PARTICIPATING ADDENDUM
NASPO VALUEPOINT COOPERATIVE PURCHASING PROGRAM
Computer Equipment, Peripherals, & Related Services
Administered by the State of Minnesota
(hereinafter "Lead Entity")
MASTER AGREEMENT
Master Agreement No: 23012
International Business Machines Corporation "IBM"

(hereinafter "Contractor" or "Contract Vendor")
and
State of Arkansas
Contract No: 4600054501
(hereinafter "Participating State/Entity")

A. SCOPE:

This participating addendum (PA) covers the NASPO Valuepoint contract for Computer Equipment, Peripherals, & Services administered by the Lead Entity for use by State agencies and other entities located in the State of Arkansas as authorized by that State's statutes to utilize cooperative contracts.

Awarded Bands:

Band 3, Servers & Storage

B. PARTICIPATION:

All eligible purchasers within the State of Arkansas, including State agencies, K-12 educational institutions, and local public procurement units (cities, counties, municipalities), are authorized to purchase products under the terms and conditions of this Participating Addendum.

C. VALUE ADDED SERVICES:

The Contractor **shall not** propose or provide value-added services unless it meets one (1) or more of the following criteria:

1. It is of no cost to the purchasing entity.
2. Services are linked to items the entity has purchased through a current or past transaction.

D. INDIVIDUAL CUSTOMER:

Each state agency and political subdivision, as a Participating Entity, that purchase products/services **shall** be treated as if they are Individual Customers. Except to the extent modified by the State of Arkansas Participating Addendum, each agency and political subdivision will be responsible to follow the terms and conditions of the Master Agreement; and they will have the same rights and responsibilities for their purchases as the State has in the Master Agreement and this Participating Addendum. Each agency and political subdivision **shall** be responsible for their own charges, fees, and liabilities. Each agency and political subdivision **shall** have the same rights to any indemnity or to recover any costs allowed in the contract for their purchases. The Contractor **shall** apply the charges to each Participating Entity individually.

E. ORDER OF PRECEDENCE:

1. Arkansas's Participating Addendum (PA); Arkansas's Participating Addendum shall not diminish, change, or impact the rights of the Lead State with regard to the Lead State's contractual relationship with the Contractor under the Terms of the Lead State's Master Agreement.

2. Lead State's Master Agreement (includes negotiated Terms & Conditions);
3. The Solicitation including all Addendums; and
4. Contractor's response to the solicitation.

These documents **shall** be read to be consistent and complementary. Any conflict among these documents **shall** be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to the Master Agreement are only those that are expressly accepted by the Lead State and **must** be in writing and attached to the Master Agreement as an Exhibit or Attachment. Notwithstanding the foregoing, ordering documents (purchase orders) may contain transaction-specific terms and each ordering document that is accepted by the Contractor **shall** become a part of this Agreement as to the products and services listed on the ordering document only. No other terms and conditions **shall** apply, including terms and conditions listed in the Contractor's response to the Solicitation, or terms listed or references on the Contractor's website, in the Contractor's quotation/sales order or in similar documents subsequently provided by the Contractor (unless such terms are referenced in the Master Agreement).

F. LEASING
Leasing **shall not** be authorized under this Participating Addendum.

G. ACCESS TO CLOUD PRODUCTS AND SERVICES REQUIRE STATE CTO APPROVAL:
Unless otherwise stipulated in this Participating Addendum, Cloud Products & Services accessed through this Participating Addendum by State executive branch agencies are subject to the authority and prior approval of the State Chief Technology Officer's Office. The State Chief Technology Officer means the individual designated by the State Governor within the Executive Branch with enterprise-wide responsibilities for leadership and management of information technology resources of a State. The Contractor **shall** provide the Department of Information Systems (DIS) with a monthly report detailing cloud products and services purchased during the reporting period. Reporting **must** be submitted to DIS.Software.Contracts@arkansas.gov by the 15th of the following month. The State Chief Technology Officer means the individual designated by the State Governor within the Executive Branch with enterprise-wide responsibilities for leadership and management of information technology resources of a State.

H. CLOUD PRODUCTS AND SERVICES:
All servers and data to be stored with the Arkansas instance of the Contractor provided Cloud Products and Services **must** reside in the continental United States. Contractor **shall** perform all work on the Cloud Products and Services from within the continental United States of America provided, however, that the State consents to the global delivery of technical assistance and support via Arkansas Department of Transformation and Shared Services Division of Information Systems monitored and controlled access. Except as specified in this section, the Cloud Products and Services **must not** be accessed from outside of the U.S.

I. SOFTWARE TERMS AND CONDITIONS:
Purchasing Entities that acquire software **shall** be subject to the license agreements (attached hereto as Exhibit "A"), distributed with such software; however, in the event of a conflict in language between an end user license agreement (EULA) and the Participating Addendum the language in the Participating Addendum will supersede and control. In addition, any language in a EULA which violates a Purchasing Entity's constitution, statute or other

applicable law will be deemed void, and of no force or effect, as applied to the Purchasing Entity.

