPs may be discontinued at any time if the third party discontinues or IBM no longer makes available such Non-IBM EPs. IBM may provide Client opportunities to voluntarily provide feedback in connection with the use of IBM EPs, which IBM may use for any purpose.
- l. A preview product is when IBM makes an IBM EP or Non-IBM EP or feature of an IBM EP or Non-IBM EP available at no charge, with limited or pre-release functionality, or for a limited time, to try available functionality (such as beta, trial, evaluation, no-charge, or designated preview products). Services levels agreements set forth in the Agreement (including in a TD or Attachment) that provides service levels does not apply to preview products. A preview product may not be covered by support and IBM may change or discontinue a preview product at any time and without notice. For any preview product that is provided as a pre-release, IBM is not obligated to release a generally available product. Client is responsible for placing an order under generally available terms for generally available EPs when a preview expires.
- m. Neither party may assign the Agreement, in whole or in part, without the prior written consent of the other. IBM may assign its right to receive payments without consent. IBM will remain responsible to perform its obligations. Assignments by IBM in conjunction with the sale of the portion of IBM's business that includes an IBM EP or Non-IBM EP is not restricted by the foregoing. IBM may share the Agreement and related documents in conjunction with any assignment.
- n. The parties' consent to use electronic means and facsimile transmissions for communications as a signed writing. Any reproduction of the Agreement made by reliable electronic means is considered an original. The Agreement supersedes any course of dealing, discussions, or representations between the parties. Where approval acceptance, consent, access, cooperation, or similar action by either party is required, such action will not be unreasonably delayed or withheld.
- o. 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.
- p. IBM may use personnel and resources in locations worldwide, including third-party contractors to support the delivery of IBM EPs and Non-IBM EPs. Client's use of IBM EPs or Non-IBM EPs may result in the transfer of Content, including personally identifiable information, across country borders. A list of countries where Content may be transferred and processed is described in the TD or as specified in Services support documentation. IBM is responsible for the obligations under the Agreement even if IBM uses a third-party contractor and will have appropriate agreements in place to enable IBM to meet its obligations.
- q. If IBM and Client agree to use a Client requested third-party service to support the procurement or payment activities associated with the Agreement, IBM agrees to submit or receive applicable documents (such as invoices or similar contracting documents) using the third-party service. Client agrees to reimburse IBM for any third-party fees associated with IBM's use of such third-party service. In the event: i) the third-party service becomes unavailable for any reason; or ii) the third-party provider modifies the service or terms of use in a manner IBM deems commercially unacceptable, the Client agrees to directly accept documents from IBM and pay IBM directly. Client remains responsible to IBM for timely payments of invoices and for any claims or proceedings related to the third-party service provider's failure to comply with applicable laws or for such provider's use, misuse, or disclosure of data or confidential information. IBM agrees to promptly notify Client in writing of any such claim or proceeding.

9. Program Licenses

- a. IBM Programs available under this IPAA are licensed under IBM's International Program License Agreement (IPLA) or a designated IBM license agreement available at <http://www.ibm.com/terms/pla>, and the Program's License Information document (LI) available at <http://www.ibm.com/terms/?cat=software-license>. If there is a conflict between the terms of this IPAA, including its applicable Attachments and TDs, and the terms of the IPLA including the applicable LI, the terms of this IPAA prevail.

- b. If Client is dissatisfied with a Program for any reason, Client may terminate the license by returning the Program and proof of entitlement to IBM or the authorized IBM Business Partner within 30 days of the first acquisition date of such Program for a refund of the amount paid.
- c. Trade-up licenses for IBM Programs that replace IBM Programs with active support or Non-IBM Programs may be acquired for a reduced charge. When Client installs a replacement IBM Program, the replaced IBM Program license terminates. Client agrees to uninstall and destroy all copies of the replaced IBM or Non-IBM Program, unless the trade-up license covers continued use of such replaced Program.

9.1 Program Term Licenses and Renewals

- a. Programs IBM offers under term licensing models give Client a license to use a Program and access to S&S or Sustained Support, as applicable, for a term specified in applicable TDs.
- b. Upon expiration of the license term, Client's license to use the Program and access to S&S or Sustained Support, as applicable, terminates. Client is required to uninstall and destroy all copies of the affected Program. Client agrees to provide evidence of such upon request from IBM.

9.1.1 Subscription License

- a. Client may not terminate entitlements for Subscription License before the end of the current term.
- b. For select Programs that Client has previously licensed and has active support (Qualifying Program), Client may upgrade to a Subscription License Upgrade Program, as detailed in a TD. When a Subscription License Upgrade is acquired, Client may use the Qualifying Program and the Subscription License Program in any deployment combination up to the total number of entitlements purchased for the Subscription License Upgrade Program.

9.1.2 Monthly License

- a. Client may terminate a Monthly License term early by giving IBM at least 30 days' written notice. Client will receive a prorated refund for any whole months remaining in a prepaid term.

9.1.3 Fixed Term License

- a. Client may terminate a Fixed Term License early by giving IBM at least 30 days' written notice. Client will receive a prorated refund for any whole months remaining in a prepaid term.

9.1.4 Term License Renewal

- a. If the Program is still available and Client renews for another term, IBM will renew the expiring license entitlements for the term and renewal charges specified in the TD.
- b. If Client does not renew, the license term expires.
- c. If Client does not renew a Subscription License Upgrade Program, the license term for the Upgrade Program expires. Client may continue to use the Qualifying Program at the Program version level in use at the end of the term or, if applicable, the designated Qualifying Program replacement. If Client elects to resume an available Support Offering for the Qualifying Program, Client must acquire the Support Offering at then current prices for all uses and installations of the Qualifying Program.
- d. If Client requests to renew expiring licenses at a lesser quantity of the Program uses and installations than the expiring quantity, Client must provide system generated documentation that verifies the current Program uses and installations to IBM, as specified in the Agreement. If the documentation is not received by IBM at least 30 days prior to the renewal date, Client must renew all expiring quantities.
- e. Client may change the renewal option for a Term License, if available, at any time by giving IBM at least 30 days' written notice before the end of the current term.

9.2 Full Capacity and Virtualization Requirements

- a. Client must license the total number of all physical Activated Processor Cores in the physical hardware environment made available to or managed by the EP, except for those servers from which the EP has been permanently removed (Full Capacity). An Activated Processor Core is a processor core that is available for use in a physical server, regardless of whether the capacity of the processor core can be or is limited through virtualization technologies, operating system commands, BIOS settings, or similar restrictions.

9.2.1 Virtualization Environment Products (Sub-Capacity or Container Licensing)

- a. Sub-Capacity Licensing – EPs that meet the requirements for Sub-Capacity usage (see <http://www.ibm.com/software/passportadvantage/subcaplicensing.html>) may be licensed under Sub-Capacity Licensing terms (Eligible Sub-Capacity Product). Client must acquire entitlements equal to the virtualization capacity available to the Eligible Sub-Capacity Product.
- b. Container Licensing – EPs that meet the requirements for Container usage (see <http://www.ibm.com/software/passportadvantage/containerlicenses.html>) may be licensed under Container Licensing terms (Eligible Container Product). Client must acquire entitlements for the total number of processor cores associated with the capacity of all containers available to the Eligible Container Product.
- c. Client is responsible to comply with the virtualization environments requirements to be eligible for Sub-Capacity Licensing or Container Licensing benefits.
- d. Prior to an increase in Sub Capacity or Container Licensing Programs, Client must first acquire sufficient licenses, including IBM Software Subscription and Support, if applicable, to cover that increase.
- e. If EP deployments do not meet the Sub-Capacity Licensing or Container Licensing requirements in this section, Client is required to license at Full Capacity.

9.2.2 Client's Reporting Responsibilities

In addition to the License Verification terms in Section 4.1 and applicable TDs, the following reporting and resolution terms apply.

- a. For EPs under Sub-Capacity Licensing and Container Licensing, Client agrees to properly install, run, and maintain the most current available update of the applicable license reporting tool within 90 days of Client's first deployment and produce a report. Unless IBM approves a different reporting tool, the Client agrees to the following tools.
 - 1) Sub-Capacity Products - Client will use the IBM License Metric Tool (ILMT) and to subscribe to the ILMT support notifications at <http://www.ibm.com/support/mynotifications> and promptly install any updates.
 - 2) Container Products – Client will use the IBM License Service tool and Client is responsible to correctly configure according to the Eligible Container Product's documentation.
- b. Client must assign a person in Client's organization with authority to manage and promptly resolve questions on reports or inconsistencies between report contents, license entitlement, and the applicable license reporting tool.
- c. For EPs under Sub-capacity Licensing or Container Licensing, for all Sites and environments, Client is required to run reports at least once per quarter and retain each report a minimum of 2 years and provide to IBM upon request. Manual reporting is not permitted for Container Products.
- d. For EPs running in Full Capacity, in all Sites and environments, Client must: i) track either manually or using an available IBM tools; ii) report Client's licenses for each EP at least once a year; iii) retain, for a minimum of 2 years, each report and the Deployment Data used to identify the deployed EP and the related Full Capacity of the Servers made available or managed by the EP; and iv) provide reports to IBM upon request. Report format must contain similar information as noted in the Manual Calculation of Virtualization Capacity report at: <http://www.ibm.com/software/passportadvantage/subcaplicensing.html>.
- e. For EPs that no longer meet Sub-Capacity Licensing requirements for which Client would like to continue to license under Sub-Capacity Licensing terms, Client will submit a migration plan to meet the Sub-Capacity Licensing requirements for IBM's review and approval. During any approved migration, Client shall maintain the version of ILMT that supported the EP based on the Sub-Capacity Licensing requirements prior to becoming ineligible and continue to generate ILMT reports. With IBM's prior written consent, Client may manually manage and track such EPs in accordance with item d above.
- f. Except for IBM approved changes, modifications, or updates to software licensing tools, Client may not alter, modify, omit, delete, or misrepresent by any means, directly or indirectly:
 - 1) any IBM-approved software reporting tools, including its code, or any report generated by such tools; or

- 2) any manually generated reports that misrepresents use of EPs.

9.2.3 Excess Use Resolution

- a. IBM will notify Client in writing if Client has used any EPs in excess of Client's Authorized Use or is otherwise not in compliance with the Agreement. Client agrees to promptly pay the charges at then current prices that IBM specifies in an invoice for: i) such excess use; ii) S&S and Selected Support for such excess use for the lesser of the duration of such excess use or two years; and iii) any additional charges and other liabilities determined, including but not limited to taxes, duties, and regulatory fees.

9.3 CEO (Complete Enterprise Option) Product Categories

- a. A CEO Product Category is a collections of EP components offered by IBM on a per CEO User basis subject to specific acquisition rules including a minimum initial user quantity (a CEO Product Category) described at <http://www.ibm.com/software/passportadvantage/ceoproductcategories.html>. For Client's first CEO Product Category, Client must acquire licenses for all users in their Enterprise who have been assigned a machine capable of copying, using, or extending the use of any Program in the CEO Product Category (CEO User) and subject to that category's minimum initial order user quantity. For each additional CEO Product Category, Client must meet the applicable minimum initial order user quantity requirement for the CEO Product Category but is not required to acquire licenses for all CEO Users.
- b. Any installs of any EP component of a CEO Product Category can only be used by or for users for whom licenses have been obtained. All EPs used on an end user device to access an EP on a server must be acquired from the same CEO Product Category as the server the EP accessed.

10. Appliances

- a. An Appliance is an EP which is a combination of Program components, Machine components, and any applicable Machine Code components offered together as a single offering and designed for a specific function. Unless otherwise provided, terms that apply to a Program apply to the Program component of an Appliance. Client shall not use any component independent of the Appliance of which it is a part.
- b. A Machine component is an IBM or non-IBM device, including its feature, upgrades, and accessories. A Machine Code component is computer instructions, fixes, replacements, and related materials, such as data and passwords relied on, provided by, used with, or generated by a Machine component, that permit the operation of the Machine component's processors, storage, or other functionality. Machine Code may include software code licensed under separate agreement identified in an Other Internal Licensed Code Attachment. Client acceptance of this IPAA includes acceptance of IBM's Machine Code license agreements provided with the Appliance. A Machine Code component is licensed only for use to enable a Machine component to function under its specifications and only for the capacity and capability for which Client has acquired IBM's written authorization. The copy of the Machine Code component is copyrighted and licensed.
- c. Each Appliance is manufactured from parts that may be new or used, and in some cases, an Appliance or its replacement parts may have been previously installed. Regardless, IBM's warranty terms apply.
- d. When Client acquires an Appliance directly from IBM, IBM transfers title to a Machine component to Client or, if applicable, Client's lessor, upon payment of all the amounts due except in the United States where title transfers upon shipment. IBM pays for insurance on Client's behalf until delivery to Client's location. Client must report any loss in writing to IBM within 10 business days of delivery and follow the claim procedure provided by IBM. For an upgrade acquired for an Appliance, IBM reserves transfer of title of the Machine component until IBM receives payment of all the amounts due and receives all removed parts, which then become IBM's property. IBM will not serve as the exporter or importer of record.
- e. If an Appliance is IBM-set-up (IBM installable), Client will allow installation within 30 days of shipment or additional charges may apply. Client will promptly install or allow IBM to install mandatory engineering changes. If an Appliance is Client-set-up (Client installable), Client will install it according to instructions provided with it.
- f. Appliance hardware components removed or exchanged for upgrade, warranty service, or maintenance become IBM property and must be returned to IBM within 30 days. A replacement takes on the warranty or maintenance status of the replaced part. If Client returns an Appliance to

IBM, Client will remove all features not supported under Appliance Services, securely erase all data, and ensure that it is free of any legal restrictions that would prevent its return.

11. Cloud Services

- a. Cloud Services are "as a service" EPs that IBM makes available and provides via a network, such as software as a service, platform as a service, or infrastructure as a service, or other network delivered services as specified in a TD.
- b. Cloud Services are designed to be available 24/7, subject to maintenance. IBM will provide advance notice of scheduled maintenance.
- c. When IBM accepts Client's order, IBM provides Client the authorizations specified in the TD. IBM provides the facilities, personnel, equipment, software, and other resources necessary to provide Cloud Services. IBM provides generally available user guides and documentation to support Client's use of the IBM Cloud Service.
- d. Client will provide hardware, software, and connectivity to access and use Cloud Services, including any required Client-specific URL addresses and associated certificates.
- e. Client's authorized users may access Cloud Services only to the extent of authorizations Client acquires. Client is responsible for use of Cloud Services by any user who accesses the Cloud Services with Client's account credentials.
- f. The following acceptable use terms apply for Client's use of the Cloud Services. Cloud Services may not be used to undertake any activity or host Content that: i) is unlawful, fraudulent, harmful, malicious, obscene, or offensive; ii) threatens or violates the rights of others; iii) disrupts or gains (or intends to disrupt or gain) unauthorized access to data, services, networks, or computing environments within or external to IBM; iv) sends unsolicited, abusive, or deceptive messages of any type; or v) distributes any form of malware. Client may not use Cloud Services for crypto mining, unless otherwise agreed by IBM in writing. Client may not: i) reverse engineer any portion of a Cloud Service; ii) assign or resell direct access to a Cloud Service to a third party outside Client's Enterprise; or iii) combine a Cloud Service with Client's value add to create Client branded solution that Client markets to its end user customers unless otherwise agreed by IBM in writing.
- g. Additional terms, including data protection terms, for Cloud Services are provided in the General Terms for Cloud Offerings for Passport Advantage Agreements document at <http://www.ibm.com/terms/?id=i126-5948>. Each Cloud Service is described in a Service Description and may include additional Client responsibilities. These documents can be viewed at <http://www.ibm.com/terms/?cat=cloud-sd>. Technical support and service level commitments, if any, are specified in a TD.
- h. Client acquires Cloud Services on a subscription basis or as specified in a TD. Client may increase authorization levels to the Cloud Services by placing an order. Client may only decrease Client's authorization levels when renewing the Cloud Services.

12. Support

A TD will identify acquired support offerings, coverage start and end dates, and other transactional information.

- a. Support Offerings are EPs which will consist of one or combination of:
 - 1) Software Subscription which provides Client access to generally available defect corrections, restrictions, bypasses, and any new versions, releases, or updates; or
 - 2) Software Support which provides Client assistance with Client's: i) routine, short duration installation and usage (how-to) questions; and ii) code-related questions.
- b. The IBM Support Guide at <http://www.ibm.com/support/guide> provides details and additional information for IBM support offerings. The IBM Software Support Lifecycle policy is available at <http://www.ibm.com/support/lifecycle>.

12.1 Support Offerings

12.1.1 Software Subscription and Support

- a. Software Subscription and Support (S&S) provides both Software Subscription and Software Support.

12.1.2 Appliance Services

- a. Appliance Services is an offering that provides Machine maintenance and S&S. Appliance Services cover undamaged and properly maintained and installed Appliances used as authorized by IBM with unaltered identification labels. Appliance Services do not cover alterations, accessories, supply items, consumables (such as batteries), structural parts (such as frames and covers), or failures caused by a product for which IBM is not responsible.

12.1.3 Optional Support Offerings

- a. Client may acquire optional support offerings as described in the applicable TDs.

12.2 Usage and Renewal of Support Offerings

- a. Software Support for a specified version or release of an EP is available only until withdrawn by IBM at which time Client must: i) upgrade to a supported version or release of the EP; or ii) acquire an available optional support offering to continue to receive Software Support.
- b. If Client elects to continue to receive the benefits of a support offering for an EP at a designated Site, Client must maintain applicable support offering entitlements for all uses and installations of the EP at that Site. All uses and installations of any Appliance expansion or add-on applied to an Appliance must also be maintained.
- c. If Client requests to renew expiring S&S, or as specified for optional support offerings, at a lesser quantity of EP uses and installations than the expiring quantity (Partial Renewal), Client must provide system generated documentation that verifies current uses and installations of the EP to IBM. For EPs under Sub-Capacity Licensing or Container Licensing, Client must provide ILMT or IBM License Service tool reports with uses and installations of the EP for at least the last 90 days prior to the renewal date. If the documentation is not received by IBM at least 30 days prior to the renewal date, Client must renew all expiring quantities.
- d. If Client's S&S or Appliance Services coverage lapses, the benefits of the S&S or Appliance Services will no longer be available to the Client including, if applicable, but not limited to, the ability to access downloads and media. To reinstate coverage, Client must pay any applicable reactivation fee and acquire the S&S or Appliance Services at then current prices for all uses and installations of the EP. For Appliances, Client must permit IBM to inspect the Appliance before Appliance Services can be reinstated and if not in acceptable condition, Client must restore the Appliance into acceptable working condition, as determined by IBM, to receive Appliance Services for that Appliance.
- e. IBM uses information about errors and problems to improve EPs and Services and assist with the provision of related support offerings.

Part 2 – Country Required Terms

For EPs acquired in the countries specified below, the following terms replace or modify the referenced terms of this IPAA. Terms not changed by these amendments remain unchanged and in effect.

AMERICAS

Section 2. Content and Data Protection

In paragraph a, second sentence, and paragraph b, in both the first and second sentences, replace the word "contractors" with:

In Mexico: providers

Section 4. Charges, Taxes, Payment, and Verification

In paragraph b, replace the first and second sentence with the following:

In Brazil: Client agrees to pay all applicable charges for acquired entitlements and any charges for use in excess of authorizations and any customs or other duty, tax, and similar levies imposed by any authority resulting from Client's acquisitions under this Agreement.

In paragraph b:

In Mexico:

In the third sentence, delete the words "to an account specified by IBM and if not paid within 30 days, late payment fees may apply." and replace with the following words":

"and 2% default interests may apply."

In Mexico:

Add the following new sentence after the third sentence:

Payments will be made through electronic transfer of funds to an account specified by IBM or in IBM's domicile which is located in Alfonso Napoles Gandara 3111, Santa Fe Peña Blanca, Alvaro Obregon, Mexico City, Zip Code 01210.

Add at the end of paragraph b the following sentence:

In Canada: Where taxes are based upon the location(s) receiving the benefit of the Program, Client has an ongoing obligation to notify IBM of such location(s) if different than Client's business address listed in the applicable TD.

Add at the end of paragraph b the following sentence:

In United States: The parties agree no tangible personal property (e.g. media or publications) shall transfer to Client if: i) IBM delivers Programs electronically to Client; or ii) Client claims a sales or use tax exemption for Programs IBM delivers electronically to Client. Where taxes are based upon the location(s) receiving the benefit of the Program, Client has an ongoing obligation to notify IBM of such location(s) if different than Client's business address listed in the applicable TD.

Section 5. Liability and Intellectual Property Protection

In paragraph a, last sentence, delete the word:

In Mexico: "contractors"

Insert the following disclaimer at the end of paragraph a:

In Peru: In accordance with Article 1328 of the Peruvian Civil Code the limitations and exclusions will not apply in the cases of willful misconduct ("dolo") or gross negligence ("culpa inexcusable").

Section 7. Governing Laws and Geographic Scope

Replace paragraph a, in its entirety, with the following:

In Argentina: Both parties agree to the application of the laws of the Republic of Argentina, without regard to the conflict of law principles. Any proceeding regarding the rights, duties, and obligations arising from this Agreement will be brought in the Ordinary Commercial Court of the City of "Ciudad Autónoma de Buenos Aires".

In Chile: Both parties agree to the application of the laws of Chile, without regard to the conflict of law principles. Any conflict, interpretation or breach related to this Agreement that cannot be solved by the Parties should be remitted to the jurisdiction of the Ordinary Courts of the city and district of Santiago.

In Colombia: Both parties agree to the application of the laws of the Republic of Colombia, without regard to the conflict of law principles. All rights, duties and obligations are subject to the judges of the Republic of Colombia.

In Ecuador: Both parties agree to the application of the laws of the Republic of Ecuador, without regard to the conflict of law principles. Any dispute arising out or relating to this Agreement will be submitted to the civil judges of Quito and to the verbal summary proceeding.

In Peru: Both parties agree to the application of the laws of Peru, without regard to the conflict of law principles. Any discrepancy that may arise between the parties in the execution, interpretation or compliance of this Agreement that may not be directly resolved shall be submitted to the Jurisdiction and Competence of the Judges and Tribunals of the 'Cercado de Lima' Judicial District.

In Uruguay: Both parties agree to the application of the laws of Uruguay. Any discrepancy that may arise between the parties in the execution, interpretation or compliance of this Agreement that may not be directly resolved shall be submitted to the Montevideo Courts ("Tribunales Ordinarios de Montevideo").

In Venezuela: Both parties agree to the application of the laws of Venezuela, without regard to the conflict of law principles. The parties agree to submit any conflict related to this Agreement, existing between them to the Courts of the Metropolitan Area of the City of Caracas.

In paragraph a, first sentence only, replace the phrase, "the country where the transaction is performed (or for IBM or Non-IBM Cloud Services, the laws of the country of Client's business address)" with:

In United States, Anguilla, Antigua/Barbuda, Aruba, Bahamas, Barbados, Bermuda, Bonaire, British Virgin Islands, Cayman Islands, Curacao, Dominica, Grenada, Guyana, Jamaica, Montserrat, Saba, Saint Eustatius, Saint Kitts and Nevis, Saint Lucia, Saint Maarten, Saint Vincent and the Grenadines, Suriname, Tortola, Trinidad and Tobago, and Turk and Caicos: the State of New York, United States.

In Canada: the Province of Ontario and the federal laws of Canada applicable therein.

In Mexico: Mexico

In paragraph a, replace the second sentence with the following:

In Brazil: All disputes arising out of or related to this Agreement, including summary proceedings, will be brought before and subject to the exclusive jurisdiction of the Forum of the City of São Paulo, State of São Paulo, Brazil and the parties irrevocably agree with this specific jurisdiction renouncing any other, however privileged it may be.

In paragraph b, replace the phrase, "the country where the transaction is performed (or for IBM or Non-IBM Cloud Services the country of Client's business address) or, if IBM agrees, the country where the IBM EP or Non-IBM EP is placed in productive use" with:

In Argentina: Argentina

In Chile: Chile

In Colombia: Colombia

In Ecuador: Ecuador

In Mexico: Mexico

In Peru: Peru

In Uruguay: Uruguay

In Venezuela: Venezuela

Section 8. General Terms

In paragraph c:

In Mexico: In the first sentence replace the word "contractor" with the word "company" and in the last sentence replace the word "contractors" it with the word "providers"

In paragraph f (first sentence), h (second sentence), and i (first sentence):

In Mexico: *Replace the word "contractors" with the word "providers".*

In paragraph o:

In Brazil: *delete the entire 2nd sentence: "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".*

In paragraph p:

In Mexico: The words "personnel and" are eliminated and the word "contractors" in first and last sentences is substituted with "suppliers".

Add as a new paragraph r to this section:

In Canada: Both parties agree to write this document in English. Les parties ont convenu de rédiger le présent document en langue anglaise.

Section 9.1.1. Subscription License

Replace paragraph a with:

In United States for US State, Local, and Education (SLED) Government Contracts: No more than a 12-month term is permitted. IBM will invoice in full upon acceptance of Client's order.

Section 10. Appliances

In paragraph d, replace the first sentence with the following:

In Argentina, Chile, Colombia, Ecuador, Peru, Uruguay and Venezuela: When IBM accepts Client's order, IBM transfers title to a Machine component upon tradition to Client or Client's lessor.

Section 11. Cloud Services

In Mexico:

In paragraph c, second sentence delete ", personnel".

Add as a new paragraph i, the following:

- f. The Parties acknowledge and agree that, given its nature, the Cloud Services do not imply the provision of IBM personnel nor of personnel of IBM suppliers for the benefit of the Client, and consequently, Cloud Services are not considered as Services or Specialized Works in terms of the Corresponding Labor and Tax Laws.

ASIA PACIFIC

Preamble

In People's Republic of China:

Add the following to the end of the first paragraph of the Preamble.

Cloud Services may not be acquired under IPAA. Any reference to Cloud Services, including Section 11 do not apply.

Section 3. Warranties

Add at the end of this section as a new paragraph f:

In Australia: These warranties are in addition to any rights under, and only limited to the extent permitted by, the Competition and Consumer Act 2010.

In Japan: IBM's liability is limited to this paragraph and the Liability and Intellectual Property Protection section, applicable TDs as Client's sole remedy for failure to meet the warranties specified in this section.

In New Zealand: These warranties are in addition to any rights under the Consumer Guarantee Act 1993 or other legislation that cannot be limited by law.

