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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Date: March 7, 2023

Agenda Item No. 8(P)(10)

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor

Resolution No. R-193-23

Subject: Recommendation for Approval to Award a Legacy Contract: L9130-0/27 IBM Hardware, Software, Maintenance, Support and Professional Services

Summary
This item is for the award of a legacy contract for a new Master Agreement with International Business Machines Corporation (IBM) for the Information Technology Department (ITD). For over 35 years, Miami-Dade County (County) has relied on IBM software licenses and computer hardware infrastructure to support many mission-critical enterprise and departmental functions. These systems include Criminal Justice Information System, Financial Accounting Management Information System, Enterprise Land Use and Permitting, Human Resources, Traffic system, PeopleSoft Financials and Payroll, and the Miamidade.gov platform. Modernization efforts continue for systems reliant on the mainframe. While some of the systems above are slated to be retired within the next few years, there are those that funding for a replacement solution has yet to be identified; therefore, they will require continued maintenance and support of the IBM mainframe. Furthermore, all historical financial data for County operations is stored within the mainframe environment and must be retained to meet Florida Statutes requirements. In addition to supporting the mainframe environment, this contract will allow the County to obtain services required to support and upgrade critical applications and infrastructure, as well as secure disaster recovery systems.

Recommendation
It is recommended that the Board of County Commissioners (Board) approve this request for award of *Legacy Contract No. L9130-0/27, IBM Hardware, Software, Maintenance, Support and Professional Services* for ITD in the amount of $38,000,000 for five years pursuant to Section 2-8.1(b)(2) of Miami-Dade County Code. The Small Business Enterprise measures and local preference do not apply as this is a legacy contract.

This contract will replace *Contract No. L9130-5/21-5* which, was awarded by the Board via Resolution No. R-705-16 on July 19, 2016, for one-year with five, one-year option to renew terms and an allocation of $8,222,000 for the initial term. The contract was subsequently presented to the Board on October 3, 2017 for approval of $33,000,000 for the option to renew terms, which was adopted via Resolution No. R-844-17. During the contract term, multiple modifications were approved under delegated authority resulting in additional allocation totaling $7,850,500.

Background
On October 3, 2017, the Board adopted Resolution No. R-844-17 for five, one-year option to renew terms to the IBM contract expiring in April 2023. At the time, information was provided pertaining to the modernization efforts being pursued for the County's Enterprise Land Use and Permitting System, Criminal Justice Information System, and implementation services for the Enterprise Resource Planning Solution. These three critical County systems account for a significant portion of the IBM mainframe and modernization efforts continue as detailed below.

The Enterprise Resource Planning Solution (ERP) utilizes the County's Oracle PeopleSoft products and applications to improve workflows and increase operational efficiencies. In addition, the system manages administrative processes as the official system of record for the County's Human Resources, Payroll, Procurement, Finance, and Budget functions and related reporting. On June 19, 2018, the Board adopted Resolution No. R-642-18 approving the competitive award for ERP implementation and

integration services. In late 2018, implementation of the ERP solution, branded INFORMS, commenced. As of December 2022, all INFORMS applications are live and have replaced the legacy Financial, Procurement and Administrative systems (FAMIS and ADPICS). All Human Resource applications including, Time, Leave and Payroll have been completed except for late changes that must be processed in the mainframe system for the next 18 months. Although the system modernizations have been completed, the existing mainframe applications must remain active due to Florida Statutes record retention requirements that vary depending on the data set. Currently, the County is evaluating different platforms to migrate the application data in the legacy mainframe and ensure compliance with Florida Statutes.

On July 10, 2018, the Board adopted Resolution No. R-691-18 approving the rejection of all proposals for the Enterprise Land Use and Permitting Solutions. The negotiated prices significantly exceeded the County's budget to acquire the new solution. Upon adoption of the rejection, the Information Technology Department (ITD) and the Department of Regulatory and Economic Resources (RER) determined it was in the best interest of the County to develop a hybrid solution utilizing in-house and third-party products. A portion of the modernized land use functionalities include a self-service portal for multiple zoning applications submissions and a back-office system for concurrent and collaborative reviews. Modernizations that have been completed for permitting include back-office functions for building permits plans tracking; online portal for permit submission/rework/revise and tracking; and online submission capability for Municipal and Unincorporated Certificate of Use. Remaining functionalities slated for modernization include various permit types, reviews, inspections, violations, certifications, fee assessment, collections, and cashiering integration to the INFORMS system.