J. TECHNOLOGY ACCESS

When procuring a technology product or when soliciting the development of such a product, the State of Arkansas is required to comply with the provisions of Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, which expresses the policy of the State to provide individuals who are blind or visually impaired with access to information technology purchased in whole or in part with state funds. The Vendor expressly acknowledges and agrees that state funds may not be expended in connection with the purchase of information technology unless that technology meets the statutory Requirements found in 36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating ICSs) and 36 C.F.R. § 1194.22, as it existed on January 1, 2013 (web-based intranet and internet information and applications), in accordance with the State of Arkansas technology policy standards relating to accessibility by persons with visual impairments.

ACCORDINGLY, THE VENDOR EXPRESSLY REPRESENTS AND WARRANTS to the State of Arkansas through the procurement process by submission of a Voluntary Product Accessibility Template (VPAT) for 36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating ICSs) and 36 C.F.R. § 1194.22, that the technology provided to the State for purchase is capable, either by virtue of features included within the technology, or because it is readily adaptable by use with other technology, of:

1. Providing, to the extent required by Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, equivalent access for effective use by both visual and non-visual means.
2. Presenting information, including prompts used for interactive communications, in formats intended for non-visual use.
3. After being made accessible, integrating into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.
4. Providing effective, interactive control and use of the technology, including without limitation the operating system, software applications, and format of the data presented is readily achievable by nonvisual means.
5. Being compatible with information technology used by other individuals with whom the blind or visually impaired individuals interact.
6. Integrating into networks used to share communications among employees, program participants, and the public.
7. Providing the capability of equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

State agencies cannot claim a product as a whole is not reasonably available because no product in the marketplace meets all the standards. Agencies must evaluate products to determine which product best meets the standards. If an agency purchases a product that does not best meet the standards, the agency must provide written documentation supporting the selection of a different product, including any required reasonable accommodations.

For purposes of this section, the phrase "equivalent access" means a substantially similar ability to communicate with, or make use of, the technology, either directly, by features incorporated within the technology, or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state and federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands or other means of navigating graphical displays, and customizable display appearance. As provided in Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, if equivalent access is not reasonably available, then individuals who are blind or visually impaired **shall** be provided a reasonable accommodation as defined in 42 U.S.C. § 12111(9), as it existed on January 1, 2013.

If the information manipulated or presented by the product is inherently visual in nature, so that its meaning cannot be conveyed non-visually, these specifications do not prohibit the purchase or use of an information technology product that does not meet these standards.

K. SHARED TECHNICAL ARCHITECTURE

Solutions **must** comply with the State's applicable shared Technical Architecture Program which is a set of policies and standards that can be viewed here and here. Only those standards which are fully promulgated or have been approved by the Governor's Office apply to this solution.

L. CONFIGURATION LIMITS

The configuration costs that a Contractor may charge **shall** be based on a single computer configuration and **must not** exceed the following:

Item	Configuration
Band Three	$5,000,000
Peripherals	$10,000
Services	$1,000,000

M. PAYMENTS AND INVOICE PROVISIONS:

Payment will be made in accordance with applicable State of Arkansas accounting procedures upon acceptance by the Agency. The Participating State may not be invoiced in advance of delivery and acceptance of any products or services. Payment will be made only after the Contractor has successfully satisfied the ordering agency as to the goods and/or services purchased, rented or leased. Contractors should invoice the ordering agency by an itemized list of charges. Purchase Order Number and/or Contract Number should be referenced on each invoice.

Payments will be submitted to the Contractor at the address shown on the invoice. Payment should be tendered to the Contractor within thirty (30) days of the date of invoice. After the sixtieth (60th) day from the date of the invoice, unless mutually agreed to, interest may be paid on the unpaid balance due to the Contractor at the rate of one half of one percent per month in accordance with Arkansas Code Annotated §19-11-224. The Purchasing Entity will make a good-faith effort to pay within thirty (30) days after date of invoice. Payments may also be made via a Purchasing Entity's Purchasing Card ("P-Card"). The State **shall** have the right to dispute billed goods or services and withhold payment for those goods or services that are in dispute. Interest **shall not** be charged on disputed amounts while in dispute.

Contractor **shall** ensure that all invoices are sent directly to the State agency or local public procurement unit that purchased products from them.

All invoices should be forwarded to:

Agency Name
Attention: Accounts Payable
Address
City, Arkansas Zip Code

N. PURCHASE ORDER INSTRUCTIONS:

All Participating Entities issuing valid purchase orders within the jurisdiction of this Participating Addendum should include the following:

1. NASPO Valuepoint Master Agreement number 23012
2. State contract number 4600054501
3. Agency Name, Address, Contact, and Phone-Number
4. Applicable approvals
5. Orders **shall** be made out to the Contractor or Reseller

The Purchasing Entities **shall not be** required, by the Contractor or its subcontractors, to sign any additional terms and conditions when utilizing this Agreement.