Section 4. Charges, Taxes, Payment, and Verification

In paragraph b. replace the third sentence that starts with "Amounts are due upon receipt..." with the following 2 sentences:

In Hong Kong, Indonesia, Korea, Macau, Malaysia, Philippines, Singapore, and Vietnam: Amounts are due upon receipt of the invoice from IBM and payable within 30 days of the invoice date to an account specified by IBM. If payment is not received within 30 days from the invoice date, IBM may charge a late payment fee on the amount outstanding, calculated on the number of days the payment is received late, at the lesser of: i) 2% for every 30-day period or portion thereof; or ii) the maximum amount permissible by applicable law.

In Thailand: Amounts are due upon receipt of the invoice from IBM and payable within 30 days of the invoice date to an account specified by IBM. If payment is not received within 30 days from the invoice date, a late payment fee may be applied on the amount outstanding, at the rate of 1.25% per month, calculated on the number of days the payment is received late.

Replace paragraph c, in its entirety with, the following (ensure list properly re-letters to "c"):

In India, Indonesia, Japan, Philippines, and Thailand:

- c. In the event Client is required to pay any withholding or deduction of tax required under an applicable governmental entity regulation based on IBM's charge for a:

- 1) cross border transaction, Client will increase the sum payable by the amount necessary to ensure IBM receives an amount equal to the sum it would have received had no withholdings or deductions been made. Client is responsible to pay any withholding tax directly to the appropriate government entity where required by law.
- 2) domestic transaction, Client will: i) pay withholding tax directly to the appropriate government entity where required by law; ii) furnish a tax certificate evidencing such payment to IBM within the timeline prescribed under the income tax regulations; iii) pay IBM only the net proceeds after tax; and iv) fully cooperate with IBM in seeking a waiver or reduction of such taxes as per the applicable law and promptly complete and file all relevant documents or returns timely and accurately. Client agrees to promptly compensate IBM any amount withheld or deducted, if Client delays in furnishing IBM, or incorrectly files, tax certificates, documents or returns.

Section 5. Liability and Intellectual Property Protection

In paragraph a, add at the end of the first sentence the following:

In Australia: (for example, whether based in contract, tort, negligence, under statute or otherwise)

In paragraph a, second sentence after the word "special" and before the word "incidental", add the following:

In Philippines: (including nominal and exemplary damages), moral,

Add as a new paragraph after the end of paragraph a (and ensure paragraphs properly reletter):

In Australia: Where IBM is in breach of a guarantee implied by the Competition and Consumer Act 2010, IBM's liability is limited to the repair or replacement of goods or the supply of equivalent goods, or the payment of the cost of replacing the goods or having the good repaired. Where a guarantee relates to the right to sell, quiet possession, or clear title of a good under schedule 2 of the Competition and Consumer Act, then none of these limitations apply.

Section 6. Termination

Add at the end of the section as a new paragraph d:

In Indonesia: The parties waive article 1266 of the Indonesian Civil Code to the extent it requires a court decree for the termination of an agreement creating mutual obligations.

Section 7. Governing Laws and Geographic Scope

In paragraph a, in the first sentence only, replace the phrase, "the country where the transaction is performed (or for IBM or Non-IBM Cloud Services, the laws of the country of Client's business address)" with:

In Cambodia, Laos: the State of New York, United States

In Australia: the State or Territory in which the transaction is performed

In Hong Kong: the Hong Kong Special Administrative Region of the People's Republic of China

In Korea: the Republic of Korea

In Macau: the Hong Kong Special Administrative Region of the People's Republic of China

In People's Republic of China: the People's Republic of China

In Taiwan: Taiwan

In India: India

In paragraph a, replace the second sentence with the following:

In Cambodia, Laos, Philippines, and Sri Lanka: Disputes will be finally settled by arbitration in Singapore under the Arbitration Rules of the Singapore International Arbitration Center ("SIAC Rules").

In India: Disputes shall be finally settled in accordance with The Arbitration and Conciliation Act, 1996 then in effect, in English, with seat in Bangalore, India. There shall be one arbitrator if the amount in dispute is less than or equal to Indian Rupee five crores and three arbitrators if the amount is more. When an arbitrator is replaced, proceedings shall continue from the stage they were at when the vacancy occurred.

In Indonesia: Disputes will be finally settled by arbitration in Jakarta, Indonesia, administered by the Indonesian National Board of Arbitration established in the year 1977 ("Badan Arbitrase Nasional Indonesia" or "BANI") in accordance with the rules of the Indonesian National Board of Arbitration The arbitration award shall be final and

binding on the parties without appeal and shall be in writing and set forth the findings of fact and the conclusion of law.

In Korea: Any dispute will be brought before the Seoul Central District Court of the Republic of Korea.

In People's Republic of China: Any dispute will be brought to the China International Economic and Trade Arbitration Commission in Beijing, the PRC, for arbitration. The parties agree three arbitrators will be used to resolve any dispute.

In Vietnam: Disputes will be finally settled by arbitration in Vietnam under the Arbitration Rules of the Vietnam International Arbitration Centre ("VIAC Rules"). All proceedings and documents presented will be in the English language.

Replace paragraph b, in its entirety with, the following:

In Hong Kong: The rights and obligations of each party are valid only in the Hong Kong Special Administrative Region of the People's Republic of China, except all licenses are valid as specifically granted.

In Macau: The rights and obligations of each party are valid only in the Macau Special Administrative Region of the People's Republic of China, except all licenses are valid as specifically granted.

In Taiwan: The rights and obligations of each party are valid only in Taiwan, except all licenses are valid as specifically granted.

In paragraph c, in the first sentence, item ii), after the word "including" and before words "the defense", add:

In Japan: those of Japan laws and

In paragraph c, replace the last sentence with:

In People's Republic of China: IBM will not serve as Client's exporter or importer, except as required by data protection laws, for any Content.

Section 8. General Terms

In paragraph o, in the second sentence, replace the phrase "two years" with:

In India: three years

Add to the end of this section the following new paragraph r:

In Indonesia: This agreement is made in the English and Bahasa Indonesian language versions. To the extent permitted by the applicable law, the English version will prevail in the event of conflict between such versions.

EUROPE, MIDDLE EAST, AND AFRICA

Section 3. Warranties

In paragraph e, replace the fourth sentence that starts with "Non-IBM EPs...", and before the existing last sentence, with the following two sentences:

In Czech Republic, Estonia, and Lithuania: Non-IBM EPs and preview products, or identified non-warranted IBM EPs are provided as-is, without warranties of any kind or liabilities for defects. The parties hereby exclude any liability of IBM for defects beyond the agreed warranties.

Section 4. Charges, Taxes, Payment, and Verification

In paragraph b, add the following to the end of the third sentence:

In Italy: if IBM requests in a written notice to Client.

In Ukraine:, on the overdue amount from the next day after the due date up to the date of actual payment, prorated for each day of delay, at the interest rate of double the discount rate determined by the National Bank of Ukraine (NBU) during the delay period (paragraph 6 of article 232 of Commercial Code of Ukraine does not apply).

In paragraph b, replace the third sentence with the following:

In France: Amounts are due and payable within 10 days of the invoice date to an account specified by IBM and late payment fees apply equal to the most recent European Central Bank rate plus 10 points, in addition to debt collection costs of forty (40) euros or, if these costs exceed forty euros, complementary indemnification subject to justification of the amount claimed).

In paragraph b, add the following to the end of the sixth sentence that starts with "IBM does not give credit...":

In Lithuania:, or except as provided by law

At the end of paragraph b, add the following:

In Italy: In the instance of no payment or partial payment, and also following a formal credit claim procedure or trial that IBM may initiate, in derogation of article 4 of Legislative Decree n. 231 dated October 9, 2002, and according to article 7 of the same Legislative Decree, IBM will notify Client in writing by registered, return receipt mail of late payment fees due.

Replace paragraph c, in its entirety, with the following:

In Angola, Egypt, Morocco, Ghana, Kenya, Nigeria, Pakistan, Senegal, and Tunisia:

- c. In the event Client is required to pay any withholding or deduction of tax required under an applicable governmental entity regulation based on IBM's charge for a:
 - 1) cross border transaction, Client will increase the sum payable by the amount necessary to ensure IBM receives an amount equal to the sum it would have received had no withholdings or deductions been made. Client is responsible to pay any withholding tax directly to the appropriate government entity where required by law.
 - 2) domestic transaction, Client will: i) pay withholding tax directly to the appropriate government entity where required by law; ii) furnish a tax certificate evidencing such payment to IBM within the timeline prescribed under the income tax regulations; iii) pay IBM only the net proceeds after tax; and iv) fully cooperate with IBM in seeking a waiver or reduction of such taxes as per the applicable law and promptly complete and file all relevant documents or returns timely and accurately. Client agrees to promptly compensate IBM any amount withheld or deducted, if Client delays in furnishing IBM, or incorrectly files, tax certificates, documents, or returns.

Section 5. Liability and Intellectual Property Protection

In paragraph a, in the first sentence insert the following before the words "the amounts paid":

In Belgium, France, Germany, Italy, Luxembourg, Malta, Portugal, and Spain: the greater of €500,000 (five hundred thousand euro) or

In Ireland and United Kingdom: 125% of

In paragraph a, in the first sentence, replace the phrase "direct damages incurred by Client" with:

In Spain: and proven damages incurred by Client as a direct consequence of the IBM default

In paragraph a, insert after the first sentence the following new sentence:

In Slovakia: Referring to § 379 of the Commercial Code, Act No. 513/1991 Coll. as amended, and concerning all conditions related to the conclusion of the agreement, both parties state that the total foreseeable damage, which may accrue, shall not exceed the amount above, and it is the maximum for which IBM is responsible.

In paragraph a, in the second sentence, delete the word:

In Ireland and United Kingdom: economic

In paragraph a, replace the second sentence with the following and bold the text:

In Belgium, Netherlands, and Luxembourg: IBM will not be liable for indirect or consequential damages, lost profits, business, value, revenue, goodwill, damage to reputation or anticipated savings, any third party claim against Client, and loss of (or damage to) data.

In France: IBM will not be liable for damages to reputation, indirect damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.

In Portugal: IBM will not be liable for indirect damages, including loss of profit.

In Spain: IBM will not be liable for damage to reputation, lost profits, business, value, revenue, goodwill, or anticipated savings.

Add the following new sentence at the end of paragraph a:

In France: The terms of the Agreement, including financial terms, were established in consideration of the present clause, which is an integral part of the general economy of the Agreement.

In paragraph b, replace "and ii) damages that cannot be limited under applicable law" with the following:

In Germany: ; ii) damages for body injury (including death); iii) loss or damage caused by a breach of guarantee assumed by IBM in connection with any transaction under this Agreement; and iv) caused intentionally or by gross negligence.

Section 6. Termination

In paragraph a, insert the following new sentence at the end of paragraph a:

In Netherlands: The Parties waive their rights under Title 7.1 ('Koop') and clause 7:401 and 402 of the Dutch Civil Code, and their rights to invoke a full or partial dissolution ('gehele of partiele ontbinding') of this Agreement under Section 6:265 of the Dutch Civil Code

Section 7. Governing Laws and Geographic Scope

In paragraph a, first sentence only, replace the phrase "the country where the transaction is performed (or for IBM or Non-IBM Cloud Services, the laws of the country of Client's business address)" with:

In Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Romania, Serbia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan: Austria

In Estonia, Latvia, and Lithuania: Finland

In Algeria, Andorra, Benin, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis and Futuna: France

In Angola, Bahrain, Botswana, Egypt, Eritrea, Ethiopia, Gambia, Ghana, Iraq, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, West Bank/Gaza, Yemen, Zambia, and Zimbabwe: England

In Liechtenstein: Switzerland

In South Africa, Namibia, Lesotho, and Swaziland: the Republic of South Africa

In United Kingdom: England

In paragraph a, add the following new sentence after the first sentence:

In France: The Parties agree that articles 1222 and 1223 of the French Civil Code are not applicable.

In paragraph a, replace the second sentence, in its entirety, with the following:

In Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kosovo, Kyrgyzstan, Moldova, Montenegro, Romania, Serbia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan: All disputes arising out of this Agreement shall be finally settled by the International Arbitral Centre of the Austrian Federal Economic Chamber (Arbitration Body), under the Rules of Arbitration of that Arbitral Centre (Vienna Rules), in Vienna, Austria, with English as the official language, by three impartial arbitrators appointed in accordance with the Vienna Rules.

Each party will nominate one arbitrator, who will jointly appoint an independent chairman within 30 days or else the chairman will be appointed by the Arbitration Body under the Vienna Rules. The arbitrators will have no authority to award injunctive relief or damages excluded by or exceeding limits in this Agreement. Nothing in this Agreement will prevent either party from resorting to judicial proceedings for (1) interim relief to prevent material

prejudice or a breach of confidentiality provisions or intellectual property rights, or (2) determining the validity or ownership of any copyright, patent or trademark owned or asserted by a party or its Enterprise company, or (3) debt collection in amounts below USD 500,000.00.

In Estonia, Latvia, and Lithuania: All disputes arising out of this Agreement shall be finally settled by the Arbitration Institute of the Finland Chamber of Commerce (FAI) (Arbitration Body), under the Arbitration Rules of the Finland Chamber of Commerce (Rules), in Helsinki, Finland, with English as the official language, by three impartial arbitrators appointed in accordance with those Rules. Each party will nominate one arbitrator, who will jointly appoint an independent chairman within 30 days or else the chairman will be appointed by the Arbitration Body under the Rules. The arbitrators will have no authority to award injunctive relief or damages excluded by or exceeding limits in this Agreement. Nothing in this Agreement will prevent either party from resorting to judicial proceedings for (1) interim relief to prevent material prejudice or a breach of confidentiality provisions or intellectual property rights, or (2) determining the validity or ownership of any copyright, patent or trademark owned or asserted by a party or its Enterprise company, or (3) debt collection in amounts below USD 500,000.00.

In Afghanistan, Angola, Bahrain, Botswana, Burundi, Cape Verde, Djibouti, Egypt, Eritrea, Ethiopia, Gambia, Ghana, Iraq, Jordan, Kenya, Kuwait, Lebanon, Liberia, Libya, Madagascar, Malawi, Mozambique, Nigeria, Oman, Pakistan, Palestinian Territory, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Seychelles, Sierra Leone, Somalia, South Sudan, Tanzania, Uganda, United Arab Emirates, Western Sahara, Yemen, Zambia, and Zimbabwe: All disputes arising out of this Agreement shall be finally settled by the London Court of International Arbitration (LCIA) (Arbitration Body), under the LCIA Arbitration Rules (the Rules), in London, UK, with English as the official language, by three impartial arbitrators appointed in accordance with the Rules. Each party will nominate one arbitrator, who will jointly appoint an independent chairman within 30 days or else the chairman will be appointed by the Arbitration Body under the Rules. The arbitrators will have no authority to award injunctive relief or damages excluded by or exceeding limits in this Agreement. Nothing in this Agreement will prevent either party from resorting to judicial proceedings for (1) interim relief to prevent material prejudice or a breach of confidentiality provisions or intellectual property rights, or (2) determining the validity or ownership of any copyright, patent or trademark owned or asserted by a party or its Enterprise company, or (3) debt collection in amounts below USD 500,000.00.

In Algeria, Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Congo Republic, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Guinea, Guinea-Bissau, Ivory Coast, Mali, Mauritania, Mauritius, Morocco, Niger, Senegal, Togo, and Tunisia: All disputes arising out of this Agreement shall be finally settled by the ICC International Court of Arbitration, in Paris (Arbitration Body), under its arbitration rules (the Rules), in Paris, France, with French as the official language, by three impartial arbitrators appointed in accordance with the Rules. Each party will nominate one arbitrator, who will jointly appoint an independent chairman within 30 days or else the chairman will be appointed by the Arbitration Body under the Rules. The arbitrators will have no authority to award injunctive relief or damages excluded by or exceeding limits in this Agreement. Nothing in this Agreement will prevent either party from resorting to judicial proceedings for (1) interim relief to prevent material prejudice or a breach of confidentiality provisions or intellectual property rights, or (2) determining the validity or ownership of any copyright, patent or trademark owned or asserted by a party or its Enterprise company, or (3) debt collection in amounts below USD 250,000.00.

In South Africa, Namibia, Lesotho, and Swaziland: All disputes arising out of this Agreement shall be finally settled by the Arbitration Foundation of Southern Africa (AFSA) (Arbitration Body), under the Rules of the Arbitration of the AFSA (the Rules), in Johannesburg, South Africa, with English as the official language, by three impartial arbitrators appointed in accordance with the Rules. Each party will nominate one arbitrator, who will jointly appoint an independent chairman within 30 days or else the chairman will be appointed by the Arbitration Body under the Rules. The arbitrators will have no authority to award injunctive relief or damages excluded by or exceeding limits in this Agreement. Nothing in this Agreement will prevent either party from resorting to judicial proceedings for (1) interim relief to prevent material prejudice or a breach of confidentiality provisions or intellectual property rights, or (2) determining the validity or ownership of any copyright, patent or trademark owned or asserted by a party or its Enterprise company, or (3) debt collection in amounts below USD 250,000.00.

In Andorra, Austria, Cyprus, France, Germany, Greece, Israel, Italy, Portugal, Spain, Switzerland, and Turkiye: All disputes will be brought before and subject to the exclusive jurisdiction of the following court of competent jurisdiction:

In Andorra: the Commercial Court of Paris.

In Austria: the court of Vienna, Austria (Inner City).

In Cyprus: the competent court of Nicosia.

In France: Commercial Court of Paris.

In Germany: the courts of Stuttgart.

In Greece: the competent court of Athens.

In Israel: the courts of Tel Aviv Jaffa.

In Italy: the courts of Milan.

In Portugal: the courts of Lisbon.

In Spain: the courts of Madrid.

In Switzerland: the commercial court of the canton of Zurich.

In Turkiye: the Istanbul Central (Çağlayan) Courts and Execution Directorates of Istanbul, the Republic of Turkiye.

In Netherlands: The Parties waive their rights under Title 7.1 ('Koop') and clause 7:401 and 402 of the Dutch Civil Code, and their rights to invoke a full or partial dissolution ('gehele of partiele ontbinding') of this Agreement under Section 6:265 of the Dutch Civil Code.

Add the following as an additional paragraph e:

In all countries in Western Europe (see definition within provision): Client agrees i) not to use in, or sell, export or re-export, directly or indirectly to, the Russian Federation any IBM Products or Non-IBM Products Client acquires from IBM; and ii) to prohibit Client's employees, contractors, or affiliates to do any of the foregoing and will implement processes to monitor compliance. Failure to comply with the above is considered a material breach. Client agrees to promptly inform IBM of any activities concerning compliance and provide relevant information upon IBM request. For purposes of this paragraph, Western Europe means European Union member countries and Andorra, Iceland, Liechtenstein, Monaco, Norway, San Marino, Switzerland, United Kingdom, and the Vatican State.

Section 8. General Terms

In paragraph i, insert the following at the end of the paragraph:

In Spain: IBM will comply with requests to access, update or delete contact information if submitted to the following address: IBM, c/ Santa Hortensia 26-28, 28002 Madrid, Departamento de Privacidad de Datos.

In paragraph o, add to the end the paragraph:

In Czech Republic: Pursuant to Section 1801 of Act No. 89/2012 Coll. (the "Civil Code"), Section 1799 and Section 1800 of the Civil Code as amended, do not apply to transactions under this Agreement. Client accepts the risk of a change of circumstances under Section 1765 of the Civil Code.

In paragraph o, delete the 2nd sentence:

In Bulgaria, Croatia, Serbia, and Slovenia: Delete the 2nd sentence that says: "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".

In paragraph o, add to the end of the second sentence:

In Lithuania:, except as provided by law

In paragraph o, replace the second sentence with:

In Poland: Neither party will bring a legal action arising out of or related to the Agreement more than three years after the cause of action arose, except for an action of non-payment which will be brought no more than 2 years after payment is due.

In paragraph o, second sentence, replace the word "two" with:

In Latvia and Ukraine: three

In Slovakia: four

In paragraph o, third sentence, modify the sentence: "Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control" as follows:

In Ukraine: Neither party is responsible for failure to fulfill its non-monetary obligations due to causes or regulatory changes beyond its control, including but not limited to import, export and economic sanctions requirements of the United States.

Add the following at the end of the section as new paragraph r:

In Czech Republic:

- r. Client expressly accepts the terms of this agreement which include the following important commercial terms: i) limitation and disclaimer of liability for defects (Warranties); ii) IBM's right to verify Client's usage data and other information affecting the calculation of charges (License Verification); iii) limitation of Client's entitlement to damages (Liability and Intellectual Property Protection); iv) binding nature of export and import regulations (Governing Laws and Geographic Scope); v) shorter limitation periods (General Terms); vi) exclusion of applicability of provisions on adhesion contracts (General Terms); and vii) acceptance of the risk of a change of circumstances (General Terms).

In Hungary:

- r. By entering into this Agreement, Client confirms that Client was sufficiently informed of all the provisions of this Agreement and had the opportunity to negotiate those terms. The following provisions may significantly deviate from the provisions generally applied by Hungarian law and both parties accept those provisions by signing the Agreement: IPAA Acceptance; Content and Data Protection; Warranties; Charges, Taxes, Payment, and Verification; Liability and Intellectual Property Protection; Termination; Governing Laws and Geographic Scope; General Terms, Program License; Term Licenses and Renewal; Full Capacity and Virtualization Requirements; Selected Support, CEO (Complete Enterprise Option) Product Categories; Appliances; and Cloud Services.

In Italy:

- r. Pursuant to the art. 1341 and 1342 of Italian Civil Code, Client expressly accepts the following articles of this Agreement: IPAA Acceptance; Content and Data Protection; Warranties; Charges, Taxes, Payment, and Verification, including License Verification and Volume Pricing; Liability and Intellectual Property Protection; Termination; Governing Laws and Geographic Scope; General Terms; Program License, including IBM Software Subscription and Support; Term Licenses and Renewal, including Subscription License, Monthly License, Fixed Term License, and Term License Renewal; Full Capacity and Virtualization Requirements, including EPs in a Virtualization Environment (Sub-Capacity or Container Licensing), Sub-Capacity Licensing, Container Licensing, Client Reporting Responsibilities, and Excess Use Resolution; Selected Support; CEO (Complete Enterprise Option) Product Categories; Appliances, including Appliance Services; and Cloud Services.

In Romania:

- r. The Client expressly accepts, the following standard clauses that may be deemed 'unusual clauses' as per the provisions of article 1203 Romanian Civil Code: clauses 3, 4, 5, 7, and 8n. The Client hereby acknowledges that it was sufficiently informed of all the provisions of this Agreement, including the clauses mentioned above, it properly analyzed and understood such provisions and had the opportunity to negotiate the terms of each clause.

Section 10. Appliances

In paragraph d, the first sentence, add all countries listed in the following after "United States":

In Portugal, Spain, Switzerland, and Turkiye: , Portugal, Spain, Switzerland and Turkiye,



International Program License Agreement

Part 1 – General Terms

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IF YOU DO NOT AGREE TO THESE TERMS OR DO NOT HAVE AUTHORITY: i) DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, CLICK ON AN "ACCEPT" BUTTON, OR USE THE PROGRAM; AND ii) PROMPTLY RETURN THE UNUSED MEDIA, DOCUMENTATION, AND PROOF OF ENTITLEMENT TO THE PARTY FROM WHOM IT WAS OBTAINED FOR A REFUND OF THE AMOUNT PAID. IF THE PROGRAM WAS DOWNLOADED, DESTROY ALL COPIES OF THE PROGRAM.

This International Program License Agreement (IPLA) and applicable Transaction Documents (together the "Agreement") are the complete agreement between Licensee and IBM regarding the use of a Program. The country required terms included in Part 2 of this IPLA replace or modify the terms of Part 1.

Transaction Documents (TDs) provide a description, information, and terms regarding the Program and its authorized use. Examples of TDs for Programs include license information (LI), licensed program specifications (LPS), quote, proof of entitlement (PoE), or invoice. To the extent of any conflict a TD will prevail over the IPLA.

1. Program License

- a. A Program is an executable IBM-branded computer program and its related material and includes whole and partial copies. Program details are described in a TD available at <http://www.ibm.com/software/sla> (for Passport Advantage Programs) or <http://www.ibm.com/support/knowledgecenter> (for other IBM Programs), in the Program's system command directory, or as otherwise specified by IBM. IBM software policies (such as backup, temporary use and IBM approved cloud environment) available at <http://www.ibm.com/softwarepolicies> apply to Licensee's use of Programs.
- b. Copies of Programs are copyrighted and licensed.
- c. Licensee is granted a nonexclusive license to:
 - (1) use each copy of a Program, subject to the terms of the Agreement and up to the number of license entitlements Licensee acquires ("Authorized Use");
 - (2) make and install copies to support such Authorized Use; and
 - (3) make a backup copy.
- d. Programs may be used by Licensee, its employees and contractors. Licensee may not rent or lease a Program or provide commercial IT, hosting or timesharing services to any third party. Additional rights may be available for additional fees or under different terms.
- e. The license granted for a Program is subject to Licensee:
 - (1) reproducing copyright notices and other markings on any copy;
 - (2) ensuring anyone who uses the Program: i) does so only on Licensee's behalf within Licensee's Authorized Use; and ii) complies with this Agreement;
 - (3) not reverse assembling, reverse compiling, translating, or reverse engineering the Program, except as expressly permitted by law without the possibility of contractual waiver; and
 - (4) not using any of the elements of the Program or related licensed materials separately from the Program.
- f. If the TD for a Program ("Principal Program") states that a "Supporting Program" is included with the Principal Program, Licensee may use the Supporting Program subject to any license limitations of the Principal Program and only to support the Principal Program.
- g. This license applies to each copy of the Program that Licensee makes.
- h. An update, fix, or patch to a Program is subject to the terms governing the Program unless new terms are provided in an updated TD. Licensee accepts such new terms upon installation of the update, fix, or patch. If a Program is replaced by an update, Licensee agrees to promptly discontinue use of the replaced Program.
- i. If Licensee is dissatisfied with a Program for any reason, Licensee may terminate the license by returning the Program and proof of entitlement to IBM or the authorized IBM Business Partner within 30 days of the

original acquisition date of such Program for a refund of the amount paid. For a downloaded Program, contact the party Licensee acquired the Program from for refund instructions.