The Criminal Justice Information System (CJIS) is an integrated system providing functionalities in support of all criminal justice agencies. In May 2021, the Board approved RFP-00162 for the replacement the court case functionalities within CJIS and it is estimated to be completed October 2025. However, functions supporting Miami-Dade Corrections and Rehabilitation (MDCR) such as Booking, Cell Management and Releases must remain on the mainframe until a new Jail Management System (JMS) is implemented. Additionally, a JMS will replace the Inmate Profile System that automates jail processes to MDCR and runs on the mainframe. As an integrated system, CJIS also provides Miami-Dade Police Department (MDPD) with Warrants Processing and Positive Identification functionalities and must remain on the mainframe until a Records Management System (RMS) is implemented. Currently timelines for the implementations of the JMS and RMS are not available. Lastly, the Traffic Information System and the Parking Violation System also reside on the mainframe and funding needs to be identified for modernization efforts to begin.

IBM is the sole proprietor and developer of the software licenses, maintenance, and support services required by the County. The software applications and systems supported by IBM are critical to providing services to the public and the internal processes that make service delivery possible. The availability of competition will be continually monitored; however, replacing the IBM infrastructure supported by this contract is not an option for the County as it provides support to critical County systems. Accordingly, it is in the County's best interest to award this legacy contract to IBM Corporation pursuant to Section 2-8.1(b)(2) of the County Code to ensure continued maintenance of the IBM proprietary hardware and software, and to obtain any services required to support critical applications and infrastructure.

Scope
The scope of this item is countywide in nature.

Fiscal Impact/Funding Source
The fiscal impact for the five-year term is $38,000,000. The current contract, L9130-5/21-5, is valued at $49,072,500 and expires on April 30, 2023. The allocation requested under this replacement contract accounts for present inflationary conditions as well as maintenance and support, hardware,

cloud services, software as a service, licenses and professional services required through the term of the contract.

Department	Allocation	Funding Source	Contract Manager
ITD	$38,000,000	Internal Service Funds	Mirta Lopez Cardoso
Total:	**$38,000,000**		

Track Record/Monitor
Angela Mathews-Tranumn of the Strategic Procurement Department is the Procurement Contracting Manager.

Delegated Authority
If this item is approved, the County Mayor or County Mayor's designee will have the authority to exercise all provisions of the contract, including any cancellation or extension provisions, pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38.

Vendor Recommended for Award

Vendor	Principal Address	Local Address*	Number of Employee Residents 1) Miami-Dade 2) Percentage*	Principal
International Business Machines Corporation	New Orchard Road Armonk, NY	1 Alhambra Plaza Suite 1415 Coral Gables, FL	198 .05%	Arvind Krishna

*Provided pursuant to Resolution No. R-1011-15. Percentage of employee residents is the percentage of vendor's employees who reside in Miami-Dade County as compared to the vendor's total workforce.

Due Diligence
Pursuant to Resolution No. R-187-12, due diligence was conducted in accordance with the Strategic Procurement Department's Procurement Guidelines to determine contractor responsibility, including verifying corporate status and that there are no performance or compliance issues through various vendor responsibility lists and a keyword internet search. The lists that were referenced included convicted vendors, debarred vendors, delinquent contractors, suspended vendors, and federal excluded parties. There were no adverse findings relating to contractor responsibility.

Applicable Ordinances and Contract Measures
- The two percent User Access Program provision applies where permitted by the funding source.
- The Small Business Enterprise measures and Local Preference do not apply.
- The Living Wage Ordinance does not apply as the services to be procured are not covered services under the Ordinance.

Edward Marquez
Chief Financial Officer

MEMORANDUM
(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: March 7, 2023

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(P)(10)

Please note any items checked.