The parties acknowledge and agree that orders submitted to the Contractor from a Participating Entity through the Participating Entity's business P-Card are authorized purchase orders under the (Enter the Cooperative Name (NASPO, Sourcewell, TIPS, etc.) Master Agreement (ENTER MASTER AGREEMENT NUMBER).

O. SUBCONTRACTORS:

The Contractor may use subcontractors; however, the Contractor **shall** be responsible for any agreements with the subcontractors. The Participating State/Entity is not agreeing to and is not responsible for any terms and conditions with a subcontractor. The following subcontractors are authorized to provide product delivery and services:

Subcontractor	**Contact Name**	**Email**	**Phone**
To be provided			

Subcontractors may be updated by mutual agreement.

P. ADMNISTRATIVE FEE & REPORTING

1. Contractor **must** submit quarterly reports to the Arkansas Office of State Procurement via

email to OSP.ITContracts@arkansas.gov. Reports **shall** be due on or before the last day of the month following the end of the quarter. The contractor **shall** provide an electronic usage report in Excel format which lists, but is not limited to, the following:

1) Vendor Contract Number
2) State
3) Customer Type (State, Education, Local Government)
4) Bill to Name
5) Customer PO Number
6) Customer Number
7) Order Date
8) Product/Service Description
9) Baseline Price
10) Minimum Band Discount Applied
11) Discount Unit Price
12) Quantity
13) Total Price

2. An administrative fee of one half (1/2) of one (1) percent of the net sales per quarter **shall** be collected on behalf of the State of Arkansas and **shall** be submitted within 45 days following calendar quarter end, in accordance with the following schedule.

Period End	Admin Fee Due
June 30	August 14
September 30	November 14
December 31	February 14
March 31	May 15

The administrative fee shall be submitted to the following address:

Office of State Procurement
Attn: Contract Administration Fee
501 Woodlane Street, Suite 220
Little Rock, AR 72201

Q. CONVENIENCE FEE:

1. Convenience Fee

Contractor **shall** remit a convenience fee in the amount of one percent (1%) of all Contract Sales made to the State, State Departments, and to local entities as defined in Arkansas Code Annotated § 19-11-206 (i.e. local governments, cities, counties, school districts, water districts, and other participants, collectively “State”). The convenience fee is based on Contractor invoice date and is effective upon the date of execution of this amendment or July 1, 2020, whichever is earlier. Contract Sales is defined as gross sale amounts less credits, taxes, regulatory fees and separately stated shipping charges not included in the unit prices. The State, at its sole discretion, may expand the applicability of this fee after providing notice to Contractors.

Unit prices are inclusive of the convenience fee and Contractor is not to charge the fee directly to the State in the form of a separate line item. Contracts **shall not** have separate or different prices for State Agency customers and local entities as defined in Arkansas Code Annotated § 19-11-206 participants.

2. Quarterly Reporting and Fee Remittance

   Contractor **shall** submit a Sales Report documenting all contract sales, made to the State and such submission, including any supplemental information submitted, is deemed public record.

   The Sales Report **shall** be submitted, and the related convenience fee **shall** be remitted no later than thirty (30) calendar days after the end of each calendar quarter. The calendar quarters will end March 31, June 30, September 30, and December 31. The Sales Report **must** contain the following information:

   a. Complete and accurate details of all sales, credits, returns, refunds, and the like for the reporting quarter
   b. Purchasing entity
   c. Total of Convenience Fee amount due
   d. Such other information as the State may reasonably request
   e. If no Sales were made to State during the reporting quarter, then a report **shall** be submitted showing zero sales and zero convenience fees due.

3. Payment of Convenience Fee

   The Contractor **shall** timely remit Convenience Fee via Automated Clearing House (ACH) transactions, unless otherwise directed by State, to the bank account directed by the State. Failure to remit convenience fees timely and accurately in accordance with State requirements may result in Contractor's goods and services being made ineligible for purchase by State or any other recourse available, including contract cancellation, or as further provided for by law.

4. Retention and Inspection of Records

   The Contractor **shall** keep records of Sales to State in sufficient detail to enable the State to determine the Convenience Fee payable by the Contractor. State may examine and audit, at its own expense, Contractor's sales records and Sales Reports for completeness and accuracy. In the event that such examination reveals underpayment of the Convenience Fee, the Contractor **shall** immediately pay to the State the amount of deficiency. If the examination reveals an underpayment of 5% or more, then the Contractor **shall** reimburse the State for the cost of the audit.

R. RECORD RETENTION:

Financial and accounting records relevant to State of Arkansas transactions under this Addendum **shall** be subject to examination by appropriate Arkansas government authorities for a period of five (5) years from the expiration date and final payment under this Addendum or extension thereof, provided, however, that such government authorities will provide thirty

(30) days written notice to the Contractor of its intent to conduct such examination contemplated by this section.