2. Warranties

- a. IBM warrants that a Program, when used in its specified operating environment conforms to its specifications. The warranty period for a Program is 12 months from acquisition, or the initial license term if less than 12 months, unless another warranty period is specified in the TD.
- b. During the warranty period Licensee will have access to IBM databases containing information on known Program defects, defect corrections, restrictions, and bypasses as described in the IBM Support Guide at <http://www.ibm.com/support/pages/node/733923>.
- c. If the Program does not function as warranted during its warranty period and the problem cannot be resolved with information available in the IBM databases, Licensee may return the Program and proof of entitlement to IBM or the IBM Business Partner for a refund of the amount Licensee paid and Licensee's license terminates.
- d. **IBM does not warrant uninterrupted or error-free operation of an IBM Program or that IBM will correct all defects or prevent third party disruptions. 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, or failure to comply with written instructions provided by IBM. Non-IBM Programs are provided as-is, without warranties of any kind. Third parties may provide their own warranties to Licensee.**
- e. Additional support available during or after the warranty period may be available under separate agreement.

3. Charges, Taxes, Payment, and Verification

- a. Licensee's right to use a Program is contingent on Licensee paying applicable charges as specified in the agreement under which Licensee acquired the license entitlements. Licensee is responsible to acquire additional license entitlements in advance of any increase of its use.
- b. Licensee agrees to pay all applicable charges for acquired entitlements and any charges for use in excess of authorizations. Charges are exclusive of any customs or other duty, tax, and similar levies imposed by any authority resulting from Licensee's acquisition of entitlements and will be invoiced in addition to such charges. Amounts are due upon receipt of the invoice from IBM and payable within 30 days of the invoice date to an account specified by IBM and late payment fees may apply. Licensee is responsible to properly acquire additional license entitlements in advance to increase its use. IBM does not give credits or refunds for charges already due or paid, except as specified elsewhere in this IPLA, the applicable TD, or terms of the agreement under which Licensee acquired license entitlements.
- c. Based on acquired entitlements, Licensee agrees to: i) pay any 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.
- d. If Licensee imports, exports, transfers, accesses, or uses a Program across a border, Licensee agrees to be responsible for and pay authorities any custom, duty, tax, or similar levy assessed by the authorities. This excludes those taxes based on IBM's net income.

3.1 Licensing Verification

- a. Licensee will, for all Programs at all sites and for all environments, create, retain, and each year provide to IBM upon request with 30 days' advance notice: i) a report, in a format requested by IBM using records, system tools output, and other system information; and ii) supporting documentation (collectively, "Deployment Data").
- b. Upon reasonable notice, IBM and its independent auditors may verify Licensee's compliance with this Agreement, at all sites and for all environments, in which Licensee uses (for any purposes) Programs. Verification will be conducted in a manner that minimizes disruption to Licensee's business and may be conducted on Licensee's premises, during normal business hours. IBM will have a written confidentiality agreement with the independent auditor. In addition to providing Deployment Data described above, Licensee agrees to provide to IBM and its auditors additional accurate information and Deployment Data upon request.

- c. Licensee will promptly order and pay charges at IBM's then current rates associated with: i) any deployments in excess of authorizations indicated on or by any annual report or verification; ii) applicable subscription & support services (S&S) for such excess deployments for the lesser of the duration of such excess use or two years; and iii) any additional charges and other liabilities determined as a result of such verification, including but not limited to taxes, duties, and regulatory fees.

4. Liability and Intellectual Property Protection

- a. IBM's entire liability for all claims related to this Agreement will not exceed the amount of any actual direct damages incurred by Licensee up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the entitlements to the Program 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 for lost profits, business, value, revenue, goodwill, or anticipated savings. These limitations apply collectively to IBM, its affiliates, contractors, and suppliers.**
- b. The following amounts are not subject to the above cap: i) third party payments related to infringement claims described in clause 4 c below; and ii) damages that cannot be limited under applicable law.
- c. If a third party asserts a claim against Licensee that an IBM Program infringes a patent or copyright, IBM will defend Licensee against that claim and pay amounts finally awarded by a court against Licensee or included in a settlement approved by IBM. To obtain IBM's defense against and payment of infringement claims, Licensee must promptly: i) notify IBM in writing of the claim; ii) supply information requested by IBM; and iii) allow IBM to control, and reasonably cooperate in, the defense and settlement, including mitigation efforts. IBM's defense and payment obligations for infringement claims extend to claims of infringement based on open source code that IBM selects and embeds in an IBM Program.
- d. IBM has no responsibility for claims based on non-IBM products, items not provided by IBM, or any violation of law or third party rights caused by Content, or any Licensee materials, designs, specifications, or use of a non-current version or release of an IBM Program when an infringement claim could have been avoided by using a current version or release. Content consists of all data, software, and information that Licensee or its authorized users provide, authorize access to, or inputs to a Program.

5. Termination

- a. IBM may terminate Licensee's license to use a Program if Licensee fails to comply with the IPLA, TDs or acquisition agreements, such as the International Passport Advantage Agreement (IPAA). Licensee will promptly destroy all copies of the Program after license termination. Any terms that by their nature extend beyond the termination remain in effect until fulfilled and apply to successors and assignees.

6. Governing Laws and Geographic Scope

- a. Both parties agree to the application of the laws of the country where the transaction for license entitlements is performed, without regard to conflict of law principles. The rights and obligations of each party are valid only in the country where the transaction to acquire license entitlements is performed or, if IBM agrees, the country where the Program is placed in productive use, except all licenses are valid as specifically granted.
- b. Each party is also 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 the defense trade control regime of the United States of America and any applicable jurisdictions, that prohibit or restrict the import, export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users.
- c. If any provision of this Agreement for a Program, is invalid or unenforceable, the remaining provisions remain in full force and effect. Nothing in this 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 this Agreement.

7. General

- a. IBM is an independent contractor, not Licensee's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Licensee's regulatory obligations, or assume any responsibility for Licensee's business or operations. Licensee is responsible for its use of IBM Programs and Non-IBM Programs. IBM is acting as an information technology provider only. IBM's direction, suggested usage, or guidance or use of a Program does not constitute medical, clinical, legal, accounting, or other licensed professional advice. Licensee should obtain its own expert advice.

- b. For Programs IBM provides to Licensee in tangible form, IBM fulfills its shipping and delivery obligations upon the delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by Licensee and IBM.
- c. Licensee may not use the Program if failure of the Program could lead to death, serious bodily injury, or property or environmental damage.
- d. IBM, its affiliates, and contractors of either require use of business contact information and certain account usage information. This information is not Content. Business contact information is used to communicate and manage business dealings with the Licensee. Examples of business contact information include name, business telephone, address, email, user ID, and tax registration information. Account usage information is required to enable, provide, manage, support, administer, and improve Programs. Examples of account usage information include reported errors and digital information gathered using tracking technologies, such as cookies and web beacons, during use of the Programs. The IBM Privacy Statement at <http://www.ibm.com/privacy> provides additional details with respect to IBM's collection, use, and handling of business contact and account usage information. When Licensee provides information to IBM and notice to, or consent by, the individuals is required for such processing, Licensee will notify individuals and obtain consent.
- e. IBM Business Partners who use or make available Programs are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings.
- f. IBM may offer Non-IBM Programs, or an IBM Program may enable access to Non-IBM Programs, that may require acceptance of third party terms identified in a TD or presented to the Licensee. Linking to or use of Non-IBM Programs constitutes Licensee's agreement with such terms. IBM is not a party to any third party agreement and is not responsible for such Non-IBM Programs.
- g. License grants to Programs are provided by International Business Machines Corporation, a New York corporation ("IBM Corporation"). The IBM company from which the Licensee acquires entitlements ("IBM") is acting as a distributor and delivering Programs and is responsible for enforcing the terms of this Agreement. If entitlements are acquired from an IBM Business Partner, the IBM company for the country of acquisition is responsible for enforcing the terms of this Agreement. No right or cause of action is created in favor of Licensee against IBM Corporation. Licensee waives all claims and causes of action against IBM Corporation and agrees to look solely to IBM for any rights and remedies in connection with Programs.
- h. Licensee may not sublicense, assign, or transfer the license for any Program (except to the extent assignment or transfer may not be legally restricted or as is expressly permitted in a TD or as otherwise agreed by IBM). IBM may assign its rights and obligations under this Agreement in conjunction with the sale of the portion of IBM's business that includes a Program. IBM may share this Agreement and related documents in conjunction with any assignment.
- i. All notices under the Agreement must be in writing and sent to the business address specified in the agreement Licensee acquired the license entitlements 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. Agreement supersedes any course of dealing, discussions or representations, between the parties.
- j. No right or cause of action for any third party is created by the Agreement. 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.
- k. IBM may use personnel and resources in locations worldwide, including third party contractors to support the delivery of Programs and Program support. Licensee's use of Programs may result in the transfer of Content, including personally identifiable information, across country borders to provide Program support as described in the IBM Software Support Guide.

Part 2 – Country Required Terms

For licenses acquired in the countries specified below, the following terms replace or modify the referenced terms of this IPLA. Terms not changed by these amendments remain unchanged and in effect.

1. AMERICAS

Section 3. Charges, Taxes, Payment, and Verification

Replace the first and second sentence of paragraph b with the following:

In Brazil: Licensee agrees to pay all applicable charges for acquired entitlements and any charges for use in excess of authorizations and any customs or other duty, tax, and similar levies imposed by any authority resulting from Licensee's acquisition of entitlements.

In paragraph b:

In Mexico: *In the third sentence, delete the words "to an account specified by IBM".*

In Mexico: *Add the following new sentence after the third sentence:*

Payments will be made through electronic transfer of funds to an account specified by IBM or in IBM's domicile which is located in Alfonso Napoles Gandara 3111, Santa Fe Peña Blanca, Alvaro Obregon, Mexico City, Zip Code 01210.

Add at the end of paragraph c the following sentence:

In Canada: Where taxes are based upon the location(s) receiving the benefit of the Program, Licensee has an ongoing obligation to notify IBM of such location(s) if different than Licensee's business address listed in the applicable TD.

Add at the end of paragraph c the following sentence:

In United States: The parties agree no tangible personal property (e.g. media or publications) shall transfer to Licensee if: i) IBM delivers Programs electronically to Licensee; or ii) Licensee claims a sales or use tax exemption for Programs IBM delivers electronically to Licensee. Where taxes are based upon the location(s) receiving the benefit of the Program, Licensee has an ongoing obligation to notify IBM of such location(s) if different than Licensee's business address listed in the applicable TD.

Section 4. Liability and Intellectual Property Protection

Insert the following disclaimer at the end of paragraph a:

In Peru: In accordance with Article 1328 of the Peruvian Civil Code this limitations and exclusions will not apply in the cases of willful misconduct ("dolo") or gross negligence ("culpa inexcusable").

Section 6. Governing Laws and Geographic Scope

In paragraph a, replace the first sentence only with:

In Argentina: Both parties agree to the application of the laws of the Republic of Argentina, without regard to the conflict of law principles. Any proceeding regarding the rights, duties, and obligations arising from this Agreement will be brought in the Ordinary Commercial Court of the City of "Ciudad Autónoma de Buenos Aires".

In Chile: Both parties agree to the application of the laws of Chile, without regard to the conflict of law principles. Any conflict, interpretation or breach related to this Agreement that cannot be solved by the Parties should be remitted to the jurisdiction of the Ordinary Courts of the city and district of Santiago.

In Colombia: Both parties agree to the application of the laws of the Republic of Colombia, without regard to the conflict of law principles. All rights, duties and obligations are subject to the judges of the Republic of Colombia.

In Ecuador: Both parties agree to the application of the laws of the Republic of Ecuador, without regard to the conflict of law principles. Any dispute arising out or relating to this Agreement will be submitted to the civil judges of Quito and to the verbal summary proceeding.

In Venezuela: Both parties agree to the application of the laws of Venezuela, without regard to the conflict of law principles. The parties agree to submit any conflict related to this Agreement, existing between them to the Courts of the Metropolitan Area of the City of Caracas.

In Peru: Both parties agree to the application of the laws of Peru, without regard to the conflict of law principles. Any discrepancy that may arise between the parties in the execution, interpretation or compliance of this Agreement that may not be directly resolved shall be submitted to the Jurisdiction and Competence of the Judges and Tribunals of the 'Cercado de Lima' Judicial District.

In Uruguay: Both parties agree to the application of the laws of Uruguay. Any discrepancy that may arise between the parties in the execution, interpretation or compliance of this Agreement that may not be directly resolved shall be submitted to the Montevideo Courts ("Tribunales Ordinarios de Montevideo").

In paragraph a, first sentence only, replace the phrase, "the country where the transaction for license entitlements is performed" with:

In United States, Anguilla, Antigua/Barbuda, Aruba, Bahamas, Barbados, Bermuda, Bonaire, British Virgin Islands, Cayman Islands, Curacao, Dominica, Grenada, Guyana, Jamaica, Montserrat, Saba, Saint Eustatius, Saint Kitts and Nevis, Saint Lucia, Saint Maarten, Saint Vincent and the Grenadines, Suriname, Tortola, Trinidad and Tobago, and Turk and Caicos: the State of New York, United States.

In Canada: the Province of Ontario and the federal laws of Canada applicable therein.

In paragraph a, second sentence, replace the phrase, "the country where the transaction to acquire license entitlements is performed" with:

In Argentina: Argentina

In Chile: Chile

In Colombia: Colombia

In Ecuador: Ecuador

In Mexico: Mexico

In Peru: Peru

In Uruguay: Uruguay

In Venezuela: Venezuela

Add the following sentences at the end of paragraph b:

In Brazil: All disputes arising out of or related to this Agreement, including summary proceedings, will be brought before and subject to the exclusive jurisdiction of the Forum of the City of São Paulo, State of São Paulo, Brazil and the parties irrevocably agree with this specific jurisdiction renouncing any other, however privileged it may be.

In Mexico: The Parties agree to submit themselves to the exclusive jurisdiction of the courts of Mexico City to resolve any dispute arising from this Agreement. The Parties waive to any other jurisdiction that may correspond to them due to their current or future domiciles, or for any other reason.

Section 7. General

In paragraph g:

In United States: *delete the last 2 sentences.*

In paragraph i, add the following new sentence after the first sentence:

In Mexico: Any change of address must be notified 10 (ten) days in advance, otherwise the notifications made at the last indicated address will have full legal effects.

In paragraph j:

In Brazil: *delete the entire 2nd sentence of "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".*

Add as a new paragraph l to this section:

In Canada: Both parties agree to write this document in English. Les parties ont convenu de rédiger le présent document en langue anglaise.

2. ASIA PACIFIC

Section 2. Warranties

Add at the end of this section as a new paragraph f:

In Australia: These warranties are in addition to any rights under, and only limited to the extent permitted by, the Competition and Consumer Act 2010.

In Japan: IBM's liability is limited to this paragraph and the Liability and Intellectual Property Protection section, applicable TDs as Licensee's sole remedy for failure to meet the warranties specified in this section.

In New Zealand: These warranties are in addition to any rights under the Consumer Guarantee Act 1993 or other legislation that cannot be limited by law.

Section 3. Charges, Taxes, Payment, and Verification

In paragraph b, replace the third sentence with the following 2 sentences:

In Hong Kong, Indonesia, Korea, Macau, Malaysia, Philippines, Singapore, and Vietnam: Amounts are due upon receipt of the invoice from IBM and payable within 30 days of the invoice date to an account specified by IBM. If payment is not received within 30 days from the invoice date, IBM may charge a late payment fee on the amount outstanding, calculated on the number of days the payment is received late, at the lesser of: i) 2% for every 30 day period or portion thereof; or ii) the maximum amount permissible by applicable law.

In Thailand: Amounts are due upon receipt of the invoice from IBM and payable within 30 days of the invoice date to an account specified by IBM. If payment is not received within 30 days from the invoice date, a late payment fee may be applied on the amount outstanding, at the rate of 1.25% per month, calculated on the number of days the payment is received late.

In the first sentence of paragraph c, remove the word "and" before "(iv)", and add a semicolon and the following new item "(v)":

In India: ; and (v) file accurate Taxes Deducted at Source (TDS) returns on a timely basis. If any tax, duty, levy or fee ("Taxes") are not charged on the basis of the exemption documentation provided by the Licensee and the taxation authority subsequently rules that such Taxes should have been charged, then the Licensee will be liable to pay such Taxes, including any interests, levies and/or penalties applicable thereon.

In the first sentence of paragraph c, remove the word "and" before "(iv)", and replace item (iv) and add new item (v) with:

In Singapore, Malaysia, Philippines, Thailand, Indonesia, and Vietnam: (iv) fully cooperate with IBM in seeking a waiver or reduction of withholding or other tax that Licensee requests a waiver or reduction; and v) promptly complete, file, and keep current all relevant documents for any such waiver, reductions, or exemptions.

Section 4. Liability and Intellectual Property Protection

In paragraph a, add at the end of the first sentence the following:

In Australia: (for example, whether based in contract, tort, negligence, under statute or otherwise)

In paragraph a, second sentence after the word "special" and before the word "incidental", add the following:

In Philippines: (including nominal and exemplary damages), moral,

Add as a new paragraph after the end of paragraph a (and ensure paragraphs properly reletter):

In Australia: Where IBM is in breach of a guarantee implied by the Competition and Consumer Act 2010, IBM's liability is limited to the repair or replacement of goods or the supply of equivalent goods, or the payment of the cost of replacing the goods or having the good repaired. Where a guarantee relates to the right to sell, quiet possession, or clear title of a good under schedule 2 of the Competition and Consumer Act, then none of these limitations apply.

Section 5. Termination

Add at the end of the section as a new paragraph b:

In Indonesia: The parties waive article 1266 of the Indonesian Civil Code to the extent it requires a court decree for the termination of an agreement creating mutual obligations.

Section 6. Governing Laws and Geographic Scope

In paragraph a, in the first sentence only, replace the phrase, "the country where the transaction for license entitlements is performed" with:

In Cambodia, Laos: the State of New York, United States

In Australia: the State or Territory in which the transaction is performed

In Hong Kong: the Hong Kong Special Administrative Region of the People's Republic of China

In Macau: the Hong Kong Special Administrative Region of the People's Republic of China

In Korea: the Republic of Korea, and subject to the Seoul Central District Court of the Republic of Korea

In Taiwan: Taiwan

In India: India

In paragraph a, in the second sentence, replace the phrase "the country where the transaction to acquire license entitlements is performed or, if IBM agrees, the country where the Program is placed in productive use" with:

In Hong Kong: the Hong Kong Special Administrative Region of the People's Republic of China

In Macau: the Macau Special Administrative Region of the People's Republic of China

In Taiwan: Taiwan

In paragraph b, in the first sentence, item ii), after the word "including" and before words "the defense", add:

In Japan: those of Japan laws and

Add at the end of the section as a new paragraph d:

In Cambodia, Laos, Philippines, and Sri Lanka: Disputes will be finally settled by arbitration in Singapore under the Arbitration Rules of the Singapore International Arbitration Center ("SIAC Rules").

In India: Disputes shall be finally settled in accordance with The Arbitration and Conciliation Act, 1996 then in effect, in English, with seat in Bangalore, India. There shall be one arbitrator if the amount in dispute is less than or equal to Indian Rupee five crores and three arbitrators if the amount is more. When an arbitrator is replaced, proceedings shall continue from the stage they were at when the vacancy occurred.

In Indonesia: Disputes will be finally settled by arbitration in Jakarta, Indonesia, administered by the Indonesian National Board of Arbitration established in the year 1977 ("Badan Arbitrase Nasional Indonesia" or "BANI") in accordance with the rules of the Indonesian National Board of Arbitration. The arbitration award shall be final and binding on the parties without appeal and shall be in writing and set forth the findings of fact and the conclusion of law.

In People's Republic of China: Either party has the right to submit the dispute to the China International Economic and Trade Arbitration Commission in Beijing, the PRC, for arbitration. The parties agree three arbitrators will be used to resolve any dispute.

In Vietnam: Disputes will be finally settled by arbitration in Vietnam under the Arbitration Rules of the Vietnam International Arbitration Centre ("VIAC Rules"). All proceedings and documents presented will be in the English language.

Section 7. General

In paragraph j, in the second sentence, replace the phrase "two years" with:

In India: three years

Add to the end of this section the following new paragraph l:

In Indonesia: This agreement is made in the English and Bahasa Indonesian language versions. To the extent permitted by the applicable law, the English version will prevail in the event of conflict between such versions.

3. EUROPE, MIDDLE EAST, AND AFRICA

Section 2. Warranties

In paragraph d, Replace the fourth sentence with the following two sentences:

In Czech Republic, Estonia, and Lithuania: Non-IBM Programs are provided as-is, without warranties of any kind or liabilities for defects. The parties hereby exclude any liability of IBM for defects beyond the agreed warranties.

Section 3. Charges, Taxes, Payment, and Verification

In paragraph b, add the following to the end of the third sentence:

In Italy: if IBM requests in a written notice to Licensee.

In Ukraine: , on the overdue amount from the next day after the due date up to the date of actual payment, prorated for each day of delay, at the interest rate of double the discount rate determined by the National Bank of Ukraine (NBU) during the delay period (paragraph 6 of article 232 of Commercial Code of Ukraine does not apply).

In paragraph b, replace the third sentence with the following:

In France: Amounts are due and payable within 10 days of the invoice date to an account specified by IBM and late payment fees apply equal to the most recent European Central Bank rate plus 10 points, in addition to debt collection costs of forty (40) euros or, if these costs exceed forty euros, complementary indemnification subject to justification of the amount claimed).

In Russia: Amounts are due upon receipt of the invoice and payable within 30 days of the invoice date through electronic transfer of funds to an account specified by IBM. Late payment fees at the rate of 24% per annum calculated for each day beyond the 30 days may apply.

In paragraph b, add the following to the end of the last sentence:

In Lithuania: , or except as provided by law

At the end of paragraph b, add the following:

In Italy: In the instance of no payment or partial payment, and also following a formal credit claim procedure or trial that IBM may initiate, in derogation of article 4 of Legislative Decree n. 231 dated October 9, 2002, and according to article 7 of the same Legislative Decree, IBM will notify Licensee in writing by registered, return receipt mail of late payment fees due.

Section 4. Liability and Intellectual Property Protection

In paragraph a, in the first sentence insert the following before the words "the amounts paid":

In Belgium, France, Germany, Italy, Luxembourg, Malta, Portugal, and Spain: the greater of €500,000 (five hundred thousand euro) or

In Ireland and United Kingdom: 125% of

In paragraph a, in the first sentence, replace the phrase "direct damages incurred by Licensee" with:

In Spain: and proven damages incurred by Licensee as a direct consequence of the IBM default

In paragraph a, insert after the first sentence the following new sentence:

In Slovakia: Referring to § 379 of the Commercial Code, Act No. 513/1991 Coll. as amended, and concerning all conditions related to the conclusion of the agreement, both parties state that the total foreseeable damage, which may accrue, shall not exceed the amount above, and it is the maximum for which IBM is responsible.

In paragraph a, insert before the second sentence the following new sentence:

In Russia: IBM will not be liable for the forgone benefit.

In paragraph a, in the second sentence, delete the word:

In Ireland and United Kingdom: economic

In paragraph a, replace the second sentence with:

In Belgium, Netherlands, and Luxembourg: IBM will not be liable for indirect or consequential damages, lost profits, business, value, revenue, goodwill, damage to reputation or anticipated savings, any third party claim against Licensee, and loss of (or damage to) data.

In France: IBM will not be liable for damages to reputation, indirect damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.

In Portugal: IBM will not be liable for indirect damages, including loss of profit.

In Spain: IBM will not be liable for damage to reputation, lost profits, business, value, revenue, goodwill, or anticipated savings.

Add the following at the end of paragraph a:

In France: The terms of the Agreement, including financial terms, were established in consideration of the present clause, which is an integral part of the general economy of the Agreement.

In paragraph b, replace "and ii) damages that cannot be limited under applicable law" with the following:

In Germany: ; ii) damages for body injury (including death); iii) loss or damage caused by a breach of guarantee assumed by IBM in connection with any transaction under this Agreement; and iv) caused intentionally or by gross negligence.

Section 6. Governing Laws and Geographic Scope

In paragraph a, first sentence only, replace the phrase "the country where the transaction for license entitlements is performed" with:

In Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Romania, Russia, Serbia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan: Austria

In Estonia, Latvia, and Lithuania: Finland

In Algeria, Andorra, Benin, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis and Futuna: France

In Angola, Bahrain, Botswana, Egypt, Eritrea, Ethiopia, Gambia, Ghana, Iraq, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome and Principe,

Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, West Bank/Gaza, Yemen, Zambia, and Zimbabwe: England

In Liechtenstein: Switzerland

In South Africa, Namibia, Lesotho, and Swaziland: the Republic of South Africa

In United Kingdom: England

In paragraph a, add the following at the end of the first sentence:

In France: The Parties agree that articles 1222 and 1223 of the French Civil Code are not applicable.

Add the following at the end of paragraph a:

In Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Kazakhstan, Kosovo, Kyrgyzstan, Moldova, Montenegro, Romania, Russia, Serbia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan: All disputes arising out of this Agreement shall be finally settled by the International Arbitral Centre of the Austrian Federal Economic Chamber (Arbitration Body), under the Rules of Arbitration of that Arbitral Centre (Vienna Rules), in Vienna, Austria, with English as the official language, by three impartial arbitrators appointed in accordance with the Vienna Rules. Each party will nominate one arbitrator, who will jointly appoint an independent chairman within 30 days or else the chairman will be appointed by the Arbitration Body under the Vienna Rules. The arbitrators will have no authority to award injunctive relief or damages excluded by or exceeding limits in this Agreement. Nothing in this Agreement will prevent either party from resorting to judicial proceedings for (1) interim relief to prevent material prejudice or a breach of confidentiality provisions or intellectual property rights, or (2) determining the validity or ownership of any copyright, patent or trademark owned or asserted by a party or its Enterprise company, or (3) debt collection in amounts below USD 500,000.00.

In Estonia, Latvia, and Lithuania: All disputes arising out of this Agreement shall be finally settled by the Arbitration Institute of the Finland Chamber of Commerce (FAI) (Arbitration Body), under the Arbitration Rules of the Finland Chamber of Commerce (Rules), in Helsinki, Finland, with English as the official language, by three impartial arbitrators appointed in accordance with those Rules. Each party will nominate one arbitrator, who will jointly appoint an independent chairman within 30 days or else the chairman will be appointed by the Arbitration Body under the Rules. The arbitrators will have no authority to award injunctive relief or damages excluded by or exceeding limits in this Agreement. Nothing in this Agreement will prevent either party from resorting to judicial proceedings for (1) interim relief to prevent material prejudice or a breach of confidentiality provisions or intellectual property rights, or (2) determining the validity or ownership of any copyright, patent or trademark owned or asserted by a party or its Enterprise company, or (3) debt collection in amounts below USD 500,000.00.