_____	**"3-Day Rule" for committees applicable if raised**
_____	**6 weeks required between first reading and public hearing**
_____	**4 weeks notification to municipal officials required prior to public hearing**
_____	**Decreases revenues or increases expenditures without balancing budget**
_____	**Budget required**
_____	**Statement of fiscal impact required**
_____	**Statement of social equity required**
_____	**Ordinance creating a new board requires detailed County Mayor's report for public hearing**
_____	**No committee review**
_____	**Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve**
✓	**Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(P)(10)
3-7-23

RESOLUTION NO. R-193-23

RESOLUTION AUTHORIZING AWARD OF A LEGACY CONTRACT FOR IBM HARDWARE, SOFTWARE, MAINTENANCE, SUPPORT AND PROFESSIONAL SERVICES FOR THE MIAMI-DADE INFORMATION TECHNOLOGY DEPARTMENT, CONTRACT NO. L9130-0/27 TO INTERNATIONAL BUSINESS MACHINES CORPORATION IN A TOTAL AMOUNT NOT TO EXCEED $38,000,000.00 FOR A FIVE-YEAR TERM; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE CONTRACT AND TO EXERCISE ALL PROVISIONS OF THE CONTRACT, INCLUDING ANY CANCELLATION OR EXTENSION PROVISIONS, PURSUANT TO SECTION 2-8.1 OF THE COUNTY CODE AND IMPLEMENTING ORDER 3-38

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. This Board authorizes award of a legacy contract pursuant to section 2-8.1(b)(2) of the County Code to International Business Machines Corporation in a total amount not to exceed $38,000,000.00 for a five-year term for Contract No. L9130-0/27, in substantially the form attached hereto and made a part hereof, for IBM Hardware, Software, Maintenance, Support and Professional Services for the Miami-Dade Information Technology Department.

Section 2. This Board further authorizes the County Mayor or County Mayor's designee to execute the contract and to exercise all provisions, including any cancellations or extension provisions, pursuant to section 2-8.1 of the County Code and Implementing Order 3-38.

The foregoing resolution was offered by Commissioner **Anthony Rodriguez**, who moved its adoption. The motion was seconded by Commissioner **Marleine Bastien** and upon being put to a vote, the vote was as follows:

Oliver G. Gilbert, III, Chairman	**aye**		
Anthony Rodríguez, Vice Chairman	**aye**		
Marleine Bastien	**aye**	Juan Carlos Bermudez	**aye**
Kevin Marino Cabrera	**aye**	Sen. René García	**absent**
Roberto J. Gonzalez	**aye**	Keon Hardemon	**aye**
Danielle Cohen Higgins	**aye**	Eileen Higgins	**aye**
Kionne L. McGhee	**aye**	Raquel A. Regalado	**aye**
Micky Steinberg	**aye**		

The Chairperson thereupon declared this resolution duly passed and adopted this 7th day of March, 2023. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

LUIS G. MONTALDO, CLERK AD INTERIM

Basia Pruna
By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. OR

Oren Rosenthal

IBM Master Agreement for Hardware, Software, Maintenance, Support, and Services
Agreement No. L9130-0/27

THIS HARDWARE, SOFTWARE, MAINTENANCE, SUPPORT, AND SERVICES AGREEMENT ("AGREEMENT") IS MADE AND ENTERED INTO BY AND BETWEEN MIAMI-DADE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, HAVING ITS PRINCIPAL OFFICE AT 111 N.W. 1ST STREET, MIAMI, FLORIDA 33128 (HEREINAFTER REFERRED TO AS THE "COUNTY" OR "MDC") AND IBM CORPORATION, A NEW YORK CORPORATION, HAVING ITS PRINCIPLE PLACE OF BUSINESS AT 1 ALHAMBRA PLAZA, SUITE 1415, CORAL GABLES, FL 33134 (HEREINAFTER REFERRED TO AS "IBM OR "SELLER").