S. GOVERNING LAW:

The laws of the State of Arkansas **shall** govern this agreement. Nothing under this agreement or the Master Agreement **shall** be deemed or construed as a waiver of the State's right to sovereign immunity.

T. VENUE AND JURISDICTION:

Venue for any claim, dispute, or action concerning an order placed against the contract **shall** be Pulaski County, Arkansas. Any claims against the State, whether sounding in tort or in contract, **shall** be brought before the Arkansas State Claims Commission as provided by Arkansas law, and **shall** be governed accordingly.

U. TAXES:

Personal Property tax will not be charged to Arkansas state agencies.

V. TRAVEL EXPENSES:

Expenses for travel **shall not** be reimbursed unless specifically permitted under the duties of the Contractor. All travel **must** be approved in advance by the State. Approved expenditures made by the Contractor for travel will be reimbursed at the current rate paid by the State and in accordance with Arkansas Travel Guidelines and Procedures.

W. CANCELLATION:

1. **For Convenience.** The State may cancel this Agreement for any reason by giving the Contractor written notice of such cancellation sixty (60) days prior to the date of cancellation.

2. **For Cause.** The State may cancel this Agreement for cause when the Contractor fails to perform its obligations under it by giving the Contractor written notice of such cancellation at least thirty (30) days prior to the date of proposed cancellation. In any written notice of cancellation for cause, the State will advise the Contractor in writing of the reasons why the State is considering cancelling the Agreement and provide the Contractor with an opportunity to avoid cancellation for cause by curing any deficiencies identified in the notice of cancellation for cause prior to the date of proposed cancellation. The parties may endeavor to agree to reasonable modifications in the Agreement to accommodate the causes of the cancellation for cause and avoid the cancellation, to the extent permitted by law, and at the discretion of each party individually.

3. If upon cancellation the Contractor has provided services which the State has accepted, and there are no funds legally available to pay for the services, the Contractor may file a claim with the Arkansas Claims Commission under the laws and regulations governing the filing of such claims.

X. INDEMNIFICATION:

The following indemnification clause replaces in its entirety the Indemnification Clause specified in the Master Agreement.

INDEMNIFICATION – The Contractor **shall** be fully liable for the actions of its agents and employees, partners, and subcontractors and **shall** fully indemnify, defend, and hold harmless the Purchasing Entity and the State, and their officers, agents, and employees from third-party suits, actions, damages, and costs of every name and description, including reasonable attorney's fees (collectively "Claims"), arising from or related to personal injury and damage to real or tangible personal property, alleged to be caused in whole or in part by the negligence or willful misconduct of Contractor, its agents, or employees, partners, and subcontractors. In all Claims, Contractor will defend the Purchasing Entity and the State against the Claims, and pay amounts finally awarded by a court against Purchasing Entity or the State or included in a settlement approved by the parties. Contractor's obligations in this Section X. are subject to the Purchasing Entity or the State's (1) prompt written notice of any such Claims; (2) supplying information reasonably requested by Contractor. Language in this clause **shall not** be construed or deemed as the State's waiver of its right of sovereign immunity. The Contractor agrees that any claims against the State, whether sounding in tort or in contract, **shall** be brought before the Arkansas State Claims Commission as provided by Arkansas law, and **shall** be governed accordingly. This section is not subject to any limitations of liability in the Master Agreement or in any other document executed in conjunction with the Master Agreement.

Y. CONFIDENTIAL INFORMATION:

Under Arkansas law, the release of public records is governed by The Arkansas Freedom of Information Act found at Section 25-19-101 et. seq. of the Arkansas Statutes.

Z. CONTINGENT FEE:

The Contractor guarantees that Contractor has not retained a person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the Contractor for the purpose of securing business.

AA. DISCLOSURE AND CERTIFICATIONS:

1. DISCLOSURE

   Under Arkansas law, OSP is required to have a copy of EO 98-04 Disclosure Form on file for the Contractor. Contractor **shall** submit the disclosure form prior to entering into this Addendum. Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that order, **shall** be a material breach of the terms of this PA. Any Contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy **shall** be subject to all legal remedies available to the State.

2. RESTRICTION OF BOYCOTT OF ISRAEL (for contracts valued at $1,000 or greater)

   Pursuant to Arkansas Code Annotated § 25-1-503, a public entity **shall not** enter into a contract with a company unless the contract includes a written certification that the person or company is not currently engaged in and agrees for the duration of the contract not to engage in, a boycott of Israel. By signing this Participating Addendum, a Prospective Contractor agrees and certifies that they do not, and **shall not** for the duration of the contract, boycott Israel.