In Afghanistan, Angola, Bahrain, Botswana, Burundi, Cape Verde, Djibouti, Egypt, Eritrea, Ethiopia, Gambia, Ghana, Iraq, Jordan, Kenya, Kuwait, Lebanon, Liberia, Libya, Madagascar, Malawi,, Mozambique, Nigeria, Oman, Pakistan, Palestinian Territory, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Seychelles, Sierra Leone, Somalia, South Sudan, Tanzania, Uganda, United Arab Emirates, Western Sahara, Yemen, Zambia, and Zimbabwe: All disputes arising out of this Agreement shall be finally settled by the London Court of International Arbitration (LCIA) (Arbitration Body), under the LCIA Arbitration Rules (the Rules), in London, UK, with English as the official language, by three impartial arbitrators appointed in accordance with the Rules. Each party will nominate one arbitrator, who will jointly appoint an independent chairman within 30 days or else the chairman will be appointed by the Arbitration Body under the Rules. The arbitrators will have no authority to award injunctive relief or damages excluded by or exceeding limits in this Agreement. Nothing in this Agreement will prevent either party from resorting to judicial proceedings for (1) interim relief to prevent material prejudice or a breach of confidentiality provisions or intellectual property rights, or (2) determining the validity or ownership of any copyright, patent or trademark owned or asserted by a party or its Enterprise company, or (3) debt collection in amounts below USD 500,000.00.

In Algeria, Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Congo Republic, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Guinea, Guinea-Bissau, Ivory Coast, Mali, Mauritania, Mauritius, Morocco, Niger, Senegal, Togo, and Tunisia: All disputes arising out of this Agreement shall be finally settled by the ICC International Court of Arbitration, in Paris (Arbitration Body), under its arbitration rules (the Rules), in Paris, France, with French as the official language, by three impartial arbitrators appointed in accordance with the Rules. Each party will nominate one arbitrator, who will jointly appoint an independent chairman within 30 days or else the chairman will be appointed by the Arbitration Body under the Rules. The arbitrators will have no authority to award injunctive relief or damages excluded by or exceeding limits in this Agreement. Nothing in this Agreement will prevent either party from resorting to judicial proceedings for (1) interim relief to prevent material prejudice or a breach of confidentiality provisions or intellectual property rights, or (2) determining the validity or ownership of any

copyright, patent or trademark owned or asserted by a party or its Enterprise company, or (3) debt collection in amounts below USD 250,000.00.

In South Africa, Namibia, Lesotho, and Swaziland: All disputes arising out of this Agreement shall be finally settled by the Arbitration Foundation of Southern Africa (AFSA) (Arbitration Body), under the Rules of the Arbitration of the AFSA (the Rules), in Johannesburg, South Africa, with English as the official language, by three impartial arbitrators appointed in accordance with the Rules. Each party will nominate one arbitrator, who will jointly appoint an independent chairman within 30 days or else the chairman will be appointed by the Arbitration Body under the Rules. The arbitrators will have no authority to award injunctive relief or damages excluded by or exceeding limits in this Agreement. Nothing in this Agreement will prevent either party from resorting to judicial proceedings for (1) interim relief to prevent material prejudice or a breach of confidentiality provisions or intellectual property rights, or (2) determining the validity or ownership of any copyright, patent or trademark owned or asserted by a party or its Enterprise company, or (3) debt collection in amounts below USD 250,000.00.

In Andorra, Austria, Cyprus, France, Germany, Greece, Israel, Italy, Portugal, Spain, Switzerland, and Turkey: All disputes will be brought before and subject to the exclusive jurisdiction of the following court of competent jurisdiction:

In Andorra: the Commercial Court of Paris.

In Austria: the court of Vienna, Austria (Inner City).

In Cyprus: the competent court of Nicosia.

In France: Commercial Court of Paris.

In Germany: the courts of Stuttgart.

In Greece: the competent court of Athens.

In Israel: the courts of Tel Aviv Jaffa.

In Italy: the courts of Milan.

In Portugal: the courts of Lisbon.

In Spain: the courts of Madrid.

In Switzerland: the commercial court of the canton of Zurich.

In Turkey: the Istanbul Central (Çağlayan) Courts and Execution Directorates of Istanbul, the Republic of Turkey.

In Netherlands: The Parties waive their rights under Title 7.1 ('Koop') and clause 7:401 and 402 of the Dutch Civil Code, and their rights to invoke a full or partial dissolution ('gehele of partiele ontbinding') of this Agreement under section 6:265 of the Dutch Civil Code.

Section 7. General

In paragraph d, insert the following at the end of the paragraph:

In Spain: IBM will comply with requests to access, update or delete contact information if submitted to the following address: IBM, c/ Santa Hortensia 26-28, 28002 Madrid, Departamento de Privacidad de Datos.

In paragraph j, add to the end the paragraph:

In Czech Republic: Pursuant to Section 1801 of Act No. 89/2012 Coll. (the "Civil Code"), Section 1799 and Section 1800 of the Civil Code as amended, do not apply to transactions under this Agreement. Licensee accepts the risk of a change of circumstances under Section 1765 of the Civil Code.

In paragraph j:

In Bulgaria, Croatia, Russia, Serbia, and Slovenia: *delete the 2nd sentence that says: "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".*

In paragraph j, add to the end of the second sentence:

In Lithuania: , except as provided by law

In paragraph j, replace the second sentence with:

In Poland: Neither party will bring a legal action arising out of or related to the Agreement more than three years after the cause of action arose, except for an action of non-payment which will be brought no more than 2 years after payment is due.

In paragraph j, second sentence, replace the word "two" with:

In Latvia and Ukraine: three

In Slovakia: four

In paragraph j, add to the end of the third sentence that says: "Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control":

In Russia: , including but not limited to earthquakes, floods, fires, acts of God, strikes (excluding strikes of the parties' employees), acts of war, military actions, embargoes, blockades, international or governmental sanctions, and acts of authorities of the applicable jurisdiction.

In paragraph j, third sentence, modify the sentence: "Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control" as follows:

In Ukraine: Neither party is responsible for failure to fulfill its non-monetary obligations due to causes or regulatory changes beyond its control, including but not limited to import, export and economic sanctions requirements of the United States.

Add the following at the end of the section as new paragraph i:

In Hungary: By entering into this Agreement, Licensee confirms that Licensee was sufficiently informed of all the provisions of this Agreement and had the opportunity to negotiate those terms. The following provisions may significantly deviate from the provisions generally applied by Hungarian law and both parties accept those provisions by signing the Agreement: Program License; Warranties; Charges, Taxes, Payment, and Verification; Liability and Intellectual Property Protection; Termination; Governing Laws and Geographic Scope; and General.

In Czech Republic: Licensee expressly accepts the terms of this agreement which include the following important commercial terms: i) limitation and disclaimer of liability for defects (Warranties); ii) limitation of Licensee's entitlement to damages (Liability and Intellectual Property Protection); iii) binding nature of export and import regulations (Governing Laws and Geographic Scope); iv) shorter limitation periods (General); v) exclusion of applicability of provisions on adhesion contracts (General); and vi) acceptance of the risk of a change of circumstances (General).

In Romania: The Licensee expressly accepts, the following standard clauses that may be deemed 'unusual clauses' as per the provisions of article 1203 Romanian Civil Code: clauses 2, 4, 5, 8j. The Licensee hereby acknowledges that it was sufficiently informed of all the provisions of this Agreement, including the clauses mentioned above, it properly analyzed and understood such provisions and had the opportunity to negotiate the terms of each clause.

International Agreement for Acquisition of Software Maintenance



Part 1- General Terms

This IBM International Agreement for Acquisition of Software Maintenance (called the "Agreement") governs Customer's acquisition of IBM software maintenance ("Software Maintenance"), which may also be referred to as subscription and support ("S&S") in connection with IBM System z Programs. Software Maintenance is provided only for those Eligible Programs licensed by Customer within its Enterprise. Acquisition of Software Maintenance in quantities greater than the number for which Customer is licensed does not create or imply any greater license authorization. An "Enterprise" in this Agreement is any legal entity (such as a corporation) and the subsidiaries it owns by more than 50 percent. "Eligible Programs" are described below.

IBM has signed agreements with certain organizations (called "IBM Business Partners") to promote and market Software Maintenance offerings. When Customer orders Software Maintenance marketed to Customer by IBM Business Partners, IBM will provide Software Maintenance to Customer under the terms of this Agreement. IBM is not responsible for 1) the actions of IBM Business Partners, 2) any additional obligations they have to Customer or 3) any products or services that they supply to Customer under their agreements. In the event that Customer's IBM Business Partner is no longer able to market Software Maintenance, for any reason, Customer may continue to receive Software Maintenance under the terms of this Agreement by instructing IBM to transfer administration of Software Maintenance to either 1) another IBM Business Partner of Customer's choice (who may require Customer to first execute one of their agreements) who is approved to market Software Maintenance to Customer, or 2) IBM.

Section 2 of the Agreement contains terms that are specific to a particular hardware platform. The terms in the remaining sections are in addition to those in section 2 and apply to all platforms.

1. Incorporated Terms

Eligible Programs to which this Agreement applies are licensed under the applicable International Program License Agreement ("IPLA") provided with each Program in the Eligible Program's directory or in a library identified as "License," a booklet, or on a CD, unless otherwise specified by IBM.

Sections of the applicable IPLA entitled (or similarly entitled depending on the version) of: i) "Licensee Data and Databases (or like data handling provisions);" ii) "Limitation of Liability;" iii) "Compliance Verification;" iv) "Geographic Scope and Governing Law;" v) "General;" and vi) the applicable Part 2 country terms applicable to such sections are incorporated as part of this Agreement. For the purposes of this Agreement only, if the Programs' IPLA is a version 12 or lower, the terms of IPLA version 13 will apply and is available at <https://www.ibm.com/support/customer/csol/terms/?ref=Z125-3301-13-04-2009-zz-en> will apply.

For the purpose of this Agreement only, the following modifications apply to the IPLA terms referenced in above:

- a. the following terminology changes are:
 - (1) the terms "Program" and "Program license(s)" are replaced by the term "Software Maintenance."
 - (2) the term "Licensee" is replaced by the term "Customer."
 - (3) the phrase "the laws of the country in which Customer acquired the Program license" (or similar) in the Governing Law subsection is replaced by "the laws of the country in which Software Maintenance is acquired."
 - (4) the statement, "All of our rights, duties, and obligations are subject to the courts of the country in which Customer acquired the Program license" (or similar) is replaced by the statement, "All rights, duties, and obligations of each of the parties are valid only in the country in which Software Maintenance is acquired or, if IBM agrees, the country where Software Maintenance is used."

Capitalized terms used but not defined in this Agreement have the meaning given to them in the IPLA.

2. Software Maintenance

- a. For Eligible Programs running on an IBM System z platform or equivalent:
 - (1) **Eligible Programs:** Programs for which S&S is available may be obtained from Customer's IBM marketing representative or IBM Business Partner.
 - (2) **S&S Period:** One year. When Customer orders S&S with a Program, the initial S&S Period begins on the date that IBM makes the Program available to Customer.

- (3) **Early Termination of an S&S Period for a Program:** While Customer may terminate an S&S Period, IBM does not issue a credit or refund for the unused portion of an S&S Period.
 - (4) **Automatic Renewal:** If, by the last day of the current S&S Period, IBM has received no written notification from Customer or Customer's Business Partner, as applicable, that Customer does not want to renew S&S for a Program, IBM will automatically renew that expiring S&S Period under the Agreement terms and charges in effect on that date, subject to applicable law. Subsequent S&S Periods begin on the day following the end of the preceding S&S Period.
 - (5) **S&S Period Adjustment:** When Customer acquires S&S initially or resumes it, or prior to the end of the then current S&S Period, Customer may request that the S&S Period duration is adjusted to end at a month of Customer's choice. If Customer does not choose a date, IBM will inform Customer of the end date. The "S&S ("Software Maintenance") Charge" (see item (1) in subsection b. Software Maintenance acquired directly from IBM of section 3. **Charges and Payment** below) will be pro-rated accordingly.
 - (6) **S&S:** During the S&S Period, for the unmodified portion of a Program, and to the extent problems can be recreated in the specified operating environment, IBM will provide the following:
 - (a) defect correction information, a restriction, or a bypass;
 - (b) Program Updates: periodic releases of collections of code corrections, fixes, functional enhancements and new versions and releases to the Program and documentation; and
 - (c) Technical Assistance: a reasonable amount of remote assistance via telephone or electronically to address suspected Program defects. Technical assistance is available from the IBM support center in the Customer's geography. Additional details regarding Technical Assistance, including IBM contact information (see Appendix C: Contact Information), are provided in the IBM Software Support Guide at: <https://www.ibm.com/support/pages/ibm-support-guide>.

S&S does not include assistance for 1) the design and development of applications, 2) Customer's use of Programs in other than their specified operating environment, or 3) failures caused by products for which IBM is not responsible under this Agreement.

S&S is provided only if the Program is within its support timeframe as specified in the Software Support Lifecycle policy for the Program.
 - (7) **Resumption Fee:** A charge to resume S&S after Customer either (a) declined S&S at the time Customer acquired the license for a Program or (b) terminated S&S. This charge is equal to the total of all S&S Charges that Customer would have paid during the lapsed interval. An S&S Period in such an instance begins on the date that IBM accepts Customer's order.
 - (8) **S&S Upgrade:** If Customer upgrades S&S due to an increase in the level of use of an Eligible Program, any increase to the S&S Charge will be pro-rated to the end of the current S&S Period.
- b. For Eligible Programs running on IBM distributed platforms (e.g., IBM Power Systems, IBM System i, IBM System p, IBM System x, IBM System Storage, and IBM Retail Store Solutions) or equivalent:
- (1) **Eligible Programs:** Unless otherwise provided by IBM, Eligible Programs for which Software Maintenance is available may be obtained from Customer's IBM marketing representative or IBM Business Partner.
 - (2) **Initial Software Maintenance Period:** Customer must choose either one year, the charge for which may be included with the Eligible Program, or, for an additional charge, three years of Software Maintenance at the time Customer orders an Eligible Program. The Initial Software Maintenance Period begins on the date that IBM makes the Program available to Customer. If the Eligible Program is part of an IBM Software Maintenance for OS/400, i5/OS, and selected Programs, then the Initial Software Maintenance Period duration will be adjusted so that the expiration coincides with that of the other Eligible Programs in the group. In such event, the Initial Software Maintenance Period may be less than one year.
 - (3) **Subsequent Software Maintenance Periods (under this Agreement):** One or three years, at Customer's option.
 - (4) **Early Termination of a Software Maintenance Period for a Program:** While Customer may terminate a Software Maintenance Period, IBM does not issue a credit or refund for the unused portion of a Software Maintenance Period.

(5) Renewal:

- (a) It is Customer's responsibility to renew Software Maintenance at the end of each Software Maintenance Period. IBM or Customer's IBM Business Partner will renew expiring Software Maintenance under terms and charges made available to Customer prior to expiration of the then current Software Maintenance Period, if it receives Customer's order to renew (e.g., order form, order letter, purchase order) not later than the expiration date. Subsequent Software Maintenance Periods under this Agreement (or other terms and charges made available to Customer prior to expiration of the then current Software Maintenance Period) begin on the day following the end of the preceding Software Maintenance Period. If Customer does not renew Software Maintenance by the expiration date of the Software Maintenance Period but subsequently wishes to acquire Software Maintenance, a Software Maintenance After License Fee, as set forth below, will apply.
- (b) For Eligible Programs running on Power Systems, System i or System p platforms, if the Customer specifies in advance, IBM, even if it does not receive Customer's order to renew, will continue to provide Software Maintenance under terms and charges made available to Customer prior to expiration of the current Software Maintenance Period.

(6) Software Maintenance: During the Software Maintenance Period:

- (a) IBM makes available to Customer the most current commercially available version, release, or update to all of the Eligible Programs for which Customer acquires Software Maintenance under this Agreement, should any be made available. For Power Systems, System i, and System p Programs under this Agreement, Customer may obtain upgrades to any more recent commercially available version, release or update. Customer's right to upgrade to a new version, release or update under this subsection may only be exercised during the Software Maintenance Period and expires at the end of the Period if Software Maintenance is not renewed.
- (b) For IBM Software Maintenance for OS/400, i5/OS, and selected Programs, Customer is entitled to upgrade an Eligible Program to a specific version or release only one time per machine, notwithstanding 2.b.(6)(a) above.
- (c) IBM provides Customer technical assistance for Customer's 1) routine, short duration installation and usage (how-to) questions; and 2) code-related questions.
- (d) IBM provides assistance via telephone and, if available, electronic access, to only Customer's information systems (IS) technical support personnel during the normal business hours (IBM published prime shift hours) of IBM support center in the Customer's geography. This assistance is not available to Customer's end users. IBM provides Severity 1 assistance 24 hours a day, every day of the year. Additional details regarding assistance, including the definition of Severity 1, are provided in the IBM Software Support Guide at: <https://www.ibm.com/support/pages/ibm-support-guide>.
- (e) Software Maintenance does not include assistance for 1) the design and development of applications, 2) Customer's use of Eligible Programs in other than their specified operating environment, or 3) failures caused by products for which IBM is not responsible under this Agreement.
- (f) And only if the Program is within its support timeframe as specified in the Software Support Lifecycle policy for the Program.

(7) Software Maintenance After License Fee (which may be referred to as "Maintenance After License" or "MAL" in connection with System i platforms and as "After License Charge" or "ALC" in connection with System p platforms):

- (a) Software Maintenance After License Fee is the charge to resume Software Maintenance if Customer
 - (i) did not renew it before the end of the then current Software Maintenance Period; or
 - (ii) terminated it.
- (b) The Software Maintenance Period for a resumption of Software Maintenance begins on the date that IBM accepts Customer's order.
- (c) The Software Maintenance After License Fee applies when Customer acquires a used Power Systems, System i, or System p machine and wishes to acquire Software Maintenance for OS/400, i5/OS, and selected Programs, unless

- (i) the machine has the most current version and release of the appropriate operating system installed; and
 - (ii) Customer acquires Software Maintenance within 30 days of Customer's acquisition of the machine.
- (d) The Software Maintenance After License Fee applies when Customer acquires a used Power Systems, System i, or System p machine and wishes to acquire Software Maintenance for the AIX operating system or AIX selected Programs unless
 - (i) the machine has a current version and release of the AIX operating system or AIX selected Programs installed and
 - (ii) Customer acquires Software Maintenance within 30 days of Customer's acquisition of the machine.
- (e) For Software Maintenance for other Eligible Programs not otherwise covered by this subsection 2.b(7), a Software Maintenance After License Fee may apply to Customers acquiring used Power System, System i, or System p machines. Please contact your IBM representative, or where applicable, an IBM Business Partner or IBM Call Center, for further information.
- (8) **Transfer of IBM Software Maintenance on Power Systems, System i and System p machines:** In addition to the provisions of section 4. "Software Maintenance Transferability" below, Software Maintenance for Programs running on Power Systems, System i or System p platforms
 - (a) applies to a designated machine (type, model and serial number);
 - (b) may be transferred only to another machine that is licensed for the same operating system at the same or a more recent release level; and
 - (c) may incur an increase in the Software Maintenance Charge if the "transferred to" machine is of a larger capacity.

3. Charges and Payment

If Customer returns an Eligible Program for refund as allowed under its license terms, IBM or Customer's IBM Business Partner will terminate, and refund any charges paid for, Software Maintenance ordered with the Program. IBM does not give refunds for Software Maintenance without the return of the associated Eligible Program.

- a. Software Maintenance acquired from an IBM Business Partner

When Customer acquires Software Maintenance from an IBM Business Partner, the IBM Business Partner sets the charges and the terms governing charges. Customer will pay Customer's IBM Business Partner directly.
- b. Software Maintenance acquired directly from IBM
 - (1) Charges for Software Maintenance during each Software Maintenance Period, called the Software Maintenance Charge, are invoiced in advance.
 - (2) The Software Maintenance Charge may vary, depending on, for example, the machine (type/model), the Eligible Program or group of Eligible Programs, or level of use of the Eligible Program.
 - (3) IBM may increase the Software Maintenance Charge without notice. An increase will not apply to Customer if IBM receives Customer's order for Software Maintenance before the announcement date of the increase and within three months of receipt by IBM of Customer's order IBM makes Software Maintenance available to Customer. Customer receives the benefit of a decrease in the Software Maintenance Charge for amounts which become due on or after the effective date of the decrease.
 - (4) Amounts are due and payable upon receipt of invoice. Customer agrees to pay accordingly, including any late payment fee.
 - (5) If any authority imposes a duty, tax, levy or fee, excluding those based on IBM's net income, upon Software Maintenance IBM supplies under this Agreement, then Customer agrees to pay that amount as specified in the invoice, unless Customer supplies exemption documentation.

4. **Software Maintenance Transferability**

Customer may transfer Software Maintenance only to an entity that is within Customer's Enterprise and located within the country in which Software Maintenance is acquired, provided that the entity receiving the Eligible Program agrees to the terms of this Agreement.

5. **Customer's Responsibilities**

Customer agrees that when Customer acquires Software Maintenance for an Eligible Program:

- a. Customer will acquire Software Maintenance for the same level of use as that at which the Eligible Program is authorized. Partial coverage for a particular Eligible Program is not offered;
- b. Customer is responsible for the results obtained from the use of the Software Maintenance;
- c. Customer will, at IBM's request, allow IBM to remotely access Customer's system to assist Customer in isolating the software problem cause;
- d. Customer remains responsible for adequately protecting Customer's system and all data contained in it whenever IBM remotely accesses it with Customer's permission to assist Customer in isolating the software problem cause;
- e. Customer will provide sufficient, free, and safe access to Customer's facilities for IBM to fulfill its obligations; and
- f. except as permitted by section 4. Software Maintenance Transferability above, Customer will not assign, or otherwise transfer, this Agreement or Customer's rights under this Agreement, or delegate Customer's obligations, without IBM's prior written consent. Any attempt to do so is void. The assignment of this Agreement, in whole or in part, within the Enterprise of which either of us is a part or to a successor organization by merger or acquisition does not require the consent of the other. IBM is also permitted to assign its rights to payments under this Agreement without obtaining your consent. It is not considered an assignment for IBM to divest a portion of its business in a manner that similarly affects all of its customers.

6. **Warranty for Software Maintenance**

IBM warrants that Software Maintenance will be provided using reasonable care and skill and according to its description in the IBM Software Support Guide at: <https://www.ibm.com/support/pages/ibm-support-guide>. Customer agrees to provide timely written notice of any failure to comply with this warranty so that IBM can take corrective action.

The warranties 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.

EXCEPT AS EXPRESSLY REQUIRED BY LAW WITHOUT THE POSSIBILITY OF CONTRACTUAL WAIVER OR LIMITATION, THESE WARRANTIES ARE CUSTOMER'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF SATISFACTORY QUALITY, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

IBM does not warrant uninterrupted or error-free provision of Software Maintenance or that IBM will correct all defects.

7. **Changes to Agreement Terms**

IBM may change the terms of this Agreement by giving Customer three months' prior written notice by letter or e-mail, either directly to Customer or through Customer's IBM Business Partner. These changes are not retroactive and apply, as of the effective date IBM specifies in the notice, only to new orders and renewals.

Otherwise, for a change to be valid, both of us must sign it.

8. **Termination and Withdrawal**

Either of us may terminate this Agreement if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time to comply.

IBM may withdraw Software Maintenance for an Eligible Program by publishing a notice of withdrawal not less than 12 months prior to its effective date. If IBM withdraws Software Maintenance for which Customer has prepaid and IBM has not yet fully provided it to Customer, at its sole discretion IBM will either continue to provide Software Maintenance to Customer until the end of the current Software Maintenance Period or

give Customer a prorated refund. Acquisition of Software Maintenance does not extend the period for which an Eligible Program is supported.

Notwithstanding anything to the contrary in this Agreement, if IBM terminates Customer's license for an Eligible Program due to Customer's breach of any of its terms, IBM may also concurrently terminate Software Maintenance for that Eligible Program. In this instance, IBM is not obligated to issue a refund or credit for any unused portion of Software Maintenance.

IBM may withdraw the Software Maintenance offering in its entirety on 12 months' written notice to all then current Software Maintenance customers by letter or e-mail.

Any terms of this Agreement which by their nature extend beyond the Agreement termination remain in effect until fulfilled and apply to both of our respective successors and assignees.

9. Data Processing Protection

IBM's Data Processing Addendum (DPA) at <http://ibm.com/dpa> and the DPA Exhibit at <https://www.ibm.com/mysupport/s/article/support-privacy> applies to IBM's processing of personal data on behalf of Client.

10. Additional Terms

- a. To assist Customer in isolating the cause of a software problem, IBM may ask Customer to (1) allow IBM to remotely access Customer's system or (2) send customer information or system data to IBM. IBM uses information about errors and problems only to improve its products and services and assist with its provision of Software Maintenance. IBM may use subcontractors and IBM Enterprise entities in other countries for these purposes, and Customer authorizes IBM to do so.

Customer remains responsible for (i) any data and the content of any database Customer makes available to IBM, (ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally-identifiable data), and (iii) backup and recovery of the database and any stored data. Customer will not send or provide to IBM access to personal information and will be responsible for any reasonable costs and other amounts that IBM may incur relating to any such information mistakenly provided to IBM or to the loss or disclosure of such information by IBM, including those arising out of any third party claims.
- b. All information exchanged is nonconfidential. If either of us requires the exchange of confidential information, it will be made under a signed confidentiality agreement.
- c. Each may communicate with the other by electronic means and such communication is acceptable as a signed writing to the extent permissible under applicable law. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity.

11. Complete Agreement

This Agreement is the complete agreement regarding Customer's acquisition of Software Maintenance and replaces any prior oral or written communications between Customer and IBM concerning Software Maintenance. 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 6 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.

Customer accepts the terms of this Agreement without modification by any one of the following means: to the extent permissible under applicable law, by ordering, using, or making payment for Software Maintenance or, where required by law, signing a transaction document. Software Maintenance becomes subject to this Agreement when IBM or Customer's IBM Business Partner accepts Customer's order or payment. Once in effect, 1) unless prohibited by applicable local law or specified otherwise, any reproduction of this Agreement made by reliable means (for example, photocopy, electronic scan or facsimile) is considered an original and 2) Software Maintenance Customer orders under this Agreement are subject to it.