WITNESSETH:

WHEREAS, IBM has offered to provide Hardware, software, Maintenance, support, and Services, that shall conform to the terms and conditions of this Agreement including all associated addenda and Attachments, incorporated herein by referenced; and,

WHEREAS, the County desires to procure from IBM such Hardware, software, Maintenance, support, and Services for the County, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

a) The term "Attachments" to mean documents that are part of this Agreement that contain terms that may apply to more than one product or Service transaction.

b) The term "Change Order" or "Extra Work" or "Additional Work" to mean work resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in a mutually approved Statement of Work (SoW).

c) The terms "Consultant" or "Seller" or "Vendor" to mean International Business Machines Corporation ("IBM"), ("IBM Corporation") and its permitted successors and assigns.

d) The terms "Contract" or "Contract Documents" or "Agreement" to mean collectively these terms and conditions, and all associated addenda and Attachments.

e) The term "Contract Date" to mean the date on which this Agreement is effective.

f) The term "County" to mean Miami-Dade County, a political subdivision of the State of Florida, including any agents, authorized by the County to use the Licensed Software in accordance with this Agreement.

g) The term "Date of Installation" to mean the following:

i. For an IBM Machine that IBM is responsible for installing, the business day after the day IBM installs it or, if the County defers installation, makes it available to the County for subsequent installation by IBM;

ii. For a County-set-up Machine and a non-IBM Machine, the second business day after the Machine's standard transit allowance period; and for a Program:

1. Basic license, the second business day after the Program's standard transit allowance period,
2. Copy, the date (specified in a Transaction Document) on which IBM authorizes the County to make a copy of the Program, and
3. Chargeable component (also called a feature), the date the County uses the chargeable component or copy. The County agrees to notify IBM of the chargeable component's Date of Installation.

h) The term "Days" to mean calendar days.

i) The term "Deliverables" to mean all documentation and any items of any nature submitted by IBM to the County's Project Manager for review and approval pursuant to a mutually agreed to Statement of Work (SoW).

j) The term "Project Manager" to mean the authorized person(s) at the County responsible for the management of the project.

k) The term "Contract Manager" to mean the authorized person(s) at the County responsible for the administration of the Agreement.

l) The term "Existing Hardware" to mean the hardware currently installed at a Miami-Dade County site as identified in any attachments to this Agreement.

m) The term "Hardware" to mean the new hardware components sold by the IBM under this Agreement.

n) The term "Licensed Software" to mean the computer programs licensed by IBM under this Agreement.

o) The term "Machine" to mean a hardware device, its features, conversions, upgrades, elements, or accessories, or any combination of them. The term "Machine" includes an IBM Machine and any non-IBM Machine (including other equipment) that IBM may provide to the County.

p) The term "Maintenance" to mean IBM Maintenance Services as set forth in the IBM product documentation as provided under this Agreement.

q) The term "Program" to mean an IBM-branded computer program and related material available for license from IBM subject to payment of charges.

r) The terms "Scope of Services" or "Scope of Work" to mean "Scope of Services" that details the work to be performed by IBM under a mutually agreed upon Statement of Work (SoW).

s) The term "Service" to mean a performance of a task, assistance, support, or access to resources (such as information database) that IBM makes available to the County.

t) The term "Statement of Work" or "SOW" to mean a document that describes a project Work requirement. It defines project-specific activities, Deliverables, and timelines for a vendor providing Services to a client.

u) The terms "Subconsultant" to mean any person, firm, entity or organization, other than the employees of IBM, who contracts with IBM to furnish labor, or labor and materials, in connection with the Work or Services under this Agreement to the County, whether directly or indirectly, as a Subconsultant to IBM.

v) The term "Transaction Documents" to mean documents that contain specific details and terms related to each individual transaction.

w) The word "Work" to mean all matters and things required to be done by the Seller in accordance with the

provisions of this Agreement.