3. ENERGY, FOSSIL FUEL, FIREARMS, & AMMUNITION BOYCOTT RESTRICTION (for contracts valued at $75,000 or greater)

   Pursuant to Arkansas Code Annotated § 25-1-1102, a public entity **shall not** enter into a contract with a company unless the contract includes a written certification that the person or company is not currently engaged in, and agrees for the duration of the contract not to engage in, a boycott of an Energy, Fossil Fuel, Firearms, or Ammunition Industry. By signing this Participating Addendum, a Prospective Contractor agrees and certifies that they do not, and **shall not** for the duration of the contract, boycott the energy, fossil fuel, firearms, and/or ammunition industries.

4. RESTRICTION OF SCRUTINIZED COMPANIES

   Pursuant to Arkansas Code Annotated § 25-1-1203, a state agency shall not contract with a Scrutinized Company or a company that employs a Scrutinized Company as a subcontractor. A Scrutinized Company is a company owned in whole or with a majority ownership by the government of the People's Republic of China. A state agency shall require a company that submits a bid or proposal for a contract to certify that it is not a Scrutinized Company and does not employ a Scrutinized Company as a subcontractor.

5. EQUAL OPPORTUNITY POLICY

   In compliance with Arkansas Code Annotated § 19-11-104, if a state agency is purchasing services, the Office of State Procurement (OSP) is required to have a copy of the Contractor's *Equal Opportunity (EO) Policy* prior to entering into a contract. *EO Policies* **must** be submitted in electronic format with this Addendum. The submission of an *EO Policy* is a one-time requirement. Contractor is responsible for providing updates or changes to its policy, and for supplying *EO Policies* upon request to other State agencies that must also comply with this statute. If Contractor is not required by law to have an *EO Policy*, Contractor **must** submit a written statement to that effect.

6. PROHIBITION OF EMPLOYMENT OF ILLEGAL IMMIGRANTS (for services contracts)

   Pursuant to Arkansas Code Annotated § 19-11-105, if a state agency is purchasing services, the Office of State Procurement (OSP) is required to have a certification on file from the Contractor stating that the Contractor does not employ or contract with illegal immigrants. By signing this Participating Addendum, the Contractor agrees and certifies that they do not employ or contract with illegal immigrants and that they **shall not** employ or contract with illegal immigrants during the aggregate term of the contract.

7. PERFORMANCE STANDARDS (for services contracts)

   Under Arkansas law, all state agencies, boards, commissions, and institutions of higher education **must** include performance standards when purchasing services. Performance standards **shall** be mutually agreed upon by the parties hereto for any services purchased.

BB. VENDOR REGISTRATION:
In order to receive payment, Contractor **must** register online at Vendor Services.

CC. TERMS:
The Participating State/Entity is agreeing to the terms of the Master Agreement only to the extent the terms are not in conflict with Arkansas law.

DD. PRIMARY CONTACTS:
The primary contacts for this participating addendum are as follows (or their named successors):

1. Lead State

Name:	Minnesota Office of State Procurement
Contact Person:	Beth Randa
Address:	112 Administrative Bldg., 50 Sherburne Ave., Saint Paul, MN 55155
Telephone:	651-201-3122
E-Mail:	Elizabeth.Randa@state.mn.com

2. Contractor

Company Name:	International Business Machines Corporation
Contact Person:	Urania Davis
Address:	7100 Highlands Parkway, Smyrna, GA 30082
Telephone:	919-486-6625
E-Mail:	Urania.Davis1@ibm.com

3. Arkansas Contact

Company Name:	State of Arkansas TSS Office of State Procurement
Contact Person:	Shane Phillips
Address:	501 Woodlane Street, Suite 220, Little Rock, Arkansas 72201
Telephone:	501-324-9322
E-Mail:	Shane.Phillips@arkansas.gov

The contacts listed above can be changed by the parties from time to time in writing. Such updates do not require an amendment to this Addendum.

PARTICIPATING ADDENDUM
NASPO VALUEPOINT COOPERATIVE PURCHASING PROGRAM
MASTER AGREEMENT # 23012

This Participating Addendum and Master Agreement #23012 (administered by the State of Minnesota), together with its exhibits (including any terms referenced in the Master Agreement), set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Orders may include Order specific terms and conditions, however, terms and conditions inconsistent with, contrary to, or any other terms and conditions in addition to the terms and conditions of this Addendum or the Master Agreement, together with its exhibits, **shall not** be added to or incorporated into this Participating Addendum or the Master Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Participating Addendum and the Master Agreement and its exhibits **shall** prevail and govern in the case of any such inconsistent or additional terms within the Participating State.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating Entity: State of Arkansas	Contractor: International Business Machines Corporation
Signature: Jessica Patterson	Signature: Urania Davis
Name: Jessica Patterson	Name: Urania Davis
Title: State Procurement Director	Title: Public Sector Program Manager
Date: September 23, 2024	Date: September 11, 2024

State of Arkansas NASPO CE Participating Addendum
Attachment – Exhibit A

In years past, the prior NASPO Computer Equipment (“CE”) agreements, contractor software license, service, support, maintenance and other terms were embedded in the master agreement. However, for this latest agreement, the NASPO CE Lead State of Minnesota removed such terms from the Master Agreement and advised that each state should be responsible for inserting the applicable Contractor license and other terms in the applicable Participating Addendum.