International Agreement for Acquisition of Software Maintenance

Part 2- Country-unique Terms

AMERICAS

The following terms apply to all Americas countries (except Brazil, Canada and the United States) unless a specific country term states otherwise:

3. Charges and Payment

In subsection b. Software Maintenance acquired directly from IBM, the following replaces item (4):

Amounts are due upon receipt of invoice and payable as IBM specifies in a transaction document. The currency for payment of amounts due is US dollars or the equivalent in local currency as follows:

- (a) As long as the country operates in a free currency exchange market, Customer and IBM agree that IBM will accept payment in the applicable country national currency calculated at the country official exchange rate published by the bank specified in a transaction document on the date payment is made.
- (b) If the government of a country establishes any restriction or limitation on its free currency exchange markets, Customer agrees to make payments to IBM in US dollars to a bank account in New York, NY, USA, designated by IBM in the transaction document, provided that such payment is not illegal under country law. If such method of payment is forbidden by country law, Customer agrees to pay the amount indicated in the transaction document in country national currency, calculated at the official exchange rate which is in use for the remittance of dividends and net earnings to foreign investors outside the country.

Customer agrees to pay accordingly, including any late payment fee. The late payment fee is calculated and payable in US dollars at two percent (or the maximum rate allowed by local law if such is less than two percent) of the delinquent amount due per each thirty day period during which any delinquent balance remains unpaid.

All additional terms apply to the referenced country.

BRAZIL

2. Software Maintenance

In subsection a. For Eligible Programs running on an IBM System z platform, items 2 through and including 5 are deleted in their entirety.

In item 6, the phrase "S&S Period" is replaced by the following:

the period for which Customer has paid for S&S

In item 8, the phrase "pro-rated to the end of the current S&S Period" is replaced by the following:
effective on the first day of the following month

3. Charges and Payment

In subsection b. Software Maintenance acquired directly from IBM, the following replaces item (1):

For Eligible Programs running on IBM distributed platforms or equivalent, charges for Software Maintenance during each Software Maintenance Period, called the Software Maintenance Charge, are invoiced in advance. For Eligible Programs running on an IBM System z platform or equivalent, charges for Software Maintenance, called the Software Maintenance Charge, are invoiced monthly in advance.

In subsection b. Software Maintenance acquired directly from IBM, the following replaces item (3):

IBM may increase charges for Software Maintenance provided under this Agreement. IBM's ability to increase such charges is subject to the requirements of Brazilian law.

In subsection b. Software Maintenance acquired directly from IBM, the following replaces item (4):

Amounts are due upon receipt of invoice and payable in local currency as IBM specifies in a transaction document. Customer agrees to pay accordingly, including any late payment fee. Delinquent amounts are subject to monetary correction based on the inflation index called the "General Price Index" calculated by Getulio Vargas Foundation (IGP-M/FGV), plus interest at the rate of one percent per month, both calculated "pro rata die." The late payment fee is calculated against the resultant delinquent amount at the following rates:

- (a) if payment is made between the 31st day and the 60th day from invoice date, a two percent late payment penalty applied to the resultant delinquent amount, or
- (b) if payment is made 61 or more days from invoice date, a ten percent late payment penalty applied to the resultant delinquent amount.

The following is added to subsection b. Software Maintenance acquired directly from IBM as item (6):

Amounts due are expressed in local currency.

The following is added to subsection b. Software Maintenance acquired directly from IBM as item (7):

The charges for Software Maintenance acquired under this Agreement are inclusive of all applicable taxes that are IBM's responsibility on the base date established in a transaction document. The parties agree that IBM will adjust the charges accordingly should any of the following occur:

- (a) any change is made to the rate, form or base of calculation, form of payment, classification or taxes levied on the Software Maintenance or on their costs,
- (b) a new applicable tax is created,
- (c) any change is made to any other legal aspect related to the taxes applicable on the base date,
- (d) any change is made to the origin or to the delivery location for the Software Maintenance,
- (e) any change is made to the location where Services are to be provided, or
- (f) any change is made to the manner in which Services are marketed.

7. Changes to Agreement Terms

The following replaces this section in its entirety:

In order to maintain flexibility in our business relationship, the terms of this Agreement may be changed upon execution of an amendment and the changes shall apply as of the effective date specified in the amendment. They apply only to new orders, on-going transactions that do not expire, and transactions with a defined renewable contract period. For transactions with a defined renewable contract period, Customer may request that IBM defer the change effective date until the end of the current contract period.

8. Termination and Withdrawal

The words "or e-mail" in the fourth paragraph of this section are deleted.

10. Additional Terms

In the first sentence of item c, the phrase "and such communications are acceptable as a signed writing" is deleted.

In the clause that begins with "This Agreement is the complete ..."

In the fourth sentence, which begins with "Customer accepts the terms ...," the following phrase is deleted:

any one of the following means: to the extent permissible under applicable law, by ordering, using, or making payment for Software Maintenance or, where required by law,

In the fifth sentence, which begins with "Software Maintenance becomes subject to this Agreement...", the phrase "accepts Customer's order or payment" is replaced by the following phrase:

accepts Customer's order by signing it.

ANGUILLA, ANTIGUA AND BARBUDA, ARUBA, BAHAMAS, BARBADOS, BERMUDA, BRITISH VIRGIN ISLANDS, CAYMAN ISLANDS, DOMINICA, GRENADA, GUYANA, JAMAICA, MONTSERRAT, NETHERLANDS ANTILLES, SAINT KITTS AND NEVIS, SAINT LUCIA, SAINT MARTIN, SAINT VINCENT AND THE GRENADINES, SURINAME, TRINIDAD AND TOBAGO, TURKS AND CAICOS ISLANDS, BELIZE, BOLIVIA, COSTA RICA, DOMINICAN REPUBLIC, EL SALVADOR, HAITI, HONDURAS, GUATEMALA, NICARAGUA, PANAMA, AND PARAGUAY

2. Software Maintenance

The following replaces (4) Automatic Renewal in subsection 2.a For Eligible Programs running on an IBM System z platform or equivalent:

IBM will renew, for an additional payment, expiring S&S for all of Customer's Program licenses for an additional Software Maintenance Period if IBM receives (1) Customer's order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current coverage period or (2)

Customer's payment within 30 days of Customer's receipt of the S&S invoice for the next coverage period.

UNITED STATES OF AMERICA

2. Software Maintenance

The following is added at the end the sentence beginning with "While Customer may terminate an S&S Period ..." in (3) Early Termination of an S&S Period for a Program in subsection 2.a For Eligible Programs running on an IBM System z platform or equivalent:

unless the S&S Period was renewed under the provisions of subsection 4, Automatic Renewal (below). In such event, Customer may obtain a credit, prorated to the end of that S&S Period from the first day of the month following the later of (a) IBM's receipt of Customer's termination request or (2) Customer's requested date of termination, through the end of that S&S Period.

ASIA PACIFIC

AUSTRALIA

3. Charges and Payment

The following paragraph is added after item b:

All charges or other amounts payable under this Agreement are specified to include applicable goods and services tax ("GST").

The following paragraph replaces item b(5) in its entirety:

If any government or authority imposes a duty, tax (other than income tax), levy, or fee, on the Agreement or on the Software Maintenance itself, that is not otherwise provided for in the amount payable, Customer agrees to pay it when IBM invoices Customer. If the rate of GST changes, IBM may adjust the charge or other amount payable to take into account that change from the date the change becomes effective.

6. Warranty for Software Maintenance

The following paragraph is added as the first paragraph of this section:

The warranties specified in this section are in addition to any rights Customer may have under the Trade Practices Act 1974 or other legislation and are only limited to the extent permitted by the applicable legislation.

CAMBODIA, LAOS, PEOPLE'S REPUBLIC OF CHINA, VIETNAM, BANGLADESH, BHUTAN, NEPAL

2. Software Maintenance

The following replaces (4) Automatic Renewal in subsection 2.a For Eligible Programs running on an IBM System z platform or equivalent:

IBM will renew, for an additional payment, expiring S&S for all of Customer Program licenses for an additional S&S Period if IBM receives (1) Customer's order to renew (e.g., order form, order letter, purchase order) prior to the expiration of the current coverage period or (2) Customer's payment within 30 days of Customer's receipt of the S&S invoice for the next coverage period.

HONG KONG SAR, MACAU SAR, AND TAIWAN

As applies to transactions initiated and performed in Taiwan and the special administrative regions, phrases throughout this Agreement containing the word "country" (for example, "country of acquisition" and "country of installation") are replaced with the following:

- (1) *In Hong Kong SAR: "Hong Kong SAR"*
- (2) *In Macau SAR: "Macau SAR" except in the Governing Law clause (section 14.1)*
- (3) *In Taiwan: "Taiwan."*

INDONESIA

8. Termination and Withdrawal

The following paragraph is added between the first and second paragraphs:

We both waive in this regard, the provision of article 1266 of the Indonesian Civil Code to the extent the article provision requires such court decree for the termination of an agreement creating mutual obligations.

JAPAN

8. Termination and Withdrawal

The following paragraph is added to this section:

When all or a substantial portion of either party's assets, credits or business are so changed as to make continued performance of that party's obligations impracticable or impossible, the other party may terminate this Agreement with prior notice.

NEW ZEALAND

6. Warranty for Software Maintenance

The following paragraph is added as the first paragraph of this section:

The warranties specified in this Part are in addition to any rights Customer may have under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited. The Consumer Guarantees Act 1993 will not apply in respect of any goods or services which IBM provides, if Customer requires the goods or services for the purposes of a business as defined in that Act.

EUROPE, MIDDLE EAST, AFRICA (EMEA)

EUROPEAN UNION MEMBERS

6. Warranty for Software Maintenance

For European Union Member States the following is added to Section 6:

In the European Union, consumers have legal rights under applicable national legislation governing the sale of consumer goods and services. Such rights are not affected by the provisions set out in this Section 6 Warranty for Software Maintenance.

AUSTRIA

6. Warranty for Software Maintenance

This Section 6. Warranty for Software Maintenance is amended as specified for GERMANY.

FRANCE

3. Charges and Payment

In subsection b. Software Maintenance acquired directly from IBM the following is added to the end of item (3).

If Customer disagrees with the increase, Customer may terminate the transaction by notifying IBM, in writing, within fifteen days after the date of IBM's notification to Customer of the increase.

GERMANY

3. Charges and Payment

In subsection b. Software Maintenance acquired directly from IBM, item (3), "three months" is replaced with "four months."

6. Warranty for Software Maintenance

For Germany (and Austria) the following replaces Section 6. Warranty for Software Maintenance in its entirety.

IBM warrants that Software Maintenance will be provided using reasonable care and skill and according to its description in the IBM Software Support Guide at:

<https://www.ibm.com/support/pages/ibm-support-guide>.

Customer agrees to provide timely written notice of any failure to comply with this warranty so that IBM can take corrective action. IBM will remedy any defects covered by warranty, of which written notice has been given by Customer. If a defect is not remedied within a reasonable period of time, Customer may with respect to that defect, at Customer's choice, either request a reduction of price, or, if the value or the serviceability of the work is substantially impaired, instant termination ("Kündigung") of this Agreement. In case of minor defects or deviations, Customer shall not be entitled to terminate the Agreement.

The warranties 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.

Without prejudice to Customer's rights under other warranty provisions of the Agreement, IBM does not warrant uninterrupted or error-free provision of Software Maintenance or that IBM will correct all defects.

IRELAND and UNITED KINGDOM

6. Warranty for Software Maintenance (Ireland only)

The following paragraph is added:

Except as expressly provided in these terms and conditions, or Section 12 of the Sale of Goods Act 1893 as amended by the Sale of Goods and Supply of Services Act, 1980 (the "1980 Act"), all conditions or warranties (express or implied, statutory or otherwise) are hereby excluded including, without limitation, any warranties implied by the Sale of Goods Act 1893 as amended by the 1980 Act (including, for the avoidance of doubt, Section 39 of the 1980 Act).

12. Complete Agreement

The following sentence is added to the end of first paragraph:

Nothing in this paragraph shall have the effect of excluding or limiting liability for fraud.



Agreement for Exchange of Confidential Information

This Agreement protects confidential information (Information) while maintaining each party's ability to conduct its respective business activities. The following terms apply when one party (Discloser) discloses Information to the other (Recipient).

Disclosure

Information disclosed orally or not marked with a restrictive legend must be identified as confidential at the time of disclosure. Each disclosure of Information is subject to this Agreement for five years following the initial date of disclosure.

Obligations

Recipient will use Information only for the purpose for which it was disclosed or for the benefit of Discloser, and will use reasonable care to avoid disclosure of the Information other than to Recipient's:

- a) employees and employees of any legal entity that it controls, controls it, or with which it is under common control, who have a need to know. Control means to own or control, directly or indirectly, over 50% of voting shares; or
- b) subcontractors, financial and legal advisors, and then only to those who have a need to know.

Before disclosure to any party in (a) or (b), Recipient will have a written agreement with such party sufficient to require that party to treat Information substantially the same as described in this Agreement.

If required to disclose Information by law or court order, Recipient will endeavor to give Discloser prompt notice to allow Discloser a reasonable opportunity to obtain a protective order.

Disclaimers

Discloser provides Information without warranties of any kind and is not liable for any damages arising out of Recipient's use of Information disclosed under this Agreement.

This Agreement does not require either party to disclose or to receive Information, perform any work, or enter into any license, business engagement or other agreement. Neither this Agreement nor any disclosure of Information under it creates any joint or fiduciary relationship or grants Recipient any right or license under any trademark, copyright or patent, now or subsequently owned or controlled by Discloser.

The receipt of Information under this Agreement does not preclude Recipient from:

1. developing, manufacturing, marketing or providing products or services which may be competitive with products or services of Discloser, or entering into any business relationship with any other party; or
2. assigning its employees in any way it may choose.

Any Information is subject to change or withdrawal without notice.

Recipient may disclose, disseminate, and use Information that is already in its possession without obligation of confidentiality, developed independently, obtained from a source other than Discloser without obligation of confidentiality, publicly available when received or subsequently becomes publicly available through no fault of the Recipient, or disclosed by Discloser to another without obligation of confidentiality.

General

Assignment. Neither party may assign, or otherwise transfer, its rights or delegate its duties or obligations under this Agreement without prior written consent of the other except as part of the divestiture of a business line where the acquirer agrees to be bound by the terms of this Agreement. Any attempt to do so is void.

Termination. Either party may terminate this Agreement by providing at least one month's written notice to the other. Any terms of this Agreement which by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees.

Modification. Only a written agreement signed by both parties can modify this Agreement.

Choice of Law. Both parties agree to the application of the laws of the State of New York to govern, interpret, and enforce all of the parties' respective rights, duties, and obligations arising from, or relating to, the subject of this Agreement, without regard to conflict of law principles.

Import/Export Compliance. Each party will comply with all applicable export and import laws and associated embargo and economic sanction regulations, including those of the United States.

This Agreement, including any applicable supplements, is the complete agreement regarding the exchange of Information, and replaces all prior oral or written communications, representations, warranties, covenants, and commitments between Company and IBM regarding the exchange of Information. Each party accepts the terms of this Agreement by signing this Agreement (or another document that incorporates it by reference) by hand or electronically. Once signed, any reproduction of this Agreement or a supplement made by reliable means is considered an original.

Agreed to:

<Company Full Legal Name> ("Company")

By _____

Authorized Signature

Name (type or print):

Date:

Identification number:

Address:

Agreed to:

International Business Machines Corporation ("IBM")

By _____

Authorized Signature

Name (type or print):

Date:

Agreement number:

IBM address:



Client Relationship Agreement

International Business Machines, 1 New Orchard Road, Armonk, New York 10504

These Client Relationship Agreement base terms and any identified CRA Product Appendix (CRA Appendix) (collectively, "CRA") provide IBM's base relationship terms for acquiring IBM Products and Non-IBM Products ("Products"). The CRA and applicable Attachments and Transaction Documents are the complete agreement regarding each transaction under this CRA (together, the "Agreement").

A CRA Product Appendix is incorporated and becomes part of the CRA upon Client placing an order for a specific Product or upon the written agreement of the parties. Products may include Programs, Machines, Appliances, Services (collectively, IBM Products) and third-party products and services (Non-IBM Products) as described in an applicable CRA Appendix. CRA Product Appendices included as part of this CRA are:

- {Program License Appendix}
- {Machines and Appliances Appendix}
- {Services - Cloud Services Appendix}
- {Services Appendix}

Transaction Documents (TDs) provide the specifics of transactions, such as charges and a description of and information about the Product. Examples of TDs include statements of work, service descriptions, license information, licensed program specifications, ordering documents, supplements, or invoices. There may be more than one TD applicable to a transaction.

Attachments provide supplemental terms that apply across certain types of IBM Products or Non-Products.

In the event of conflict, an Attachment prevails over this CRA, and a TD prevails over both the CRA and any Attachment and only applies to the specific transaction.

1. Content and Data Protection

- a. Content consists of all data, software, and information to which Client (or its authorized users or contractors) provides, authorizes, makes access available, or inputs into an IBM tool or computing environment, to enable IBM to provide Services. Client grants the rights and permissions to IBM, its affiliates, and contractors of either, to use, provide, store, and otherwise process Content solely for the purpose of providing the Services. Use of the Services will not affect Client's ownership or license rights in Content.
- b. IBM, its affiliates, and contractors of either may access and use the Content solely for the purpose of providing and managing the applicable Services. IBM will treat all Content as confidential by only disclosing to IBM employees and contractors to the extent necessary to provide the Services.
- c. Client is responsible for obtaining all necessary rights and permissions to permit IBM to process Content during the provision of the Services. Client will make disclosures and obtain consent required by law before Client provides, authorizes, or makes available access to or inputs individuals' information, including personal or other regulated data, for any processing, or use by IBM, its affiliates, and contractors of either when providing the Services.
- d. If any Content could be subject to governmental regulation or may require security measures beyond those specified by IBM for the Services, Client will not provide, authorize, or allow access of Content to IBM unless specifically permitted in the applicable TD or unless IBM has first agreed in writing to implement additional security and other measures. Client is responsible for adequate back-up of Content on Client managed systems prior to providing or allowing access of Content to IBM to provide Services.
- e. IBM Data Security and Privacy Principles (DSP), at <http://ibm.com/terms/?id=z126-7745>, apply for generally available standard Services as identified in a TD. At IBM's discretion, IBM may change the DSP from time to time and the change will be effective when published or on the specified effective date. The intent of any change will be to improve and clarify existing commitments and maintain alignment to current adopted operational and security standards or applicable laws. The intent is not to degrade the security or functionality.
- f. The specific security features and functions of a Services will be described in the applicable Attachment and TD. Client is responsible for assessing the suitability and intended use of Content with the Services IBM will provide. Client acknowledges that the use of the Services meet Client's requirements and processing instructions required to comply with applicable laws.

- g. IBM's Data Processing Addendum (DPA) is found at <http://ibm.com/dpa>. The DPA and applicable DPA Exhibit(s) apply to IBM's processing of personal data on behalf of the Client.
- h. IBM will return or remove Content from IBM computing resources upon the expiration or cancellation of the Services, 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 backup files until expiration of such files as governed by IBM's backup retention practices.

2. Warranties

- a. Product warranties, as stated in the applicable CRA Product Appendix, 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 does not warrant uninterrupted or error-free operation of an IBM Product or that IBM will correct all defects or prevent third-party disruptions or unauthorized third-party access to an IBM Product. IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, or failure to comply with written instructions provided by IBM. Non-IBM Products and preview products, or identified non-warranted IBM Products, are sold under the Agreement as-is, without warranties of any kind. Third parties may provide their own warranties to Client for Non-IBM Products.

3. Charges, Taxes, Payment and Verification

- a. Client agrees to pay all applicable charges specified in a TD for an IBM Product or Non-IBM Product and charges for use in excess of authorizations. 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 from IBM and payable within 30 days of the invoice date to an account specified by IBM and late payment fees may apply. Prepaid IBM Products or Non-IBM Products 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, except as may be specified in an Agreement.
- b. In the event Client is required to pay any withholding or deduction of tax required under an applicable governmental entity regulation based on IBM's charge for a cross border transaction, Client will increase the sum payable by the amount necessary to ensure IBM receives an amount equal to the sum it would have received had no withholdings or deductions been made. Client is responsible to pay any withholding tax directly to the appropriate government entity where required by law.
- c. If Client imports, exports, transfers, accesses, or uses an IBM Product or Non-IBM Product across a border, Client agrees to be responsible for and pay authorities any custom, duty, tax, or similar levy assessed by the authorities. This excludes those taxes based on IBM's net income.
- d. IBM will invoice: i) recurring charges at the beginning of the selected billing frequency term; ii) overage and usage charges in arrears; and iii) one-time charges upon IBM's acceptance of an order.
- e. IBM may change recurring charges, labor rates and minimum commitments on 90 days' notice, except as may be specified in a CRA Appendix. A change applies on the invoice date or the first day of the charging period or new term on or after the effective date IBM specifies in the notice. IBM may change one-time charges without notice. However, a change to a one-time charge does not apply to an order if: i) IBM receives the order before the announcement date of the increase; and ii) within 90 days after IBM's receipt of the order, the Product is shipped or made available to Client.
- f. If Client uses a purchase order or similar document to place an order, the document must reference the applicable Attachment or TD for the Products being ordered. Additional or different terms in any such document are void.

4. Liability and Intellectual Property Protection

- 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 Product 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, and suppliers.
- b. The following amounts are not subject to the above cap: i) third-party payments related to infringement claims described in the paragraph c below; and ii) damages that cannot be limited under applicable law.

- c. If a third party asserts a claim against Client that an IBM Product 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. To obtain IBM's defense against and payment of infringement claims, Client must promptly: i) notify IBM in writing of the claim; ii) supply information requested by IBM; and iii) allow IBM to control, and reasonably cooperate in, the defense and settlement, including mitigation efforts. IBM's defense and payment obligations for infringement claims extend to claims of infringement based on open-source code that IBM selects and embeds in an IBM Product.
- d. IBM has no responsibility for claims based on: i) Non-IBM Products; ii) items not provided by IBM; iii) IBM's proper use of any Client required third-party product or service related to the administration of the transaction; iv) any violation of law or third-party rights caused by Content or any Client materials, designs, specifications; or v) Client's use of a non-current version or release of an IBM Product when an infringement claim could have been avoided by using a current version or release.

5. Termination

- a. Either party may terminate: i) this CRA without cause on at least 30 days' notice to the other after expiration or termination of its obligations under each Agreement; or ii) immediately for cause if the other is in material breach of an Agreement, provided the non-complying party is given notice and reasonable time to comply. Termination of this CRA does not terminate transactions in effect and not affected by the cause of a material breach and provisions of the Agreement, as they relate to such transactions, remain in effect until fulfilled or otherwise terminated in accordance with the Agreement term.
- b. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled and apply to successors and assignees.
- c. Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations. Client's failure to pay, or Client providing inaccurate or fraudulent account or payment information to acquire IBM Products or Non-IBM Products, is a material breach.

6. Governing Laws and Geographic Scope

- a. Both parties agree to the application of the laws of the State of New York, United States, without regard to conflict of law principles. Any disputes will be brought before a court of competent jurisdiction within such country.
- b. The rights and obligations of each party are valid only in the country where the transaction is performed (or for IBM or Non-IBM cloud or remotely delivered Services, the country of Client's business address) or, if IBM agrees, the country where the IBM Product or Non-IBM Product is placed in productive use, except all licenses are valid as specifically granted.
- c. Each party is also 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 the defense trade control regime of the United States of America and any applicable jurisdiction, that prohibit or restrict the import, export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. IBM will not serve as Client's exporter or importer, except as required by data protection laws, for: i) any Content; or ii) use of any portion of a cloud Service from a country outside Client's business address.
- d. 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.

7. 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. Client is responsible for its use of IBM Products and Non-IBM Products. IBM is acting as an information technology provider only. IBM's direction, suggested usage, guidance, or Client's use of an IBM Product does not constitute medical, clinical, legal, accounting, or other licensed professional advice. Client should obtain its own expert advice. Each party is responsible for determining the assignment of its and its affiliates personnel and their respective contractors, and for their direction, control, and compensation.
- b. For Programs IBM provides to Client in tangible form, IBM fulfills its shipping and delivery obligations upon the delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by Client and IBM.

- c. Client may not use IBM Products or Non-IBM Products if failure or interruption of the IBM Products or Non-IBM Products could lead to death, serious bodily injury, or property or environmental damage.
- d. Parties will not disclose confidential information to employees or contractors of the other party without a separate, signed confidentiality agreement or as specified in a CRA Appendix. If confidential information is exchanged in connection with the Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this CRA.
- e. Client accepts an Attachment or TD by ordering, enrolling, using, or making a payment for, the IBM Product or Non-IBM Product. Since this CRA may apply to many future orders, IBM may change this CRA by providing Client at least 90 days' written notice. Changes are not retroactive. They will only apply as of the effective date to: i) new orders; ii) ongoing or continuous IBM Product or Non-IBM Product offerings that do not expire; and iii) renewals. For transactions with a defined renewable contract period stated in a TD, 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 specifically provided in this CRA or as specified in an Attachment or TD, all changes to an Agreement must be in writing signed by both parties.
- f. IBM maintains a robust set of business conduct and related guidelines covering conflicts of interest, market abuse, anti-bribery and corruption, and fraud. IBM and its personnel comply with such policies and require contractors to have similar policies.
- g. IBM, its affiliates, and contractors of either require use of business contact information and certain account usage information. This information is not Content. Business contact information is used to communicate and manage business dealings with the Client. Examples of business contact information include name, business telephone, address, email, user ID, and tax registration information. Account usage information is required to enable, provide, manage, support, administer, and improve IBM Products. Examples of account usage information include reported errors and digital information gathered using tracking technologies, such as cookies and web beacons, during use of IBM Products. The IBM Privacy Statement at <https://www.ibm.com/privacy/> provides additional details with respect to IBM's collection, use, and handling of business contact and account usage information. When Client provides information to IBM and notice to, or consent by, the individuals is required for such processing, Client will notify individuals and obtain consent.
- h. IBM Business Partners who use or make available IBM Products or Non-IBM Products are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings. If IBM notifies Client their current IBM Business Partner will no longer resell an IBM Product, Client may select to acquire auto renewing or continuous use of IBM Products directly from IBM or from another authorized IBM Business Partner.
- i. IBM may offer Non-IBM Products, or an IBM Product may enable access to Non-IBM Product, that may require acceptance of third-party terms presented to the Client. Linking to or use of Non-IBM Products constitutes Client's agreement with such terms. Third-party terms and privacy practices govern use of a Non-IBM Service, including Content Client may provide, grant access to or input to. IBM will invoice Client for charges due and submit Client's order details to the third-party provider for the enablement and delivery of the Non-IBM Product. IBM is not a party to any third-party agreement and is not responsible for Non-IBM Products. Access to ongoing Non-IBM Products may be discontinued at any time if the third party discontinues or IBM no longer makes available such Non-IBM Products.
- j. An IBM Product or Non-IBM Product or feature of an IBM Product or Non-IBM Product is considered "preview product" when IBM makes such product or features available at no charge, with limited or pre-release functionality, or for a limited time, to try available functionality (such as beta, trial, evaluation, no-charge, or designated preview products). Service level agreements, if any, do not apply to preview products. A preview product may not be covered by support and IBM may change or discontinue a preview product at any time and without notice. For any preview product that is provided as pre-release, IBM is not obligated to release a generally available product. Client is responsible to return a preview product or place an order under generally available terms for acquiring IBM Product or Non-IBM Product beyond the preview period. IBM may provide Client opportunities to voluntarily provide feedback in connection with the use of IBM Products, which IBM may use for any purpose.
- k. Neither party may assign the Agreement, in whole or in part, without the prior written consent of the other. IBM may assign rights to receive payments. IBM will remain responsible to perform its obligations. Assignment by IBM in conjunction with the sale of the portion of IBM's business that includes an IBM Product or Non-IBM Product is not restricted. IBM may share an Agreement and related documents in conjunction with any assignment.