ARTICLE 2. ATTACHMENTS AND TRANSACTION DOCUMENTS

Additional terms for products and Services are included in the Attachments and Transaction Documents provided by the Seller. In general, Attachments contain terms that may apply to more than one product or Services transaction, while Transaction Documents (such as a Statement of Work, supplement, schedule, invoice, exhibit, change authorization, or addendum) contain specific details and terms related to each individual transaction. The County may receive one or more Transaction Documents for a single transaction. Attachments and Transaction Documents are part of this Agreement only for those transactions to which they apply. Each transaction is separate and independent from other transactions.

This Contract shall include the following Attachments:

Attachment 1: IBM Client Relationship Agreement
IBM Delegation of Authority
IBM Client Relationship Agreement
IBM Agreement for the Exchange of Confidential Information
IBM Discounts & Pricing Structure
IBM Training & Conferences

Attachment 2: Hardware & Maintenance
Hardware Product Lines
Technical Services Attachment for Technology Support Services
(TSS) for State & Local Government
TSA Optional Services
Attachment for IBM Power Systems Temporary Capacity on Demand

Attachment 3: Software Portfolio for System Z, Passport Advantage, & Saas, Software
Software Portfolio
International Passport Advantage Agreement & Attachments for Monthly Licenses, Cloud Offerings, & Appliances
US State, Local, and Education (SLED) Attachment for Subscription Licenses
International Program License Agreement
International Agreement for the Acquisition of Software Maintenance
Current Inventory

Attachment 4: Professional Services
Overview of consulting & services offerings
GSA Contract #G-35F-110DA Services – IT Professional Services
GSA Remote Technical Support Services
Cybersecurity Labor Rates
GSA Contract #GS-35F-110DA – Services Ancillary SIN Services (Labor Categories)

Attachment 5: Green Initiatives
Resilience, Sustainability & Energy Solutions
Green Initiatives

Attachment 6: Cloud Solutions
IBM Internet Delivered Offerings
Cloud Solutions & Capabilities

Attachment 7: Installment Payment Agreement for State and Local Government Sample Forms

Notwithstanding any terms within the Attachments stating otherwise, should there be any inconsistency between the terms and conditions of this Agreement and any terms referenced in any Attachments to this Agreement, the terms and conditions of Articles 1 through 34 of this Agreement shall take precedence unless modified by a mutually agreed to Amendment to this Agreement.

ARTICLE 3. AGREEMENT TERM

3.1 This Agreement shall succeed Contract No. L9130-5/21 expiring on January 31, 2023, between the County and IBM, which became effective August 1, 2016, including IBM Customer Agreement L9130, August 1, 2016. Products and Maintenance purchased under Contract No. L9130-5/21 shall continue to be governed by the terms and conditions of Contract No. L9130-5/21, notwithstanding the expiration of that contract, for the remainder of the term identified in such purchase of products or Maintenance or until the County elects to acquire those products and Maintenance under the terms and conditions of this Agreement.

3.2 This Agreement shall become effective upon approval of the County's Board of County Commissioners and the expiration or waiver of any Mayoral veto period and shall be for the duration of five years.

3.3 Extension. At the sole discretion of the County, this Agreement may be extended for up to one hundred-eighty (180) calendar days beyond the current Agreement period or beyond any of the renewals.

3.4 Notification. At the sole discretion of the County, this Agreement may be further extended beyond the initial one hundred-eighty (180) calendar day extension period, upon approval from the Board of County Commissioners.

ARTICLE 4. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by overnight courier or certified mail, with return receipt requested; or delivered personally; or delivered via fax and followed with delivery of hard copy; and in any case addressed as follows with parallel e-mail notification:

(1) To the County Project Manager for each area:

Miami-Dade County
Information Technology Department
5680 S.W. 87th Avenue
Miami, FL 33173

Attention: Julian Manduley
Phone: 305-596-8610
Fax: 305-275-7696
E-mail: jmandul@miamidade.gov

and to the Contract Manager:

Miami-Dade County
Department of Procurement Management
111 N.W. 1st Street, Suite 1300
Miami, FL 33128-1974

Attention: Santiago A. Pastoriza
Phone: (305) 375- 1084
Fax: (305) 375- 5688
E-Mail: spastor@miamidade.gov.