Therefore, the following terms and conditions included as an attachment to the PA apply to Orders pursuant to the Participating Addendum.

State regulations or other applicable laws that conflict with a provision contained within the attached terms and conditions **must** take precedence over the conflicting term. The attached terms are incorporated herein by reference. While the contents of the attached terms are subject to change, the version in effect at the time of execution of the Order **shall** apply. Material changes to later versions **shall not** be applicable to the Order unless and until the Purchasing Addendum is formally amended. The attached terms and conditions also apply to Orders purchased through an approved Reseller. All Resellers (along with any downstream Distributors) **must** be approved in writing by the State and Contractor. All Resellers and Purchasing Entities **must** identity this PA number along with the NASPO CE Master Agreement number in the Order. Orders **shall** contain the Contractor’s Statement of Work, Transaction Document, Service Description, and/or Proof of Entitlement that applies to the specific Product and/or Service ordered.

International Program License Agreement

Part 1 – General Terms

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, CLICKING ON AN "ACCEPT" BUTTON, OR OTHERWISE USING THE PROGRAM, LICENSEE AGREES TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF LICENSEE, YOU REPRESENT THAT YOU HAVE FULL AUTHORITY TO BIND LICENSEE TO THESE TERMS.

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,. 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.

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

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 6. Governing Laws and Geographic Scope

In United States,:. the State of Arkansas, United States.

Section 7. General

In paragraph g:

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

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 International Program License Agreement ("IPLA") unless otherwise specified by IBM. A copy of the IPLA is provided with each Program in the Eligible Program's directory or in a library identified as "License," a booklet, or on a CD. Sections of the IPLA entitled "Licensee Data and Databases," "Limitation of Liability," "Compliance Verification," "General," and "Geographic Scope and Governing Law," including any associated Country-unique Terms applicable to those sections are also part of this Agreement, subject to the following:

a. If the IPLA version provided with the IBM Eligible Program is not version 13 or higher (the version number is indicated by the last two digits in the form number – for example, the "13" in Z125-3301-13), then version 13 applies. Customer may obtain a copy of version 13 from IBM or its resellers and on the Internet at www.ibm.com/software/sla; and
b. the following changes:
   (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" 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" in the Jurisdiction subsection 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 are listed at www-1.ibm.com/servers/eserver/zseries/library/swpriceinfo. Click on IPLA Subscription and Support Addenda.

(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) RESERVED.

(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 Handbook at www14.software.ibm.com/webapp/set2/sas/f/handbook/home.html.

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 are listed at www.ibm.com/servers/eserver/iseries/sftsol/subscript2.htm or 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 Handbook at www14.software.ibm.com/webapp/set2/sas/f/handbook/home.html.

(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, 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 Handbook at www14.software.ibm.com/webapp/set2/sas/f/handbook/home.html. 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. 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.

Part 2 – Country-unique Terms

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.

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.

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 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.

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.

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

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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.

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 Software Subscription and Support (S&S), Cloud Services, or other Services IBM provides, such as customization, configuration, or other services to support EPs, as detailed in a 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, License Information documents (LIs), 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.

Subject to Section 8, in the event of conflict, an Attachment prevails over this IPAA, and a TD prevails over any Attachment and this IPAA.

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. A DPA Exhibit(s) will specify how IBM will process personal data contained in Content. The DPA and applicable DPA Exhibit(s) apply to personal data contained in Content, if and to the extent: i) the European General Data Protection Regulation (EU/2016/679); or ii) other data protection laws identified at http://www.ibm.com/dpa/dpl apply. Upon request by either party, IBM, Client and/or their respective affiliates, will enter into additional agreements as required by law in the prescribed form for the protection of regulated personal data included in Content. The parties agree (and will ensure that their respective affiliates agree) that such additional agreements will be subject to the terms of the Agreement.

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. 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, 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. Client 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) unless otherwise stated, 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 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. If Client pays for Subscription License charges through periodic (annual, quarterly, monthly) billings, Client's obligation to pay such charges is absolute and unconditional and Client agrees not to assert any right of setoff against IBM or any assignee of IBM. Neither IBM nor IBM's affiliates and subsidiaries make any representation regarding Client's accounting treatment of such payments; IBM may account for such receivables as financing receivables for United States reporting purposes.

4.1 License Verification

a. Client 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 of deployed Programs, 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 the Agreement at all Sites and for all environments, in which Client uses (for any purpose) Programs. 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 written confidentiality agreement 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. For 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. For 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 Non-IBM EPs, items not provided by IBM, or any violation of law or third-party rights caused by Content, or any Client materials, designs, specifications, or 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 term. 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.