- l. This CRA applies to IBM and Client (accepting this CRA) and their respective Enterprise companies that provide or acquire IBM Products or Non-IBM Products under this CRA. The parties shall each coordinate the activities of their own Enterprise companies under this CRA. 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 agreed to a participation agreement.
- m. 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. Where approval, acceptance, consent, access, cooperation, or similar action by either party is required, such action will not be unreasonably delayed or withheld.
- n. 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.
- o. IBM may use personnel and resources in locations worldwide, including third-party contractors to support the delivery of IBM Products and Non-IBM Products. Client's use of IBM Products or Non-IBM Products may result in the transfer of Content, including personally identifiable information, across country borders. A list of countries where Content may be transferred and processed is described in the applicable TD or support documentation. IBM is responsible for the obligations under the Agreement even if IBM uses a third-party contractor and will have appropriate agreements in place to enable IBM to meet its obligations.
- p. If IBM and Client agree to use a Client requested third-party service to support the procurement or payment activities associated with an Agreement, IBM agrees to submit or receive applicable documents (such as invoices or similar contracting documents) using the third-party service. In the event: i) the third-party service becomes unavailable for any reason; or ii) the third-party provider modifies the service or terms of use in a manner IBM deems commercially unacceptable, the Client agrees to directly accept documents. Client remains responsible to IBM for timely payments of invoices and for any claims or proceedings related to the third-party service provider's failure to comply with applicable laws or for such provider's use, misuse, or disclosure of data or confidential information. IBM agrees to promptly notify Client in writing of any such claim or proceeding.

Agreed to:	Agreed to:
Client Company Name (Client):	IBM Company (IBM): International Business Machines Corporation
By _____	By _____
Authorized signature	Authorized signature
Title:	Title:
Name (type or print):	Name (type or print):
Date:	Date:
Client number:	Enterprise number:
Client address:	Agreement number:
	IBM address:

CRA Product Appendix for Programs Licenses

The following Product terms become part of the CRA when the Client acquires Programs or the Program portion of an Appliance from IBM. For terms that reference MC, those terms will apply for Machine Code only if Client orders a Machine subject to the CRA Product Appendix for Machines and Appliances.

1. Program Licenses

For Programs packaged with IBM's International Program License Agreement (IPLA) or IPLA family license agreements for early release, evaluation or non-warranted Programs, that have specific use rights and terms, those terms apply. For all other IBM Programs, the following license applies. The terms of the IPLA and terms of this CRA related to acquisition and licensing of Programs are equivalent terms.

- a. A Program is an executable IBM-branded computer program and related material and includes whole and partial copies. Program details are described in TDs and can be found in the Program's system command directory, at <http://www.ibm.com/software/sla> (for Passport Advantage Programs) or <http://www.ibm.com/support/knowledgecenter> (for other IBM Programs), or as otherwise specified by IBM. IBM Software Policies (such as backup, temporary use and IBM approved cloud environment) available at <http://www.ibm.com/softwarepolicies> apply to Client's use of Programs. Programs do not include Machine Code or Project Materials as defined below.
- b. Copies of Programs are copyrighted and licensed.
- c. Client is granted a nonexclusive license to:
 - (1) use each copy of a Program, subject to the terms of the Agreement and up to the number of license entitlements Client acquires from IBM or an IBM Business Partner ("Authorized Use");
 - (2) make and install copies to support such Authorized Use; and
 - (3) make a backup copy as described in IBM's Software Policies.
- d. Programs may be used by Client, its employees and contractors. Client may not rent or lease a Program or provide commercial IT, hosting, or timesharing services to any third party. Client may not sublicense, assign, or transfer the license for any Program (except to the extent assignment or transfer may not be legally restricted or as is expressly permitted in a TD or as otherwise agreed by IBM in writing). Additional rights may be available for additional fees or under different terms.
- e. The license granted for a Program is subject to Client:
 - (1) reproducing copyright notices and other markings on any copy;
 - (2) ensuring anyone who uses the Program: i) does so only on Client's behalf within Client's Authorized Use; and ii) complies with the license terms and the Agreement;
 - (3) not reverse assembling, reverse compiling, translating, or reverse engineering the Program, except as expressly permitted by law without the possibility of contractual waiver; and
 - (4) not using any of the elements of the Program or related licensed material separately from the Program.
- f. If a TD for a Program ("Principal Program") states that a "Supporting Programs" is included with the Principal Program, Client may use the Supporting Program subject to any license limitations of the Principal Program and only to support the Principal Program.
- g. This license applies to each copy of the Program that Licensee makes.
- h. An update, fix, or patch to a Program is subject to the terms governing the Program unless new terms are provided in an updated TD. Client accepts such new terms upon installation of the update, fix, or patch. If a Program is replaced by an update, Client agrees to promptly discontinue use of the replaced Program.
- i. Selected licensing type and metrics applicable to a Program license are specified in an Attachment or TD. All Programs licensed on a server or capacity-based metric must be licensed to the full capacity of the server on which the Program is installed, unless sub-capacity usage is available from IBM and Client complies with the applicable sub-capacity requirements and terms as set forth in Attachments and TDs.
- j. For Programs packaged with an IPLA or IBM License Agreement for Non-Warranted Programs, if Client as licensee is dissatisfied with a Program for any reason, Client may terminate the license by returning the Program and proof of entitlement to IBM or the authorized IBM Business Partner within 30 days of the original acquisition date of such Program for a refund of the amount paid. For a downloaded Program, contact the party Licensee acquired the Program from for refund instructions.

2. Warranties

- a. IBM warrants that a Program used in its specified operating environment conforms to its specifications. The warranty period for a Program is 12 months from acquisition, or the initial license term if less than 12 months, unless another warranty period is specified in an Attachment or TD.
- b. During the Program warranty period, Client will have access to IBM databases containing information on known Program defects, defect corrections, restrictions, and bypasses as described in the IBM Support Guide at <http://www.ibm.com/support/pages/node/733923>.
- c. If a Program does not function as warranted during its warranty period and IBM is unable to repair or replace it with a functional equivalent, Client may return it to IBM or the IBM Business Partner and upon such return receive a refund of the amount Client paid (for recurring charges, up to twelve months' charges) and Client's license or right to use terminates.

3. Charges, Taxes, and Payment

- a. Client's right to use an IBM Program or Non-IBM Program is contingent on Client paying applicable charges as specified in a TD or applicable agreement under which Client acquired the entitlements. Client is responsible to acquire additional entitlements in advance of any increase of its use. The parties agree no tangible personal property (e.g., media or publications) shall transfer to Client if: i) IBM delivers Programs electronically to Client, or ii) Client claims a sales or use tax exemption for Programs IBM delivers electronically to Client.

3.1 License Verification

- a. Client will, for all Programs and MC at all sites and for all environments, create, retain, and each year provide to IBM upon request within 30 days' advance notice: i) a report, in a format requested by IBM using records, system tools output, and other system information; and ii) supporting documentation (collectively, "Deployment Data").
- b. Upon reasonable notice, IBM and its independent auditors may verify Client's compliance with this Agreement, at all sites and for all environments, in which Client uses (for any purposes) Programs and MC. Verification will be conducted in a manner that minimizes disruption to Client's business and may be conducted on Client's premises, during normal business hours. IBM will have a written confidentiality agreement with the independent auditor. In addition to providing Deployment Data described above, Licensee agrees to provide to IBM and its auditors additional accurate information and Deployment Data upon request.
- c. Client will promptly order and pay charges at IBM's then current rates associated with: i) any deployments in excess of authorizations indicated on or by any annual report or verification; ii) applicable software maintenance or subscription and support services (S&S) for such excess deployments for the lesser of the duration of such excess use or two years; and iii) any additional charges and other liabilities determined as a result of such verification, including but not limited to taxes, duties, and regulatory fees.

4. Termination

- a. Upon any termination of Client's license to use a Program or MC,, Client will promptly destroy all copies of the Program or MC after either party has terminated the license.

CRA Product Appendix for Machines and Appliances

The following Product terms become part of the CRA when the Client acquires Machines and Appliances. Provisions of the CRA Appendix for Programs apply to for the Program components of Appliances and for Machine Code as specifically identified in the Appendices.

1. Machines and Appliances

- a. A Machine is an IBM-branded device including its features, upgrades, and accessories. An Appliance is a Program and an IBM or a Non-IBM Machine combination designed for a particular function. Unless otherwise provided, terms that apply to a Program apply to the Program component of an Appliance and terms that apply to a Machine apply to the Machine component of an Appliance. Client may not use or transfer an Appliance's Program component independently of the Appliance.
- b. When IBM accepts Client's order, IBM transfers title to Machines and Non-IBM machines to Client or Client's lessor upon payment of all amounts due, except in the United States where title transfers upon shipment. IBM bears risk of loss until delivery to the carrier for shipment. IBM pays for insurance on Client's behalf until delivery to Client's location. Client must report any loss in writing to IBM within 10 business days of delivery and follow the claim procedure. Additional charges may apply for IBM installation more than six months after shipment. Client must follow instructions provided to install Client set up Machines.
- c. Machines and parts removed or exchanged for upgrade, warranty service, or maintenance are IBM property and must be returned to IBM promptly. A replacement assumes the warranty or maintenance status of the replaced part. A Machine may include parts that are not new, and, in some instances, Machines may have been previously installed. Regardless, IBM's warranty terms apply. Client will promptly install or allow IBM to install mandatory engineering changes. Client may only acquire Machines for use within Client's Enterprise in the country where acquired and not for resale, lease, or transfer. Lease-back financing is permitted.

1.1 Machine Code and Built in Capacity

- a. Machines may include Machine Code (MC) and Built in Capacity (BIC). MC is computer instructions, fixes, replacements, and related materials, such as data and passwords relied on, provided, used with or generated by MC, that permit the operation of the machine's processors, storage or other functionality. MC may include Other Internal Licensed Code (OILC) licensed under a separate agreement as identified for a Machine in the server product support pages at <https://www.ibm.com/support/pages/node/631391>. BIC is computing resource (e.g., processors, storage and other functionality) that IBM provides for a Machine. Use of BIC may be restricted by contract, technology or other measures.
- b. Copies of MC are copyrighted and licensed. IBM only provides copies, fixes or replacements for MC for Machines under warranty or IBM maintenance, or under a separate written agreement which may be subject to additional charges. Client agrees that all copies, fixes or replacements for MC will be obtained solely as authorized by IBM.
- c. Client is granted a nonexclusive license to use MC only: i) on the Machine for which IBM provided it; and ii) to access and use BIC only to the extent paid for by Client, activated by IBM and subject to the IBM Authorized Use Table for Machines (AUT) Attachment available at http://www.ibm.com/systems/support/machine_warranties/machine_code/aut.html.
- d. Except as provided in an OILC, Client may not alter, reverse assemble, reverse compile, translate or reverse engineer the MC, or circumvent or interfere, by any means, with IBM's contractual, technological or other measures that restrict, monitor or report on use of BIC or MC.
- e. Client agrees to IBM's implementation of technological and other measures that restrict, monitor and report on use of BIC or MC, and to install any changes IBM provides. Use of BIC in excess of authorizations from IBM is subject to additional charges.
- f. While Client's license to MC is in effect, Client may transfer possession of the entire MC along with all of Client's rights and obligations only with corresponding transfer of the Machine, including BIC, and a hardcopy of this MC license, and only if the transferee agrees to the terms of this MC license. Client's MC license terminates immediately upon transfer.
- g. This Agreement governs MC and BIC on Machines Client acquires from another party.

2. Warranties

- a. IBM warrants that a Machine when used in its specified operating environment conform to its specifications. For a Machine or Appliance, the warranty period is specified in the Attachment or TD. During its warranty period, IBM will repair or exchange the Machine without charge, as specified in the Attachment or TD. Warranty does not apply to Machines that Client did not allow IBM to install as required by the TD. Client may purchase warranty service upgrades and post warranty support where available. For Appliances, post warranty support includes maintenance and S&S.
- b. If a Machine or, Appliance does not function as warranted during its warranty period and IBM is unable to repair or replace it with a functional equivalent, Client may return it to IBM or the IBM Business Partner and upon such return receive a refund of the amount Client paid (for recurring charges, up to twelve months' charges) and Client's license or right to use terminates.

CRA Product Appendix for Services - Cloud Services

The following Product terms become part of the CRA when the Client acquires Services that are Cloud Services as defined below.

1. Cloud Services

- a. A Cloud Service is an "as a service" IBM offering that IBM makes available via a network, such as software as a service, platform as a service, infrastructure as a service, or other network delivered services. IBM may also provide other labor-based Services to support use of Cloud Services.
- b. Cloud Services are designed to be available 24/7, subject to maintenance. IBM will provide advance notice of scheduled maintenance. Technical support and service level commitments, if any, are specified in an Attachment or TD.
- c. When IBM accepts Client's order, IBM provides Client the authorizations specified in the TD. IBM provides the facilities, personnel, equipment, software, and other resources necessary to provide Cloud Services. IBM provides generally available user guides and documentation to support Client's use of the IBM Cloud Service.
- d. Enabling Software is software that Client downloads to Client systems that facilitates the use of a Cloud Service and will be identified in a TD. Enabling Software is not part of the Cloud Service and Client may use Enabling Software only in connection with use of the Cloud Service and in accordance with any licensing terms specified in a TD. The licensing terms will specify applicable warranties, if any. **Otherwise, Enabling Software is provided as-is, without warranties of any kind.**
- e. Client will provide hardware, software and connectivity to access and use Cloud Services, including any required Client-specific URL addresses and associated certificates.
- f. Client's authorized users may access Cloud Services only to the extent of authorizations Client acquires. Client is responsible for use of Cloud Services by any user who accesses the Cloud Services with Client's account credentials.
- g. The following acceptable use terms apply for Client's use of the Cloud Services. Cloud Services may not be used to undertake any activity or host Content that: i) is unlawful, fraudulent, harmful, malicious, obscene, or offensive; ii) threatens or violates the rights of others; iii) disrupts or gains (or intends to disrupt or gain) unauthorized access to data, services, networks, or computing environments within or external to IBM; iv) sends unsolicited, abusive or deceptive messages of any type; or v) distributes any form of malware. Client may not use Cloud Services for crypto-mining, unless otherwise agreed by IBM in writing. Client may not: i) reverse engineer any portion of a Cloud Service; ii) assign or resell direct access to a Cloud Service to a third party outside Client's Enterprise; or iii) combine a Cloud Service with Client's value add to create a Client-branded solution that Client markets to its end user customers unless otherwise agreed by IBM in writing.

1.1 Changes and Withdrawal of IBM Cloud Services

- a. At any time and at IBM's discretion, IBM may change Cloud Services, including corresponding published descriptions.
- b. The intent of any change will be to: i) make available additional features and functionality; ii) improve and clarify existing commitments; or iii) maintain alignment to current adopted operational and security standards or applicable laws. Changes will not degrade the security or functionality of the Cloud Services.
- c. Changes will be effective when published or on the specified effective date. Any Changes that do not meet the conditions specified above will only take effect, and Client accepts, upon: i) a new order; ii) the term renewal date for the Cloud Services that automatically renew; or iii) notification from IBM of the change effective date for ongoing services that do not have a specified term.
- d. IBM may withdraw a Cloud Service on 12 months' notice. IBM will continue to provide withdrawn Cloud Services for the remainder of Client's unexpired term or work with Client to migrate to another generally available IBM offering.

1.2 Term and Termination of Cloud Services

- a. The term begins on the date IBM notifies Client that Client can access the Cloud Services. The ordering TD will specify whether the Cloud Services renew automatically, proceed on a continuous use basis, or terminate at the end of the term. For automatic renewal, unless Client provides written notice to IBM or the IBM Business Partner involved in the Cloud Services not to renew at least 30 days prior to the term expiration date, the Cloud Services will automatically renew for the specified term. For continuous use, the Cloud Services will continue to be available on a month-to-month basis until Client provides 30 days written termination notice to IBM or the IBM Business Partner involved in the Cloud Services. The Cloud Services will remain available until the end of the calendar month after such 30-day period.
- b. IBM may suspend or limit, to the extent necessary, Client's use of a Cloud Service if IBM reasonably determines there is a material breach of Client's obligations, security breach, violation of law, or breach of the acceptable use terms set forth in section 2 above. IBM will provide notice prior to a suspension, as commercially reasonable. If the cause of a suspension can reasonably be remedied, IBM will provide notice of the actions Client must take to reinstate the Cloud Services. If Client fails to take such actions within a reasonable time, IBM may terminate the Cloud Services.
- c. Client may terminate a Cloud Service on 30 days' 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 a change to the Cloud Services causes Client to be noncompliant with applicable laws; or iii) if IBM notifies Client of a change to the Cloud Services that has a material adverse effect on Client's use of the Cloud Services, provided that IBM will have 90 days to work with Client to minimize such effect. In the event of any such Client termination above or a similar termination of a Non-IBM Product as permitted in the third-party agreement terms, IBM shall refund a portion of any prepaid amounts for the applicable Cloud Service for the period after the date of termination. Client may terminate a Cloud Services for material breach of IBM's obligations by IBM giving notice and reasonable time to comply. If the Cloud Services or Non-IBM Products are terminated for any other reason, Client will pay to IBM, on the date of termination, the total amounts due per the Agreement. Upon termination, IBM may assist Client in transitioning Content to an alternative technology for an additional charge and under separately agreed terms.

2. Content and Data Protection

- a. Client is responsible for selecting, ordering, enabling, or using available data protection features appropriate to support Client's use of Cloud Services.
- b. For Cloud Services with self-managed features, Client can remove Content at any time.

3. Warranties

- a. IBM warrants that it provides Services using commercially reasonable care and skill and as described in an applicable Attachment or TD, including any completion criteria. The warranty for Services ends when the Services end.

4. Charges, Taxes, and Payment

- a. Client's right to use IBM Cloud Services or Non-IBM Cloud Services is contingent on Client paying applicable charges as specified in a TD or applicable agreement under which Client acquired the entitlements. Client is responsible to acquire additional entitlements in advance of any increase of its use. 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. For Cloud Services, if IBM commits to pricing as specified in a TD, IBM will not change such pricing during the specified term. If there is not a specified commitment, then IBM may change pricing on thirty days' notice.

5. General

- a. IBM's confidentiality obligations are as set forth in the Content and Data Protection section of the base CRA terms and not subject to a separate confidentiality agreement.

CRA Product Appendix for Services

The following Product terms become part of the CRA when the Client acquires Services (other than Cloud Services provided under the CRA Product Appendix for Services – Cloud Services).

1. Services

- a. Services are project or other labor-based Services, such as consulting, installation, customization and configuration, maintenance, Program support, and remote services IBM provides to Client. When IBM accepts Client's order, IBM will provide or make the Services as described in an Attachment or TD.
- b. Services to support and maintain IBM Products and applicable Non-IBM Products are described in IBM's Support Guide at <https://www.ibm.com/support/pages/node/733923> and applicable terms in an Attachment, TD or as available under separate agreement.

2. Service Deliverables Ownership and Licensing

- a. When IBM provides deliverables, Client will own the copyright in works of authorship that IBM develops for Client as described in a TD (Project Materials). Project Materials exclude Existing Works. Existing Works are works of authorship delivered to Client, but not created, under the SOW, and includes any modifications or enhancements of such works made during the performance of the Services. Some Existing Works may be subject to a separate license agreement (Existing Licensed Works). A Program is an example of an Existing Licensed Work and is subject to its Program terms.
- b. IBM grants Client an irrevocable (subject to Client's payment obligations), nonexclusive, worldwide license to use, execute, reproduce, display, perform and prepare derivatives of Existing Works that are not Existing Licensed Works. IBM retains an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works of Project Materials.

3. Services Termination

- a. Either party may terminate a Service if a material breach concerning the Service is not remedied within a reasonable time.
- b. IBM will provide at least 90 days' notice prior to withdrawal of standard Services offerings.
- c. Client agrees to pay charges for Services provided through the effective date of termination.
- d. If Client terminates without cause or IBM terminates for breach, Client will:
 - (1) meet all minimum commitments;
 - (2) pay termination or adjustment charges specified in a TD; and
 - (3) pay any additional costs IBM reasonably incurs because of early termination, such as costs relating to subcontracts or resource relocation.IBM will take reasonable steps to mitigate any such additional costs.
- e. Specific termination rights for a Service may be specified in a TD.

4. Warranties

- a. IBM warrants that it provides Services using commercially reasonable care and skill and as described in an applicable Attachment or TD, including any completion criteria. Project Materials will comply with the Attachment or TD at the time of delivery. The warranty for Services ends when the Services end.



International Passport Advantage Agreement

US State, Local, and Education (SLED) Government Contracts

Attachment for Subscription License

This Attachment for Subscription License ("Attachment") govern the license of Programs IBM makes available on a Subscription License basis that Client acquires from IBM or an IBM Business Partner under a State and Local Government Contract with IBM. This Attachment supplements the terms of the IBM International Passport Advantage Agreement Revision 11 (Z125-5831-11) or equivalent agreement, as applicable, between Client and IBM ("IPAA"). Client accepts these terms by the incorporation or attachment to their State and Local contracts with IBM. Capitalized terms not defined in this Attachment are defined in the IPAA.

Subscription License

A Subscription License is a licensing model that gives Client access to a Program and IBM Subscription and Support (S&S) for a term specified in applicable Transaction Documents (TDs). The license term begins and ends as specified in a TD. No more than a 12-month Subscription Term is permitted. IBM will invoice in full upon acceptance of Client's order. Client will not receive a prorated refund for any unused term.

This Attachment, the IPAA, the US State & Local Government contract, and any applicable Transaction Document(s), are the complete Agreement between the parties regarding transactions by which Client acquires Subscription License or Subscription License Upgrade for a Program, and replaces all prior oral or written communications or commitments between Client and IBM regarding this subject. By entering into this Attachment, including any applicable Transaction Documents, neither party is relying on any representation not specified in this Attachment, the IPAA, or a Transaction Document. Additional or different terms in any written communication from Client (such as a purchase order) are void.

Technical Services Attachment for Technology Support Services (TSS) Offerings for State and Local Government



Using this Technical Services Attachment for TSS Offerings (Attachment or TSA), Client may order TSS offerings from IBM. Additional details are provided in Transaction Documents. The agreement in place between the parties (CRA or equivalent) referenced in the signature page, this Attachment, and Transaction Documents are the complete agreement regarding TSS transactions hereunder. In the event of conflict, a) this Attachment prevails over the agreement, and b) a Transaction Document prevails over both the agreement and this Attachment and only applies to the specific transaction.

1. Services

IBM will provide Services, as described in a) this Attachment and b) Statements of Work (SOW), Schedules, and Change Authorizations (collectively Transaction Documents or TDs), to support Client's Machines and Programs that are eligible for the specific Service that Client is acquiring hereunder and are documented in the applicable TD (Eligible Machines, Eligible Programs, and collectively, Eligible Products). This Attachment replaces all other previously accepted versions of this Attachment for the Client named in the signature page, as to new transactions dated after the effective date of this Attachment.

IBM will identify Eligible Products, Specified Locations (entire information processing environment, or a portion thereof, at multiple sites or a single building), hours of coverage selected, applicable Services, and the contract period, in TDs. Additional details may be documented in the TD, as applicable to the specific transaction. Client may access IBM Support to place service requests by calling the Support number for Client's country, listed at <https://www.ibm.com/planetwide/> 24x7 or otherwise as directed by IBM, by voice or electronically (depending on severity), however IBM will begin servicing the request during the applicable entitled coverage days and hours. Coverage is based on the time zone where the Eligible Machine is located. IBM provides Services during the hours of service selected in the TD.

Eligible Machines must meet IBM's safety and serviceability requirements. Any IBM inspection for maintenance eligibility is subject to a charge. IBM reserves the right to inspect a Machine within one month from the start of Service. If the Machine is not in acceptable condition for Service, IBM will restore it for a charge or Client may withdraw its request for maintenance Service.

Machine Maintenance is Service to keep Machines in, or restore them to, conformance with their official published specifications, and may include:

- a. remote assistance with problem determination (whether system problems are machine or program related);
- b. on-site and remote diagnostic and remedial maintenance Service in accordance with the service level specified for the Eligible Machine in the TD;
- c. if available for Client's IBM Eligible Machines, installation of Service Programs to endeavor to:
 - (1) detect and analyze permanent errors;
 - (2) correlate temporary errors; and
 - (3) identify and report media problems.
- d. the services of support specialists from IBM manufacturing, engineering, and development locations as deemed necessary by IBM;
- e. the planning, scheduling, and installation of any engineering changes or field change orders required to improve the serviceability, performance, and safety of the IBM Eligible Machines;
- f. assisting Client in establishing and implementing electronic support facilities such as IBM Electronic access; and
- g. activation, for use by IBM personnel, of electronic facilities to remotely diagnose, applying fixes, and update Client's IBM Eligible Machines.