(2) To the Seller

IBM Corporation
Attention: Debbie Langeman
8723 Spikerush Lane
Naples, FL 34109
954-494-9774
debbie@us.ibm.com

IBM Corporation
Attention: Christopher Colonnese
1 Alhambra Plaza, Suite 1415
Coral Gables, FL.33134
954-658-0641
colonnese@us.ibm.com

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

ARTICLE 5. PRICING

The Seller may offer additional incentive discounts to those referenced in this Agreement to Miami-Dade County at any time during the contractual term and any extensions thereof. The Seller agrees that all pricing offered under this Agreement shall not exceed the then current IBM GSA Schedule price list to include the GSA Labor Hourly Rates as may be amended from time to time or, in the event that IBM GSA Schedule pricing is unavailable, pricing shall not exceed the amounts as set forth in the price list attached to this Agreement (Attachment 4: IBM GSA Schedule GS-35F-110DA, Information Technology Services Charges).

ARTICLE 6. CHARGES AND PAYMENT FOR SERVICES/AMOUNT OBLIGATED

6.1 The Seller warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Seller deemed necessary in order to determine the price the Seller will charge to provide the Work and Services to be performed under this Agreement. The compensation for all Work and Services performed under this Agreement, including all costs associated with such Work and Services, shall be in accordance with Article 5, "Pricing." The County shall have no obligation to pay the Seller any additional sum in excess of what is stated in Article 5, "Pricing", except for a change and/or modification to the Agreement, which is approved and executed in writing by the County and the Seller.

All Services undertaken by the Seller before County's approval of this Agreement shall be at the Seller's risk and expense.

6.2 Charges. Amount payable for products or Services are based on one or more of the following types of charges: one-time, recurring, time and materials, or fixed price. Recurring charges for a product begin on its Date of Installation. Charges for Services are billed as specified in a Transaction Document, which may be in advance, periodically during the performance of the Service, or after the Service is completed. Unless otherwise provided in this Agreement (including any applicable Attachment or Transaction Document): i) Services for which the County prepays must be used within the applicable contract period; and ii) the Seller does not give credits or refunds for any prepaid or other charges already due or paid, provided Seller has not unreasonably delayed services past the expiration date of the contract period.

If a Transaction Document provides an estimated total charge for time and materials or for usage charges, the estimate is for planning purposes only. The Seller invoices charges based on actual time and materials expended or the County's actual use, subject to any specified minimum commitment.

6.3 Usage Charges. One time and recurring charges may be based on measurements of actual or authorized use (for example, authorized capacity for Machines, number of users or processor size for Programs, or meter readings for maintenance services).

The County agrees to provide actual usage data as described in an Attachment or Transaction Document.

If the County makes changes to its environment that impacts usage charges (for example, change authorized capacity for Machines or change processor size or configuration for Programs), the County agrees to promptly notify the Seller and pay any applicable charges. Recurring charges will be adjusted accordingly. In the event that the Seller changes the basis of measurement, its terms for changing charges will apply provided the County is given reasonable notice of such change and is allowed to cancel the service without any additional charge prior to such change in the basis of measurement

6.4 Changes to Charges. From time to time, the Seller may change its charges. The County receives the benefit of a decrease in charges for amounts that become due on or after the effective date of the decrease.

Unless provided otherwise in an Attachment or Transaction Document, the Seller may increase recurring charges for products and Services, as well as labor rates and minimums for Services provided under this Agreement in accordance with Article 5, "Pricing", by giving the County three (3) months' written notice. An increase applies on the first day of the invoice or charging period on or after the effective date the Seller specifies in the notice.

Upon reasonable notice, the Seller may verify the usage data and other information affecting the calculation of charges under this Agreement. Such verification will be conducted in a manner that minimizes disruption to the County's business and may be conducted on the County's premises, during the County's normal business hours. The County agrees to i) provide records, system tools outputs, and other electronic or hard copy system information reasonably necessary for such verification, and ii) promptly pay any additional, valid charges and other liabilities determined as a result of such verification.