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. Program License

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 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. Trade-up licenses for Programs that replace qualifying IBM Programs active on S&S or qualifying Non-IBM Programs may be acquired for a reduced charge. When Client installs a replacement Program, the replaced Program license terminates, Client is required to uninstall and destroy all terminated copies of the replaced Program, and upon request from IBM, provide evidence of such.

8.1 IBM Software Subscription and Support

a. IBM Software Subscription and Support (S&S) for IBM Programs is detailed in the IBM Support Guide at http://www.ibm.com/support/guide. IBM provides S&S for each IBM Program licensed under this IPAA that Client has active S&S. S&S begins and ends as specified in a TD.

b. Software Subscription provides Client access to generally-available defect corrections, restrictions, bypasses, and any new versions, releases, or updates.

c. Software Support (Support) provides Client assistance with Client's: i) routine, short duration installation and usage (how-to) questions; and ii) code-related questions. Support for a specific version or release of an IBM Program is available only until IBM withdraws the Support for that IBM Program's version or release. Client must upgrade to a supported version or release of the IBM Program to continue to receive Support. The IBM Software Support Lifecycle policy is available at http://www.ibm.com/support/lifecycle.

d. After Support is withdrawn for selected IBM Program versions or releases, listed in the IBM Support Guide and while Client has current S&S coverage for such IBM Programs, IBM will continue to provide Support only for existing code patches and fixes. IBM will not develop or provide new patches or fixes for those selected IBM Program versions or releases.

e. IBM uses information about errors and problems to improve IBM Programs and Services and assist with the provision of related support offerings.

f. If Client elects to continue S&S for an IBM Program at a designated Site, Client must maintain S&S for all uses and installations of the IBM Program at that Site.

g. If Client requests to renew expiring S&S at a lesser quantity of IBM Program uses and installations than the expiring quantity, Client must provide system generated documentation that verifies current uses and installations of the IBM Program to IBM, as specified in the Agreement. If the documentation is not received by IBM at least 30 days prior to the S&S renewal date, Client must renew all expiring quantities.

h. If Client’s S&S coverage lapses, the benefits of S&S will no longer be available to the Client including the ability to access the Program’s downloads, media, and fixes. To reinstate S&S, Client must acquire S&S at then current prices for all uses and installations.

i. Client shall not use S&S benefits for IBM Programs for which Client is not fully authorized. If Client does, Client must reinstate S&S for all such unauthorized uses and installations at then current prices.

9. Term Licenses and Renewal

a. Programs IBM offers under term licensing models give Client access to a Program and S&S for a term duration specified in applicable TDs. The license term begins and ends as specified in a TD.

b. When the license term of the Program ends, Client's access to the Program and S&S will terminate and Client is required to uninstall and destroy all terminated copies of the affected Program. Client agrees to provide evidence of such upon request from IBM.

9.1 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 S&S (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.

9.2 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.

9.3 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.

9.4 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 for another term, Client's right to use the Program and S&S terminates and Client is required to uninstall and destroy all terminated copies of the affected Program. Client agrees to provide evidence of such upon request from IBM.

c. If Client does not renew a Subscription License Upgrade Program for a new term, Client's right to use the Program and S&S terminates and Client is required to uninstall and destroy all terminated copies of the affected Program except the Qualifying Program. Client agrees to provide evidence of such upon request from IBM. 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 available S&S for the Qualifying Program, Client must acquire the S&S 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 then 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. If available, Client may change the renewal option for a Term License at any time by giving IBM at least 30 days' written notice before the end of the current term.

10. Full Capacity and Virtualization Requirements

a. Client must license the total number of physical processor cores activated and available for use on all servers where the EP, if applicable, is deployed (Full Capacity).

10.1 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.

10.2 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 version 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.

- 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.
- 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 may track (manually or using an available IBM tools) and report Client's licenses for each EP at least once a year and retain each report a minimum of 2 years and 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 this 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.

10.3 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, the Client agrees to promptly pay the charges at then current prices that IBM specifies in an invoice for: i) any 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.

11. Selected Support

a. IBM may provide Selected Support services for Programs that: i) are not typically supported by IBM; and ii) are licensed to Client under separate license terms, such as non-warranted IBM Programs, Non-IBM Programs, or Open-Source Code Programs. Selected Support provides Support Services and may also provide Client assistance with application design and development as specified by IBM. IBM's Software Support Lifecycle does not apply to these Programs and Subscription Services are not offered for these Programs. If Client allows Selected Support Services coverage to lapse, Client may acquire new coverage at then current prices.

12. CEO (Complete Enterprise Option) Product Categories

a. Collections of EPs may be offered by IBM on a per user basis subject to a minimum initial user quantity (a CEO Product Category). 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). 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 component of a CEO Product Category can only be used by or for users for whom licenses have been obtained. All Programs used on an end user device to access a Program on a server must be acquired from the same CEO Product Category as the server Program they access.

13. 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.