Machine Maintenance does not cover:

- a. improperly maintained or damaged Machines, Machines with altered identification labels, alterations, accessories;
- b. supply items, consumables (such as batteries and printer cartridges), structural parts (such as frames and covers), or failures caused by a product for which IBM is not responsible;
- c. Machine installation, engineering change activity, or preventive maintenance;
- d. service of features, parts, or devices not supplied by the Machine's manufacturer, or IBM during the performance of Service;
- e. unsuitable physical or operating environment; and
- f. any failure caused by a move of an Eligible Machine by non-IBM personnel (change of location). IBM may inspect the Machine for damage after such move, such inspection to be provided as a billable Service. IBM may restore the Machine to its official published specifications upon Client request, as a billable Service.

IBM does not warrant uninterrupted or error-free operation or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access.

IBM may use tools, owned or licensed by IBM, in the performance of the Service (IBM Tools). IBM continuously develops and utilizes new IBM Tools and capabilities for the purpose of providing remote and on-site problem determination and resolution support to IBM Clients. Some IBM Tools (e.g., an application (App)), are used by on site technicians to capture and store images of the Machine and transmit the images to a remote IBM Subject Matter Expert with a goal of faster and more cost effective repair and one-visit resolution of complex issues. The images may also be modified and/or used for training and to improve maintenance services. Unless licensed in writing by IBM, Client has no right to access, retain, copy, or use the IBM Tools and no Client license or intellectual property right is

granted or implied by the use of the IBM Tools used in connection with performance of the Services. IBM Tools are subject to the terms associated with them. IBM Tools are not warranted. If applicable, upon completion of the Service Client agrees to cease use of, uninstall and remove the IBM Tools from Client's Eligible Machines and facilities.

For acquisitions through an IBM Business Partner (BP) authorized to resell IBM Services, the BP establishes the price at which they market IBM Services and communicates the terms for each BP transaction directly to Client. However, IBM establishes the terms of each Service IBM provides and will provide the Services as described in this Attachment and applicable TD. Whenever a party is required to provide notification to the other, each agrees to notify the applicable BP.

If a BP that Client has contracted through is no longer able to offer IBM Services, IBM will notify Client in writing. Client may continue to receive the Services by instructing IBM in writing to transfer administration of the Services to 1) another BP of Client's choice approved to offer IBM Services, or 2) IBM under a standard direct relationship where IBM invoices Client.

1.1 Warranty Service Upgrade (WSU)

During the warranty period for certain Eligible Machines, Client may select an upgrade to the standard warranty. WSU may not be terminated or transferred during the warranty period. When the warranty period ends, the Machine is added to maintenance at the type of Service selected for WSU.

1.2 Maintenance of IBM Machines

IBM will provide maintenance of Eligible IBM Machines specified in the TD. IBM may provide an exchange replacement for installation by Client. Replacements may be i) a part of a Machine (called a Client Replaceable Unit (CRU), e.g., keyboard, memory, or hard disk drive), or ii) an entire Machine.

1.2.1 Hardware Support Extension

After IBM has announced End of Service for specified Machines, IBM may offer limited support, to include remote assistance, from IBM's support center or via electronic access, and on-site assistance, in response to Client requests for hardware support on the specified Machines that have reached End of Service (Hardware Support Extension). IBM neither warrants i) uninterrupted or error-free operation of this IBM Service or Machines covered hereunder; nor ii) that IBM will correct all defects or prevent third party disruptions or unauthorized third party access to the Machines. On-site repair is subject to the availability of repair parts and skilled resources and does not include repairs that require Software, Engineering, or Development Support. Response time and availability of parts may vary by location. The covered Eligible Machines, Coverage Period (the HW Support Extension Effective Date to the HW Support Extension End Date), locations, options selected, and charges, all as applicable, are specified in the applicable TD. Newly added Machines are reflected in separate TDs. This Service does not renew. Subsequent periods of coverage are documented in separate TDs.

IBM will:

- a. provide remote technical support for problem determination (PD) and problem source identification (PSI);
- b. provide on-site technical resources, if necessary, for hardware defect resolution (for example, but not limited to, the exchange of field replaceable units (FRUs), provided that the parts are generally commercially available); and
- c. determine if an applicable resolution exists, which may include existing patches or workarounds for Client installation.

For the avoidance of doubt, IBM's responsibilities under Hardware Support Extension do not include any: (1) preventive service; (2) support for newly reported defects or previously reported or known defects for which no updates, patches, or fixes were created; (3) engineering change management; or (4) development of any new machine code updates, patches, or fixes (including those designed to address security). IBM publishes its responses to security vulnerabilities at its IBM Product Security Incident Response (PSIRT) blog found here: <https://www.ibm.com/blogs/psirt/>

Notwithstanding the terms of Section 6, IBM may withdraw Hardware Support Extension for any Machine on 30 days' written notice. Client will receive a credit for any remaining prepaid period associated with this IBM withdrawal. Client termination is addressed in Section 7.

1.3 Maintenance of Non-IBM Machines

IBM will provide repair Service for the manufacturer's base configuration for each covered model of Eligible non-IBM Machines specified in the TD. IBM requires up to 30 days to initiate support on newly added Eligible non-IBM Machines that Client adds or relocates. Repair of non-IBM Machines is subject to the availability of parts and technical support required of the manufacturer. Repair parts will be functionally equivalent to those replaced, may be new or used, and may have been manufactured by other than the original manufacturer. Upon written notice, IBM may withdraw coverage for an Eligible non-IBM Machine due to lack of available repair parts or manufacturer technical support. Client will receive a credit for any remaining prepaid period associated with this withdrawal.

1.3.1 Multi-Vendor Service

IBM provides maintenance support and repair coordination of maintenance activities for Machines in a multi-vendor environment (also called Multiple Vendor Service or MVS). For repair coordination, Client must notify service providers that IBM will be placing the requests for service. IBM then places warranty or maintenance calls with service providers on Client's behalf and remains responsible for coordinating maintenance activities and problem resolution until resolved. Notwithstanding other terms of this Attachment:

- a. Charges are based on MVS Inventory. IBM will adjust the charges when the inventory changes;
- b. MVS Services do not automatically renew. Additions or renewals are documented in a new TD with the new inventory, period, and applicable charges; and
- c. Client commits to continue MVS for the specified transaction contract period. No credit is given for Client termination during the committed term.

1.4 IBM Software Maintenance

IBM provides software maintenance (SWMA) for Eligible Programs for which Client is licensed. IBM makes available the most current commercially available version, release, or update to all of the Eligible Programs for which Client acquires support in the specified operating environment, as made available. Information to order versions, releases or updates is found at <https://www.ibm.com/support/pages/node/733923>.

Eligible Programs are listed at www.ibm.com/services/supline/products/ or may be obtained from Client's IBM representative. The listing of Eligible Programs contains the last date of service for each respective release. IBM supports only current releases of Eligible Programs. It is Client's responsibility to ensure that its Eligible Programs are current when requesting Service. Availability information can be viewed at <http://www-01.ibm.com/software/support/lifecycle/>.

IBM provides assistance for Client's a) routine, short-duration installation and usage (how-to) questions and b) code defect-related questions. IBM provides assistance via telephone and, if available, electronic access, only to Client's Information Systems (IS) technical support personnel. This assistance is not available to Client's end users. IBM provides Severity 1 assistance 24 hours a day, every day of the year. Consult the IBM Support Guide at <https://www.ibm.com/support/pages/node/733923> for details. A 24x7 (every day of the year) all-severity option may be available for an extra charge. All Licensed units must be covered by IBM SWMA service for an Eligible Program. No partial coverage is allowed.

Service is provided solely for Eligible Programs located within the United States (USA) and all support will be provided in the English language. Software "traps" or other tools that may be necessary to diagnose problems will be sent only to the USA Eligible Programs location, and the diagnosis and repair of data encryption will be discussed only with personnel at the USA Eligible Programs location.

1.5 Support via USA Citizens or US Persons Option

US Government, public sector, and commercial clients can acquire an IBM Support via U.S. Citizens or U.S. Persons Option (Option) when access restrictions, based on immigration status or citizenship, apply US law. Commercial clients must specify the reasons for such restrictions.

For purposes of this section, **US Person** includes US Citizens, lawful permanent residents, and protected individuals as provided in 22 C.F.R. § 120.15. **US Citizenship** can be based on birth or naturalization and is evidenced by acceptable proof of citizenship per 32 C.F.R. Part 117.

IBM support for hardware or software is a mandatory prerequisite for this Option. This Option provides an IBM US Citizen or US Person contact, as applicable, to manage IBM remote hardware and software support for Client. IBM will provide remote support agents meeting the required criteria to interact with Client. Client data submitted for diagnostic purposes may be stored and accessed outside the US and may be viewed or handled by non-US Citizens or Persons. Client agrees not to send protected or sensitive data to IBM. IBM Support via US Citizens or US Persons is available via voice support, during prime shift only. Each time Client calls IBM, Client must identify itself as a Support via US Citizens or US Persons Client, as applicable. IBM will verify Client's entitlement then transfer Client to the appropriate contact.

1.6 Machine Control Program Remote Support

Remote Support Service is provided only for Machine Control Programs (MCP), meaning code delivered with an IBM Machine that executes below the external user interface (e.g., implemented in a part of storage that is not addressable by user programs). IBM will provide remote assistance (via telephone from IBM's support center or electronic access) in response to Client's routine installation, configuration, and usage (how-to) questions pertaining to MCPs on covered IBM Machines, during normal business hours in the local time zone where Client receives Service. Hardware maintenance is a mandatory prerequisite for MCP. For an additional charge, 24x7 (every day of the year) all-severity option may be available.

2. Client Responsibilities

Client agrees:

- a. to provide IBM with the inventory of Eligible Products to be covered at each Specified Location and to notify IBM of inventory changes, utilizing the specified tools or systems to provide such written notice. Any changes to contracted configuration or inventory may result in a change to original charges;
- b. as required for the specific Service, to designate the Primary Technical Contact (PTC), Client's country-based representative to whom IBM may direct general technical information and questions regarding the Eligible Products within the environment, in order to enable effective communication with the IBM support center;
- c. to have valid licensing and subscription in place for Eligible Programs covered by a Service;
- d. that all Client notices must be in writing and received by IBM 60 days prior to the effective date of a change, unless otherwise specified;
- e. to limit use of any access codes to electronic diagnostic tools, information databases, or other Service delivery facilities to those authorized to use them under Client's control and only in support of Eligible Products and Services identified in TDs;
- f. to provide IBM with necessary information requested, and keep such information current;
- g. to access IBM Support as directed by IBM, such as by calling 1-800-IBM-SERV or the Support number for a specific country listed at <https://www.ibm.com/planetwide/> and providing machine type / serial or customer number or, to obtain support electronically, use the Internet web site: <http://www.ibm.com/support/>;
- h. to allow remote access to Client's system to assist in isolating the problem cause. Client remains responsible for adequately protecting its system and all data contained therein whenever IBM remotely accesses it. If Client denies remote access to its system by IBM, IBM may be limited in its ability to resolve the problem. If IBM is unable to resolve the problem without access, IBM will notify Client and close the service call;

- i. that some Services may require the installation and use of remote connectivity tools and equipment for direct problem reporting, remote problem determination and resolution. Any third party communications or connectivity charges are Client's responsibility;
- j. to use the information obtained under these Services only for the support of the information processing requirements within Client's Enterprise;
- k. when a part return is required, Client is charged for the replacement part if IBM does not receive the replaced part within 15 calendar days of Client's receipt of the replacement. Client may request that IBM install the replacement as a billable installation;
- l. to securely erase all non-IBM programs and all data (including confidential, proprietary and personal data regarding any individual or entity) from any Machine or part of a Machine returned to IBM for any reason and ensure that it is free of any legal restrictions that would prevent its return;
- m. that, to perform its responsibilities, IBM may ship all or part of the Machine or its software to other IBM or third party locations around the world;
- n. that Client is responsible for obtaining all necessary permissions to use, provide, store and process content in connection with Services, and grants IBM permission to do the same. Client is responsible for adequate content back-up and maintaining its system security during the Services. Some of Client's content may be subject to governmental regulation or may require security measures beyond those specified by IBM for an offering. Client will not input or provide such content unless IBM has first agreed in writing to implement additional required security measures;
- o. that Services may be performed on-site at Client's Specified Locations and off-site at IBM locations, and that IBM uses global resources (non-permanent residents used locally and personnel in locations worldwide) for delivery of Services;
- p. that the terms of the Machine Code License at http://www-947.ibm.com/systems/support/machine_warranties/support_by_product.html apply to Eligible IBM Machines and all Machine Code and Machine Code updates on such Eligible IBM Machines;
- q. to follow the service request procedures that IBM provides, to include installing entitled Machine Code and other software updates (downloaded from an IBM web site or copied from other electronic media), and to follow IBM's (or manufacturer's) guidelines pertaining to operator responsibilities, maintenance procedures, and supplies, prior to placing a Service request;
- r. that some devices have write or wear limitations as documented in the device's hardware product specifications. Once a device reaches its write or wear limitation, the device is considered end of life and therefore no longer eligible for warranty or maintenance Services. Replacement of devices that reach write or wear limitations is a Client responsibility not covered under warranty or maintenance Services;
- s. that, with respect to Services under this Attachment, the parties agree to look to their own risk management (including insurance) to cover damage, destruction, loss, theft, or government taking (collectively, Loss) of their respective tangible property (whether owned or leased), and neither party shall be liable to the other for such Loss except liability for negligence under applicable law;
- t. that Client cannot resell Services or transfer Services to another Machine; and
- u. that IBM and its affiliates, and their contractors and subprocessors, may, wherever they do business, store and otherwise process business contact information (BCI) of Client, its personnel and authorized users, for example name, business telephone, address, email and user IDs for business dealings with them. Where notice to or consent by the individuals is required for such processing, Client will notify and obtain such consent.

3. Charges

For sales through IBM, charges are based on Service selections, payment option, and any prepay period. Renewal charges are calculated at the start of each renewal period. IBM will invoice Client in advance for the Machine/Service List on the Schedule and charges period specified in the TD. Price protection will apply from the start date through the committed term as follows:

- a. no price increase announced by IBM will apply for the committed term specified in the TD; and
- b. Client will receive the benefit of a price decrease as of the stated effective date, if the price decrease is announced by IBM with an effective date during the committed term specified in the TD.

All newly added Eligible Products and Services, and changes to existing Eligible Product configurations and Services, will be charged at the then-current rate, and price protection will apply, for the term specified in the new TD.

For each transaction, total Service charges are adjusted when:

- a. a review of the inventory count indicates a change from the last accounting; or
- b. a Specified Location is affected by a change that results in additional charges (e.g., a change in tax rates), Eligible Machine type, or Service is added, deleted, or changed.

Increases to charges apply at the renewal of the term.

For sales through an IBM Business Partner (BP), the IBM BP sets the charges and charges terms. The IBM BP may impose an additional charge for some actions (e.g., termination), or for IBM's provision of some additional services (e.g., Service upgrades) as identified in this Attachment and its associated TDs. Notwithstanding any other term of this Attachment, Client must inquire with the IBM BP regarding charges, credits, or refunds. Client's payment is made directly to the IBM BP and any credit or refund is received from the IBM BP. Any required notices (e.g., changes to inventory or termination of Service) must be provided in writing to Client's BP with a copy to IBM.

Re-establishment Fee

If Client's warranty or maintenance Service coverage for a Machine lapses by 90 days or more, and Client subsequently requests to restart Services, a re-establishment fee applies based on the number of days of lapsed coverage, up to 365 days of the applicable Service fees for the Machines.

Software Maintenance After License Fee

For the Operating System and Licensed Program Products (LPPs), SWMA After License Fee (ALF) is a one-time charge to resume SWMA and applies:

- a. if there is a resumption of the SWMA after a lapse of the service; or
- b. when Client transfers a Software License for a Program not currently covered by IBM SWMA; or
- c. when Client acquires the Software License with the purchase of a used Machine, unless Client acquires SWMA within 30 days of the acquisition. For SWMA for IBM i, the most current operating system version and release is required to be installed.

The new support period begins on the date that IBM accepts Client's order.

4. Automatic Inventory Insertion

4.1 Machine Maintenance

If Client selects the Automatic Inventory Increase Option, IBM will automatically increase the inventory count and associated Services at Specified Locations. The following terms apply. If at any time either Client or IBM requests a review of the inventory count, both Client and IBM will cooperate in updating the last formal inventory. This cooperation will be limited to the exchange and consolidations of the inventory files.

If the Machine is under warranty when added, Services will commence at warranty exit. If the Machine is not under warranty when added, Services will commence at the later of a) the date of installation or b) the previous yearly anniversary of the start of the transaction contract period. IBM Machines specifically excluded from coverage at transaction contract period start remain outside the scope of this section unless Client requests IBM add them during the transaction contract period. Services are the same as for all other Machines of the same type at the Specified Location.

Newly installed IBM Machines of the same type as WSU are added at date of actual installation and covered at the same WSU support level.

4.2 Software Maintenance

IBM will increase the inventory count and associated Services when an Eligible Program licensed for use on an Eligible IBM Machine is added to the inventory. Applicable Services are the same as for other copies of the Program licensed for use on Eligible IBM Machines of the same type at the Specified Location.

Services will commence immediately upon addition of the Eligible Program to the inventory (After License Fees may apply), except if the Program is covered under the Agreement for Acquisition of Software Maintenance when added to the inventory, then Services under this Attachment will commence at the end of that support period.

5. Renewal

The Schedule will state if Services automatically renew.

6. Withdrawal of Service or Support, Change of Support Level

IBM may withdraw a Service or support for an Eligible Product on 90 days' written notice. Client will receive a credit for any remaining prepaid period associated with an IBM withdrawal of Service or support.

For some Products, instead of withdrawing all Service or support for those Products, IBM will withdraw only engineering and development support and continue to provide limited support for known defects (Change of Support Level). Unless otherwise specified in the Change of Support Level notice, IBM will continue to:

- a. provide remote technical support for problem determination (PD) and problem source identification (PSI);
- b. provide on-site technical resources, if necessary, for hardware defect resolution (for example, but not limited to, the exchange of field replaceable units (FRUs), provided that the parts are generally commercially available); and
- c. determine if an applicable resolution exists, which may include existing patches or workarounds for Client installation.

Beginning on the effective date in the notice, IBM's responsibilities will no longer include any: (1) preventive service; (2) support for newly reported defects or previously reported or known defects for which no updates, patches, or fixes were created; (3) engineering change management; or (4) development of any new machine code updates, patches, or fixes (including those designed to address security). IBM publishes its responses to security vulnerabilities at its PSIRT blog found here: <https://www.ibm.com/blogs/psirt/>

Affected Products will be covered under the new support level on the effective date in the notice (Effective Date), unless Client notifies IBM in writing of Client's intent to terminate coverage before the Effective Date.

7. Termination

Client has committed to continue Services for the entire transaction contract period as documented in the applicable TD. However, Client may terminate Services for an Eligible Product if Client: a) replaces the terminated Services with equivalent new IBM Services, or b) on 60 days' written notice to IBM if Client permanently removes the Eligible Machine from productive use within Client's Enterprise. Client may also terminate Services immediately prior to the start of any fiscal year for which funds have not been appropriated.

Client will receive a credit for any remaining prepaid period associated with Services Client terminates in accordance with this provision and a separate invoice for the equivalent Services added, if applicable. Other than as described in this Section 7, no credit is given for Client termination during the committed term.

8. Data Processing Protection

IBM's Data Processing Addendum (DPA) at <http://ibm.com/dpa> and the DPA Exhibit at <https://www.ibm.com/mysupport/s/article/support-privacy> apply to the processing of Client's personal data by IBM on behalf of Client in order to provide IBM Services, if and to the extent i) the European General Data Protection Regulation (E/2016/679) (GDPR); or ii) other data protection laws identified at <http://ibm.com/dpa/dpl> apply.

9. Purchase Order Clients

If Client requires a purchase order for its acquisitions hereunder, the following terms apply. For purchase order clients buying directly through IBM, IBM receives Client purchase orders (PO) as documentation of Client's order for Services acquired under this Attachment. Additional or different terms in any written communication from Client (including a PO) are void. If Client requires a PO, IBM is not required to commence Services until IBM receives Client's fully executed PO. IBM is not responsible for Service delays or lapses in Service caused by PO wait time. IBM must receive a renewal PO at least 30 days prior to the contract period end date to avoid termination for non-renewal.

This 1) Technical Services Attachment for TSS Offerings (Attachment), 2) applicable Transaction Documents, and 3) the agreement specified herein comprise the complete Agreement regarding the Services and replace any prior oral or written communications between Client and IBM. Accordingly, neither party is relying upon any representation that is not specified in the complete Agreement including, without limitation, any representations concerning 1) levels of service, hours, or charges to provide any Service; 2) the experiences of other clients; or 3) results or savings Client may achieve.

Each party accepts the terms of this Attachment by signing this Attachment by hand or, where recognized by law, electronically.

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Attachment 2

SCOPE OF WORK

This Scope of Work (SOW) describes the deliverables available through this Master Agreement and the scope of what Contractors are expected to offer Participating Entities and Purchasing Entities. This SOW defines the scope of the Master Agreement and is not intended to limit the products and services a Contractor may offer within the defined scope.

I. OBJECTIVES

A. Scope of Work Objectives:

1. **Data Communications:** For the purposes of this Scope of Work and the resulting Master Agreements, **Data Communications is defined as the products and services that provide the technological capabilities to transmit, receive, and manage digital information through information technology networks.** This SOW seeks the Contractor to provide all aspects of data communications capabilities in a holistic solution, that includes hardware, software, and services, to develop, establish, maintain, secure, and expand data communications networks.
2. **Original Equipment Manufacturer (OEM):** For the purposes of this Scope of Work and the resulting Master Agreements, **OEM is defined as a Contractor that designs and manufactures data communications hardware.** The OEM (Awarded Contractor) shall provide data communications solutions consisting of the hardware as well as software solutions and services to support the hardware. Offerors are strongly encouraged to review this definition as it pertains to this SOW, to determine its eligibility to submit a proposal. All Offerors must affirm their OEM status (as defined in this section) in Attachment G, Offeror Response Worksheet.

B. Approach and Considerations: The scope of work approach will not establish individual product award categories but will seek to award to OEMs that manufacture data communications hardware and be capable of supporting that hardware through a holistic approach of software, cloud networking, services, etc. to provide the interested Participating Entities secure data communications capabilities in various protocols (data formatting, transmission, and error handling such as TCP/IP, HTTP, FTP, etc.). As stated, there will not be individual award categories, however, this SOW seeks solutions to be provided consisting of, but not limited to, the following common Data Communication fields:

- **Networking:** The infrastructure and systems that enable connectivity and data transfer, including routers, switches, network management and network optimization tools.
- **Unified Communications:** Data Communications products and technologies that integrate various communications to provide the capability of exchanging digital

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information seamlessly including, but not limited to, voice, video, and text and other forms of media.

- **Wireless Networking:** Technologies that enable data communication over wireless mediums, including Wi-Fi access points, wireless controllers, and related management tools.
- **Security:** Solutions that ensure confidentiality, integrity, and availability of data and network resources, including firewalls, intrusion detection/prevention systems, encryption technologies, and secure access controls.
- **Facilities Management:** Products and technologies that provide digital capabilities to manage, monitor, and control various facilities functions utilizing access control systems, security and surveillance, energy and climate control, alert and emergency response systems, etc.

The definition of Data Communications above will consist of the following and defined in the below sections of this SOW. Some content and scope in the sections may cross between hardware and software.

- Hardware
- Software
- Services

This Scope of Work is meant to be solution-based, the following content in this SOW is meant to provide guidelines and framework for Data Communications solutions, it is not meant to limit the scope or restrict the solutions or systems. It is strongly encouraged to propose emerging technologies (such as Artificial Intelligence, Internet of Things) under the multiple categories so long as it is considered within the scope of Data Communications, by the definition encompassing this SOW, and adds or enhances the overall solution for the customer. The products must be able to address customers' business needs and integrate into the overall solution.

II. DATA COMMUNICATIONS: HARDWARE

A. Networking: Routers – A device that forwards data packets along networks. A router is connected to at least two networks, commonly two LANs or WANs or a LAN and its ISP's network. Routers are located at gateways, the places where two or more networks connect, and are the critical device that keeps data flowing between networks and keeps the networks connected to the Internet. Below is a list of routers, this list is not limited to the routers that can be provided under this scope:

- 1. Branch Routers** — A multiservice router typically used in branch offices or locations with limited numbers of users and supports flexible configurations/feature. For example: security, VoIP, wan acceleration, etc.

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- 2. Network Edge Routers** — A specialized router residing at the edge or boundary of a network. This router ensures the connectivity of its network with external networks, a wide area network or the Internet. An edge router uses an External Border Gateway Protocol, which is used extensively over the Internet to provide connectivity with remote networks.
 - 3. Core Routers** — High performance, high speed, low latency routers that enable Enterprises to deliver a suite of data, voice, and video services to enable applications such as Internet Protocol Television (IPTV) and Video on Demand (VoD), and Software as a Service (SaaS).
 - 4. Service Aggregation Routers** — Provides multiservice adaptation, aggregation and routing for Ethernet and IP/MPLS networks to enable service providers and enterprise edge networks simultaneously host resource-intensive integrated data, voice and video business and consumer services.
 - 5. Carrier Ethernet Routers** — High performance routers that enable service providers to deliver a suite of data, voice, and video services to enable next-generation applications such as IPTV, Video on Demand (VoD), and Software as a Service (SaaS)
- B. Networking: Switches** — A networking hardware device that connects multiple technology devices within a local area network (LAN). It forwards data packets to the correct destination device, ensuring efficient communication. These can be managed, unmanaged, layer 2/3 devices that are used to connect segments of a LAN (local area network) or multiple LANs and to filter and forward packets among them. Below is a list of switches, this list is not limited to the switches that can be provided under this scope:
- 1. Campus LAN – Access Switches** — Provides initial connectivity for devices to the network and controls user and workgroup access to internetwork resources.
 - 2. Campus LAN – Core Switches** — Campus core switches are generally used for the campus backbone and are responsible for transporting large amounts of traffic both reliably and quickly.
 - 3. Campus Distribution Switches** — Collect the data from all the access layer switches and forward it to the core layer switches. Traffic that is generated at Layer 2 on a switched network needs to be managed or segmented into Virtual Local Area Networks (VLANs), Distribution layer switches provides the inter-VLAN routing functions so that one VLAN can communicate with another on the network. Distribution layer switches provide advanced security policies that can be applied to network traffic using Access Control Lists (ACLs).
 - 4. Data Center Switches** — Data center switches, or Layer 2/3 switches, switch all packets in the data center by switching or routing good ones to their final destinations, and discard unwanted traffic using Access Control Lists (ACLs) a minimum of 10 Gigabit speeds. High availability and modularity differentiate a typical Layer 2/3 switch from a data center switch. Ability to remotely disable and enable individual ports. Support

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“NetFlow” or equivalent. Jumbo frame supports EVPN over MPLS or BGP (9k bytes), plug and play fabric formation. Ultra-low latency through wire-speed ports with nanosecond port-to-port latency and hardware- based Inter-Switch Link (ISL) trunking.