6.5 Travel. With respect to travel costs and travel related expenses, the Seller agrees to adhere to Section 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses including employee lodging, transportation, per diem, and all miscellaneous cost-and fees. The County shall not be liable for any such expenses that have not been approved in advance, in writing, by the County.

6.6 Invoices. All invoices issued by the Seller, shall be taken from the books of account kept by the Seller, shall be supported by any reasonable documentation required by the County, shall show the County's Agreement number, and shall have a unique invoice number assigned by the Seller. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five (45) days from receipt of a proper invoice. Billings from prime vendors under either services or goods contracts pursuant to Sections 2-8.1.1.1.1 or 2-8.1.1.1.2, respectively, that are a Small Business Enterprise (SBE) contract set-aside, bid preference or contain a Subconsultant goal, shall be promptly reviewed and payment made to the certified small businesses on those amounts not in dispute, within fourteen (14) calendar days of receipt of such billing or invoice. All payments for undisputed amounts due from the County or the Public Health Trust, and not made within the time specified by this section, shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Mayor, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

In accordance with Miami-Dade County Implementing Order 3-9, Accounts Receivable Adjustments, if money is owed by the Seller to the County, whether under this Agreement or for any other purpose, the County reserves the right to retain such amount from payment due by County to the Seller under this Agreement. Such retained amount shall be applied to the amount owed by the Seller to the County. The Seller shall have no further claim to such retained amounts which shall be deemed full accord and satisfaction of the amount due by the County to the Seller for the applicable payment due herein.

Invoices and associated back-up documentation shall be submitted by the Seller to the County as follows:

Miami-Dade County, Finance Department
Attn: Shared Services Payable Unit
111 NW 1st Street, 26th Floor
Miami, FL 33128

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

ARTICLE 7. CONFIDENTIALITY

7.1 As a political subdivision of the State of Florida, Miami-Dade County is subject to Florida's Public Records Law, Section 119 of the Florida Statutes. Notwithstanding anything else in this Article to the contrary, the County's compliance with, or good faith attempt to comply with the requirements of Chapter 119 of Florida Statute shall not be considered breach of this Agreement.

a) All developed works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Seller in the course of the performance of the Agreement, or which the County holds the proprietary rights (collectively, "Confidential Information") may not, without the prior written consent of the County, be used by the Seller or its employees, agents, Subconsultants or suppliers for any purpose other than for the benefit of the County, unless required by law.

b) In addition to the foregoing, all County employee information and County financial information shall be considered Confidential Information and shall be subject to all the requirements stated herein. Neither the Seller nor its employees, agents, Subconsultants or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Seller expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.

7.2 Maintenance of Confidential Information. The Seller shall advise each of its employees, agents, Subconsultants and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or Subconsultants or supplier's employees, present or former. In addition, the Seller agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.

7.3 Injunctive Relief. It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Seller shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Seller or its employees, agents, Subconsultants or suppliers without the prior written consent of the County.

7.4 Survival. Licensee's obligations under this Article 7 will survive the termination of this Agreement or of any license granted under this Agreement for whatever reason.

ARTICLE 8. INSURANCE

The Seller shall furnish to the Internal Services Department / Procurement Management Services, 111 NW 1st Street, Suite 1300, Miami, Florida 33128-1989, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

A. Worker's Compensation Insurance for all employees of the Seller as required by Florida Statute 440.

B. Commercial General Liability in an amount not less than $300,000 per occurrence, and $600,000 in the aggregate. **Miami-Dade County must be shown as an additional insured with respect to this coverage**.

C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the Work, in an amount not less than $300,000 combined single limit per occurrence for bodily injury and property damage.

D. Professional Liability Insurance in an amount not less than $1,000,000 per claim.

E. Cyber Liability Insurance to include data breach in an amount not less than $1,000,000 per occurrence.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "**A-**" as to management, and no less than "Class **VII**" as to financial strength, by Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

or

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida Department of Financial Services.