13.1 Appliance Services

a. IBM provides Appliance Services consisting of Machine maintenance and S&S as a single offering as well as other service offerings described in the IBM Appliance Support Guide at https://www.ibm.com/support/pages/node/737691.

b. Appliance Services cover undamaged and properly maintained and installed Appliances used as authorized by IBM with unaltered identification labels. 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. One year of Appliance Services is included with the purchase of an Appliance starting on the Warranty Start Date specified in a TD.

c. If Client renews Appliance Services for an Appliance, Client must: i) also renew any expansions or add-ons applied to the Appliance; and ii) maintain Appliance Services for all uses and installations of the Appliance and expansions at a designated Site. All renewals will be fulfilled with Appliance Services offered at the same level of service, if available, that Client was entitled to during that prior coverage.

d. If Client allows Appliance Services coverage to lapse, the benefits of Appliance Services will no longer be available to the Client. To reinstate Appliance Services, Client must acquire Appliance Services at then current prices for all uses and installations. The Appliance may be inspected by IBM no later than 30 days after Appliance Services have been reinstated. If the Appliance is not in acceptable condition, Client must restore the Appliance into acceptable working condition, as determined by IBM, to receive Appliance Service for that Appliance.

e. Parts 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.

14. 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 a 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.

15. 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, Appliance Services, or other 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 any of Client’s regulatory or other obligations or assume any responsibility for Client’s business or operations. 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. RESERVED.

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. 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.

l. 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.

m. 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.

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 five 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 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.

p. 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

q. remains responsible to IBM for timely payments of invoices. If there is a claim or proceeding against IBM related to IBM's proper use of Client's requested third-party service, Client is responsible to reimburse IBM for reasonable defense costs and any amounts IBM is required to pay due to such claim or proceeding. Such claims or proceedings include those due to the third-party service provider's use, misuse, or disclosure of data or confidential information disclosed through the third-party service or the third-party's failure to comply with applicable data protection laws. IBM agrees to promptly notify Client in writing of any such claim or proceeding.

Part 2 – Country Required Terms

For licenses 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 4. Charges, Taxes, Payment, and Verification

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 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 United States: the State of Arkansas, United States.

Client Relationship Agreement

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

This Client Relationship Agreement (CRA) and applicable Attachments and Transaction Documents are the complete agreement regarding each transaction under this CRA (together, the "Agreement") under which Client may order Programs, Cloud and other Services, Machines and Appliances (collectively, IBM Products) and third-party products and services (Non-IBM Products).

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.

1. Program License

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. Services – 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.

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.

2.1 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.

2.2 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.

3. Services – Other 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.

3.1 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.

3.2 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. 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.

4.1 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.

5. Content and Data Protection

a. Content consists of all data, software, and information that Client or its authorized users provides, authorizes access to, or inputs to the Cloud Service or information or data Client may provide, make available or grant access to, in connection with IBM providing 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. Use of the Cloud Services or other 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 Cloud Services or other Services. IBM will treat all Content as confidential by only disclosing to IBM employees and contractors to the extent necessary to provide the Cloud Services or perform other Services.

c. Client is responsible for obtaining all necessary rights and permissions to permit processing of Content in the Cloud Services or to provide 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 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 Services.

e. IBM Data Security and Privacy Principles (DSP), at http://ibm.com/terms/?id=z126-7745, apply for generally available standard Cloud Services and other 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 Cloud Service or other Services will be described in the applicable Attachment and TD. 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 or the use of Content with the Services IBM will provide. Client acknowledges that the use of Cloud Services and other 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. For 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 Cloud Service, other 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.

6. Warranties

a. IBM warrants that a Program, when used in its specified operating environment conforms to its specifications. The warranty period for a Program (not the Program component of an Appliance) 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. IBM warrants that it provides Cloud Services and 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 Cloud Services or Services ends when the Cloud Services or Services end.

d. 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.

e. If a Machine, Appliance, or 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.

f. **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 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.**

g. Additional support available during or after the warranty period may be available under separate agreement.

7. Charges, Taxes, Payment and Verification

a. Client's right to use an IBM Program or Non-IBM Program or 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.

b. 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. 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 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.

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 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.

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.

f.

IBM may change recurring charges, labor rates and minimum commitments on 90 days' notice, except for Cloud Services. 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. 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.

7.1 Licensing 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.

8. 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.

9. 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. 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.

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.

10. Governing Laws and Geographic Scope

a. Both parties agree to the application of the laws of the State of Arkansas, United States, without regard to conflict of law principles. Any disputes will be brought before a court of competent jurisdiction within the United States.

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 or remotely delivered IBM or Non-IBM 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.

11. 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. If confidential information is exchanged in connection with the Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this CRA. This paragraph does not apply to Content provided in the use of an IBM Cloud Service or Non-IBM Cloud Service.

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 accepted 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. [RESERVED]

i. [RESERVED]

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.

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p. [RESERVED]