5. Carrier Aggregation Switches — Carrier aggregation switches route traffic in addition to bridging (transmitted) Layer 2/Ethernet traffic that are designed for Ethernet networks that support video and high-bandwidth applications. Supports a variety of interface types, especially those commonly used by service providers.
6. Carrier Ethernet Access Switches – A carrier Ethernet access switch can connect directly to the customer or be utilized as a network interface on the service side to provide layer 2 services.
7. MPLS and Ethernet-Based WAN Solutions – Modern, scalable WAN technologies replacing legacy SONET networks.
8. Switch Features and Capabilities – the following list includes desired features and capabilities as necessary for the appropriate switch, as applicable:
 - Security Features: SSHv2 (Secure Shell Version 2), 802.1x (Port Based Network Access Control), Port Security, DHCP (Dynamic Host Configuration Protocol) Snooping, Two-Factor or Multi-Factor Authentication (2FA/MFA), MacSec encryption, Role-based access control lists (ACL)
 - Fast Ethernet/Gigabit Ethernet - 802.3bz (multi-gig interfaces 2.5Gbps and 5 Gbps)
 - 1/10/25/40/100/400 Gbps Support
 - PoE (Power over Ethernet) - up to 90/95W on all ports
 - Port Mirroring
 - Span Taps
 - Support of IPv6 and IPv4
 - Swappable powerlines and fans
 - AC or DC power supply minimum DC input ranging from 18V to 32 VDC and 36V to 72 VDC
 - Switch-port auto recovery
 - Dynamic Trunking Protocol (DTP)
 - Per-VLAN Rapid Spanning Tree (PVRST+)
 - IGP (Interior Gateway Protocol) routing, including non-proprietary such as IS-IS, OSPF, iBGP
 - EGP (Exterior Gateway Protocol) routing, including Border Gateway Protocol (BGP)
 - VPLS (Virtual Private LAN Service) Support
 - VRRP (Virtual Router Redundancy Protocol) Support

C. Networking: Storage

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The emergence of new technologies creates an emphasis on storage devices that are connected via networks to servers to data to be accessed, managed, and shared efficiently across multiple systems. The goal is to provide managed centralized storage, increased scalability, and improved data protection and backup solutions.

This scope seeks various storage solutions that facilitate several use cases including, but not limited to, enterprise data centers, high performance computing, virtualization environments, artificial intelligence, security systems, backup and redundancy systems, and disaster recovery systems. Below is a list of storage solutions that are desired, this list is not limited to the storage devices or solutions that can be provided under this scope:

1. **Storage Area Network (SAN):** These devices are high-speed and specialize in block-level storage for data centers. This solution is protocol-independent and can be Fibre Channel (FC), FCOE or similar SAN topology for private cloud storage in virtualized environments.
2. **Network Attached Storage (NAS):** storage system at the file level connected to an IP network.
3. **Fabric and Blade Server Switches:** A Fibre Channel switch is a network switch compatible with the Fibre Channel (FC) protocol. It allows the creation of a Fibre Channel fabric, which is currently the core component of most SANs. The fabric is a network of Fibre Channel devices, which allows many-to-many communication, device name lookup, security, and redundancy. FC switches implement zoning; a mechanism that disables unwanted traffic between certain fabric nodes.

D. Optical Networking

High-capacity networks based on optical technology and components that provide routing, grooming, and restoration at the wavelength level as well as wavelength-based services.

1. **Core DWDM (Dense Wavelength Division Multiplexing) Switches** — Switches used in systems designed for long haul and ultra long-haul optical networking applications.
2. **Edge Optical Switches** — Provide entry points into the enterprise or service provider core networks.
3. **Optical Network Management** — Provides capabilities to manage the optical network and allows operators to execute end-to-end circuit creation.
4. **IP over DWDM (IPoDWDM)** — A device utilized to integrate IP Routers and Switches in the OTN (Optical Transport Network).

E. Wireless Networking

Wireless networking hardware are physical devices that enable data transmission without the use of physical cables, using radio waves, microwaves, or infrared signals to connect computers, mobile devices, and networks.

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1. **Wireless Access Points (WAP)** – A device that allows wireless devices to connect to a wired network using Wi-Fi, or related standards. Capabilities should include:
 - 802.11a/b/g/n/ac/ and later
 - 2.4GHz, 5GHz, and 6GHz support
 - Should be capable of controller via DHCP, or automatically discovering cloud management system
 - Support for WPA2/WPA3
 - UL2043 plenum rated for safe mounting in a variety of indoor environments
 - Support AES-CCMP (128-bit)
 - Provides real-time wireless intrusion monitoring and detection
2. **Wireless Router** – Combination of a router and wireless access point, provides both internet access and Wi-Fi connectivity.
3. **Outdoor Wireless Access Points** – Outdoor APs are more rugged devices. Should be able to tolerate the elements of weather to tolerate a wide temperature range, high humidity, exposure to water, dust and oil, be able to be deployed virtually anywhere, provide real-time wireless intrusion monitoring and detection.
4. **Wireless LAN Controllers** — An onsite or offsite solution utilized to manage Light-weight access points in large quantities by the network administrator or network operations center. These devices are gateways that control user traffic aggregation. The WLAN controller automatically handles the configuration of wireless access points. Capabilities should include:
 - Ability to monitor and mitigate RF interference/self-heal
 - Support seamless roaming from AP to AP without requiring re-authentication
 - Support configurable access control lists to filter traffic and deny wireless peer to peer traffic
 - System encrypts all management layer traffic and passes it through a secure tunnel
 - Policy management of users and devices provides ability to de-authorize or deny devices without denying the credentials of the user, nor disrupting other AP traffic
5. **Wireless LAN Network and Cloud-Based Services and Management** — Enables network administrators to quickly plan, configure and deploy a wireless network, as well as provide additional WLAN services. Some examples include wireless security, asset tracking, and location services. Capabilities should include:
 - Provide for redundancy and automatic failover
 - Historical trend and real time performance reporting is supported
 - Management access to wireless network components is secured
 - RFC 1213 compliant
 - Automatically discover wireless network components

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- Capability to alert for outages and utilization threshold exceptions
 - Capability to support Apple's Bonjour Protocol / mDNS
 - QoS / Application identification capability
 - Zero-touch access point provisioning
 - Network-wide visibility and control
 - RF optimization,
 - Firmware updates
6. **Mobile Device Management (MDM)** — MDM technology is utilized to allow employees to bring personally owned mobile devices (laptops, tablets, and smart phones) to their workplace, and use those devices to access privileged government information and applications in a secure manner. Capabilities should include:
- Ability to apply corporate policy to new devices accessing the network resources, whether wired or wireless
 - Provide user and devices authentication to the network
 - Provide secure remote access capability
 - Support 802.1x
 - Network optimization for performance, scalability, and user experience
 - BYOD/unmanaged device configuration (such as SecureW2 or CloudPath)

F. Security Hardware

1. **Intrusion Detection/Protection and Firewall Appliances** — Provide comprehensive inline network firewall security from worms, Trojans, spyware, key loggers, and other malware. This includes Next-Generation Firewalls (NGFW), which offer a wire-speed integrated network platform that performs deep inspection of traffic and blocking of attacks.
 - Non-disruptive in-line bump-in-the-wire configuration
 - Network-address translation (NAT), stateful protocol inspection (SPI) and virtual private networking (VPN), etc.
 - Application awareness, full stack visibility and granular control
 - Capability to incorporate information from outside the firewall
 - Upgrade path to include future information feeds and security threats
 - SSL decryption to enable identifying undesirable encrypted applications (Optional)
2. **Data Center and Virtualization Security Products and Appliances** — Products designed to protect high-value data and data center resources with threat defense and policy control.
3. **Application Delivery and Security** — Includes application deliver controllers, load balancers, and Layer 7 Firewalls. Can be physical and virtual load balancers, WAFs, SSL offloading, and advanced traffic management.

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III. DATA COMMUNICATIONS: SOFTWARE and CLOUD

Please note that software and cloud offerings are to be related to the functionality and solution-based data communications systems and solutions scope. It is recognized that advancements in technology have provided emerging solutions that do not require hardware or on-premises solutions to provide network and data communications capabilities. This Contract will not require software or cloud services to be tied to a hardware purchase, however, the software and cloud offerings must strictly to relate to Data Communications as per the definition established in this Scope of Work.

Below is a list of software solutions, this list is not limited to the software solutions that can be provided under this scope:

A. Networking Software Solutions

Software covers a wide array of solutions required to support network operation and management within the scope of data communications. These consist of management tools to optimize area networks, or to ensure performance, optimization, capacity, data migration, data reduction and efficiency.

1. **Networking Software** – Software that runs on a server, or within the Cloud, and enables the server to manage data, users, groups, security, applications, and other networking functions. The network operating system is designed to allow transfer of data among multiple computers in a network, typically a local area network (LAN), a private network or to other networks. Networking software capabilities should include:
 - Restartable Process
 - High availability options
 - Targeted operating systems, i.e. DC, campus, core, WAN
 - Operating System Efficiencies
 - Network analysis tools (solutions utilized to collect, classify, analyze, and securely store log messages)
 - Load balancing – supports multiple balances in the same system, layer 4+7
 - Reporting
 - WAN optimization
 - Data compression
 - Network analysis tools (solutions utilized to collect, classify, analyze, and securely store log messages)
2. **Software Defined Networks (SDN)** – Virtually manages flow control and can include SDN virtualized switches, routers, and controllers. These applications enable intelligent networking.
3. **Automated Management Software for Network, Cloud, and Data Centers** — Software products and solutions for network automation, cloud computing, and IT systems management to ensure secure, reliable, and scalable network operations.
 - Automate routine and repetitive tasks

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- Implement monitoring and alerting for proactive system maintenance
 - Provision, configure, and manage cloud resources (IaaS, PaaS, SaaS)
 - Automate backup, scaling, and deployment processes
 - Monitor server health, storage systems, and power usage
 - Ensure cloud security with identity management, encryption, and compliance controls
4. Edge Computing – Distributed processing near data sources to reduce AI and IoT applications.
 5. DDI (DHCP, DNS, IPAM) Management Platforms – Integrated platforms for automating and securing core network services (DHCP, DNS, IP address management).

B. Security Solutions

Security of networks is paramount for the success of this scope of work and one of the most important aspects to ensure the confidentiality, integrity, and availability of data transmitted over communications networks. Security solutions will secure the data in transit across wired and wireless networks, prevent unauthorized access, inception, and tampering of communications. Security solutions will align with industry standards. The security solutions will enhance monitoring of the network. It is expected that networks be equipped with cutting edge security technology. Network systems need to be aware of the ever-changing landscape of threats, how to detect them, prevent them, and in cases where the threat is present, eliminate the threat.

Please note that this section refers to an array of desired security products. This does not supplement security requirements found in the Master Agreement Terms and Conditions. While some products may overlap or require additional negotiation with the Participating Entity, the MA security terms should be a baseline that take precedence and apply to all of the offerings.

Below is a list of security solutions, this list is not limited to the offerings that can be provided under this scope:

1. Network Security – These security measures will require a comprehensive solution that protect the network and digital infrastructure from cyber threats. These security measures include, but are not limited to:
 - Remote Browser Isolation (RBI): Keeps web content off endpoints to prevent drive-by downloads and malicious scripts.
 - Incident Response Solutions: Rapid-deployment networking solutions for emergency response, including drone communication hubs.
 - Zero Trust OT Security: Focused on securing operational technology environments with strict identity verification.
 - Zero Trust Network Access (ZTNA): Provides secure, identity-based access to applications regardless of location.
 - Malware Analysis & Sandboxing: Isolates and analyzes suspicious files or behavior in a secure environment before execution.

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-
- DNS Security: Blocks access to malicious domains and provides visibility into domain-level threats.
 - AI Access Security: Controls and monitors access to AI tools and platforms, helping prevent misuse or data leaks.
 - Data Center Security: Protects physical and virtual infrastructure in centralized or hybrid data centers.
 - Data Loss Prevention (DLP): Prevents sensitive data from being lost, leaked, or misused.
 - Intrusion Detection and Prevention (IDPS): Monitors and blocks suspicious or malicious network activity.
 - AI-Driven Network and Security Management - For automation, anomaly detection, predictive maintenance, and self-optimizing networks.
 - IoT Security: Protects connected devices and their communication from exploitation.
2. Cloud Security – Consists of securing the communication channels, protocols, and endpoints involved in data exchanges across cloud services. These cloud security measures include, but are not limited to:
- Cloud Secure Web Gateway: Protects users from malicious internet traffic, enforcing security policies in the cloud.
 - Cloud Access Security Broker (CASB): Bridges the gap between cloud service usage and enterprise security policies.
 - Cloud Security Posture Management: Continuously monitors and evaluates cloud configurations to ensure they meet security and compliance standards.
 - Cloud Workload Protection: Secures applications and services running in cloud environments by protecting workloads from vulnerabilities and threats.
 - Cloud Visibility, Compliance, & Governance: Provides centralized insight into cloud resources while enforcing policies for regulatory compliance and governance.
 - Secure Access Service Edge (SASE): Converges networking and security services into a single cloud-delivered platform.
 - Security Service Edge (SSE): Consolidates cloud-delivered security functions such as SWG, CASB, and ZTNA.
 - Cloud-Native Networking and Security: Tools and services supporting hybrid/multi-cloud deployments and modern security architecture.
 - Cloud Threat Detection: Identifies suspicious behavior, misconfigurations, and active threats across cloud environments using analytics and threat intelligence.
 - Infrastructure as Code (IaC) Security: Scans and secures infrastructure templates (e.g., Terraform, CloudFormation) to detect misconfigurations before deployment.

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3. **Identities and Access Management** – Consists of managing user identities, controlling access to systems and data, and ensuring that access is granted based on the principle of least privilege. These management security measures include, but are not limited to:
 - **Privileged Access Management (PAM):** Secures, monitors, and controls access to critical systems by privileged users to reduce the risk of insider threats and credential abuse.
 - **Identity as a Service (IDaaS):** Delivers cloud-based identity management capabilities such as single sign-on (SSO), authentication, and user provisioning as a service.
 - **Access Management:** Controls and enforces who can access what resources, when, and under what conditions, often integrating with authentication and authorization policies.
 - **Identity Governance and Administration (IGA):** Provides policy-based controls to manage user identities, access rights, and lifecycle processes across the enterprise.
 - **Directory Services:** Centralizes user identity data and authentication across systems, typically using technologies like LDAP, Active Directory, or cloud directories.
 - **Micro and Macro Segmentation Solutions:** Granular (micro) and broad (macro) network segmentation for enhanced security and compliance.
 - **Identity Analytics:** Uses data analysis and machine learning to detect anomalies, assess risks, and support access decisions in real-time.

- C. Unified Communications** – Integrated data communications solutions that can include hardware, software, and services.

Unified Communications (UC) is a solution that integrates multiple communications tools and technologies into a single cohesive end-user interface to enhance business communication. UC features include, but is not limited to the following:

1. **Voice Calling (VoIP):** Internet-based voice communication, includes E911 support.
 - Support for analog, digital, and IP endpoints
 - Flexibility to configure queue depth and hold time, play unique announcements and Music on Hold (MoH), log in and log out users from a queue and basic queue statistics
 - Enterprise Telephony Features (CFx, Transfer, CID, Shared line appearance, One Number Service, etc.)
2. **Video Conferencing:** Real-time video meetings and virtual collaboration.
3. **Instant Messaging (Chat):** Real-time text communication. Solutions that allow communication over the Internet Protocol, within the enterprise, and remotely, as well as with guest users that offers quick transmission of text-based messages from sender to receiver. In push mode between two or more people using personal computers,

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Desktop (Windows/Mac/VDI/Linux), Mobile/Smartphone, Tablet, along with shared clients, instant messaging basically offers real-time direct written language-based online chat. Instant messaging may also provide video calling, file sharing, PC-to-PC voice calling and PC-to-regular-phone calling

4. Email and Voicemail Integration: Unified inbox for different types of messages.
5. Presence Information: Shows user availability (e.g., available, busy, offline).
6. File Sharing & Collaboration Tools: Enables real-time co-editing and document sharing.
7. AI driven communication tools leveraging machine learning that automate and enhance communication experience and abilities.

D. Facilities Management, Monitoring and Control – Integrated data communications solutions that can include hardware, software, and services.

This integrated solution provides the capabilities of monitoring systems and control mechanisms to track, manage, and optimize building performance in areas such as energy, safety, HVAC, lighting, access, and IT infrastructure.

1. Monitoring – The use of technology such as sensors (hardware) and software to track building conditions and security. It can include environmental metrics, power usage, equipment usage and fault detection.
2. Control – The use of technology to automatically or manually manage and control systems in a physical space utilizing monitored data. It can include remote equipment operation, HVAC and lighting systems, power management and backup systems.
3. Security Systems – The use of data communications systems to provide video surveillance, facial recognition, thermal imaging, smart sensors, real-time alerts and forensic search. The employment of AI solutions that enable video surveillance and analytics is desired.

IV. DATA COMMUNICATIONS: SERVICES

This SOW seeks not only hardware and software offerings above, but a comprehensive service offering to ensure that all purchases of data communications hardware and software perform properly and optimally. The Contactor shall be responsible for the performance of all aspects of the contract, including the performance of all subcontractors.

A. Services and Consulting

To ensure success of data communications systems and networks, the SOW requires that the Contractor provide holistic solutions consisting of services including, but not limited to the following service areas:

1. Installation

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- Site Survey and Assessment – Includes preinstallation site assessments to identify cabling paths, equipment locations, power requirements, and potential constraints
- Network Cabling and Physical Infrastructure – Installation of secured cabling systems and testing of all cables to ensure connectivity.
- Equipment Installation – Mount and install all hardware including firewalls, switches, routers, wireless access points, etc. Configure hardware to design and system specifications, including integrating power supplies.
- Wireless Network Deployment – Install and test wireless access points, optimize signal strength, secure access points by configuring encryption and protocols.
- Configuration and Integration – Load base configurations on hardware, integrate new hardware with existing systems.
- Testing and Validation – Includes performance testing, fault tolerance, connectivity and document results.

2. Maintenance

- Preventative Maintenance – Perform routine inspections and testing of data comm systems.
- Corrective Maintenance – Respond to system failures, cable faults, or connectivity issues. Replace faulty or defective components, restore service and limit downtime.
- Performance Monitoring – Monitor performance, analyze data traffic efficiency, identify congestion.
- System Configuration Management – Maintain backup copies of data comm system configurations, track and document changes to network.

3. Troubleshooting and Helpdesk

- Support Services – Provide Tier 1 (basic), Tier 2 (intermediate), and Tier 3 (advanced) support for data communication systems. Offer support in multiple channels (phone, email, chat, remote in)
- Incident Management – Log, categorize, prioritize, and track all incidents through a centralized ticketing system
- Guide users through troubleshooting steps for simple issues (e.g., cable checks, adapter settings)

4. Security

- Security Architecture and Design – Includes firewall and perimeter defense consulting.
- Updates and Patching – apply critical updates to system, test and update firewall rules, scan the system for network vulnerabilities.

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- Data Encryption and Secure Transmission – Encrypt data in transit using protocols like TLS, IPSec, and VPNs. Secure communications between network nodes, cloud services, and remote users.

5. Training

- Conduct training and knowledge transfer sessions for Participating Entity staff and end users.
- Platforms for upskilling staff in AI, automation, network management, and cybersecurity.
- Provide user guides and quick-reference materials.

B. Service Level Considerations

This SOW seeks quality services administered with successful performance while recognizing that there are multiple potential Participating Entities with many different needs. This service level outline is meant to provide framework for the Contractor to incorporate as required and as appropriate per the service level agreed upon by the Contractor and Participating Entity.

1. Performance Guidelines:

- Assign a contract manager to act as a liaison and contact person between the Purchasing Entities and the Contractor for the purpose of resolving issues or problems related to any part of this contract.
- Follow the Participating Entities' state and local laws and regulations, especially labor and prevailing wage laws as well as all federal law (i.e. Davis-Bacon Act).
- Employ skilled and experienced professionals for the specific task required to ensure highest quality and neat and expeditious performance.
- Be licensed in each region, state, jurisdiction, etc. where Contractor is approved and awarded to work. Contractor or subcontractor performing work requiring a license must have obtained the license prior to commencing work. The Participating Entity reserves the right to reject a response if the responder fails to provide the Participating Entity adequate documentation of any required license. The Participating Entity reserves the right to verify any required license prior to final award and at any time during the work. The Contractor is responsible for the costs of obtaining or maintaining any licenses, permits, or other costs and shall not pass the cost through on an invoice.
- Be responsible for obtaining all necessary permits, plan reviews, and inspections required for the work when applicable. Permits and Plan Reviews required by local authorities or the State shall be secured and paid for by the Contractor.
- Provide all necessary payroll and prevailing wage reports along with any required statements of compliance along with their invoice.
- Comply with each Participating Entity's cabling, electrical, and construction materials requirements.
- Hazardous Materials – The Contractor is responsible for compliance with any Participating Entity requirements regarding hazardous materials. If the

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Contractor encounters a hazardous material or substance not addressed in the quote and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop work in the affected area and report the condition to the Participating Entity.

- Final Acceptance of Completed Service by the Participating Entity – Upon completion of installation, maintenance, or repair services, Contractor must submit a request for written final acceptance of service completion from the Participating Entity. After receiving written final acceptance of completion of the service from the Participating Entity, the Contractor may issue an invoice to the Participating Entity. Contractor must satisfy all other Contract submittal requirements necessary for the service prior to submitting the request for written acceptance of service completion. If agreed upon by Participating Entity and Contractor, milestone payments are permitted. The milestones will be in writing and a part of the quote/contract between the Participating Entity and Contractor.

2. Request for Quote

- Provide a quote to any Purchasing/Participating Entity for data communications services and projects prior to any installation.
- Provide a not to exceed number of hours at the time of quote to complete the service and indicate whether the service will be performed on or off site.
- Provide the Participating Entity with a written quote of the amount of additional time needed to complete the service which the Participating Entity must approve in writing before continuing with the service, in the event the number of quoted not to exceed hours is met, but more time is needed to complete the service.
- Provide Contractor's name and subcontractor's name, and representatives.
- Date of quote and contract number at the top.
- Hardware, software, third party products information that will be used in the data communications solution – including price, extended pricing, quantity, license agreements, additional service level agreements.
- Estimated Quantity – clear and concise number of hours for all positions that will perform work.
- Any retainage information based on Participating Entity requirements.
- Any performance bond information based on Participating Entity requirements.

Any additional fringe costs such as: mileage, lodging, freight, as agreed upon with the Participating Entity.

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Attachment 3 COST PROPOSAL

Pricing for this Agreement is set forth in the Cost Proposal, attached hereto and incorporated by reference.
The Cost Proposal is maintained as a separate Excel workbook titled **IBM Cost Proposal.xlsx**

Attachment H - Cost Proposal

Solicitation Number: SPB-RFP-2025-0563LS

Data Communications

Offeror Name:

IBM

Please note that the list of offerings below (Hardware and Software) are only to be bid on if the Offeror is the OEM.

- Offeror's Minimum Discount: Enter the discount as a percentage % off list price.
- Sales: Please indicate with either "Direct" or "Supplier Partner" to indicate how you currently sell the product.

Data Comm Hardware Sector	Offeror's Minimum Discount	Sales: Direct or Through Supplier Partner
Networking Routers	N/A	N/A
Networking Switches	N/A	N/A
Networking Storage	15%	Direct or Supplier Partner
Optical Networking	N/A	N/A
Wireless Networking	15%	Direct or Supplier Partner
Security Hardware	N/A	N/A

Data Comm Software Sector	Offeror's Minimum Discount	Sales: Direct or Through Supplier Partner
Networking Software Solutions	15%	Direct or Supplier Partner
Security Solutions	15%	Direct or Supplier Partner
Unified Communications	N/A	N/A
Facilities Management, Monitoring and Control	15%	Direct or Supplier Partner

For the services section, the maximum hourly rates will not be scored, but will contribute to the overall evaluation. Please add additional rows

Non-scored section:

Service Type	Maximum Hourly Rate
Integrator	\$473.00
Architect	\$473.00
Engingeer	\$473.00
Installer	\$473.00
Training	\$402.00
Other (PM)	\$348.00

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Offeror Name: **IBM**



1. Describe your relationship with price competitiveness and how do you ensure that the contractual pricing is competitive?

SEE SUPPLEMENTAL ATTACHMENT "Tab 4 IBM Narrative Cost Savings"

2. What measures have been put in place that will enhance cost savings. What tools and communication/transparency capabilities does the Offeror currently have to support this?

SEE SUPPLEMENTAL ATTACHMENT "Tab 4 IBM Narrative Cost Savings"

3. How will you manage pricing volatility?

SEE SUPPLEMENTAL ATTACHMENT "Tab 4 IBM Narrative Cost Savings"

4. Do you provide any tools that assists users in evaluating the total cost of ownership of products offered during the purchasing process (i.e., Contractor tools to assist buyers in identifying equipment that runs more efficiently or that utilizes fewer supplies, etc.).

SEE SUPPLEMENTAL ATTACHMENT "Tab 4 IBM Narrative Cost Savings"

5. Location of data – please provide details around your pricing models when it pertains to where data is stored. Please provide scenarios in which the location of data is provided as an option with different price points available? What is the markup when it is US soil only?

SEE SUPPLEMENTAL ATTACHMENT "Tab 4 IBM Narrative Cost Savings"

Attachment H - Cost Proposal
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Offeror Name:

IBM

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