NOTE: CERTIFICATE HOLDER MUST READ:

MIAMI-DADE COUNTY
111 NW 1ST STREET
SUITE 2340
MIAMI, FL 33128

ARTICLE 9. DEFAULT AND TERMINATION

9.1 Termination. In addition to any other termination set forth below, the County may terminate this Agreement if the Seller attempts to meet its obligations under this Agreement with the County through fraud, misrepresentation or material misstatement.

a) The County may, as a further sanction, terminate or cancel any other agreements the Seller has with the County.

b) The foregoing notwithstanding, if the Seller attempts to meet its obligations with the County under this Agreement through fraud, misrepresentation or material misstatement, the Seller may be debarred from County contracting for the maximum extent permitted by law in accordance with the County debarment procedures. The Seller may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

9.2 Termination for Convenience. In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement or any Transaction Document by written notice to the Seller and in such event:

a) The Seller shall, upon receipt of such notice, unless otherwise directed by the County: (i) stop work on the date specified in the notice ("the Effective Termination Date"); (ii) take such action as may be necessary for the protection and preservation of the County's materials and property; and (iii) take no action which will increase the amounts payable by the County under this Agreement; and

b) In the event that the County exercises its right to terminate this Agreement pursuant to this Article the Seller will be compensated as stated in the payment Articles, herein, for the portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and

c) All compensation pursuant to this Article are subject to audit.

9.3 Events of Default. This Agreement may be terminated by the non-defaulting party if any of the following events of default occur: (1) if a party materially fails to perform or comply with this Agreement or any provision hereof; (2) if either party fails to strictly comply with the provisions of Article 7 (Confidentiality) or makes an assignment in violation of Article 14 (No assignability); (3) if the Seller becomes insolvent or bankrupt, or makes an assignment for the benefit of creditors.

9.4 Effective Date of Termination. Termination due to a material breach of Articles 7 (Confidentiality), shall be effective on notice. In all other cases, termination shall be effective thirty (30) days after notice of termination to the defaulting party if the defaults have not been cured within such thirty (30) day period.

9.5 Termination and Withdrawal of a Service. Either party may terminate a Service transaction if the other materially fails to meet its obligations concerning the service. The County may terminate a Service, on notice to the Seller provided that the County has met all minimum requirements and paid any adjustment charges specified in the applicable Attachments and Transaction Documents. The termination and withdrawal of a Service by the County may also establish a basis for default under Section 9.3 of this Agreement. For Maintenance, the County may terminate without adjustment charge, provided any of the following

circumstances occur:

a) The County permanently removes the eligible product, for which the Services is provided, from productive use within the County's enterprise;

b) The eligible location, for which the Service is provided, is no longer controlled by the County (for example, because of sale or closing of the facility); or

c) The Machine has been under Maintenance for at least one year and the County gives the Seller one month's written notice prior to terminating the Maintenance.

The Seller may withdraw a Service or support for an eligible product on three (3) months written notice to the County. If the Seller withdraws a Service for which the County has prepaid and the Seller has not yet fully provided it to the County, the Seller will give the County a prorated refund not withstanding any other provision of this Agreement. The prorated refund shall be calculated based on the date of withdrawal of Services and the length of the Service Agreement, or a percentage of the unused Service minus the value of the Service already provided, whichever is greater.

ARTICLE 10. SHIPPING TERMS

Shipping will be done on an FOB Destination basis. Invoicing and a shipping address will be provided in the individual purchase orders issued against this Contract. The County may change this information by giving written notice to Seller.

ARTICLE 11. MANNER OF PERFORMANCE

11.1 The Seller shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Seller in all aspects of the Services. At the written request of the County explaining cause, the Seller shall promptly remove from the project any of the Seller's employee(s), Subconsultant, or any other person performing Services hereunder for cause. The Seller agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Seller.

11.2 The Seller shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 12. EMPLOYEES ARE THE RESPONSIBIITY OF THE SELLER

All employees of the Seller shall be considered, at all times, employees of the Seller under its sole direction and not employees or agents of the County. The Seller shall supply competent employees. The County may require the Seller to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

ARTICLE 13. INDEPENDENT SELLER RELATIONSHIP

The Seller is, and shall be, in the performance of all work services and activities under this Agreement, an independent Seller, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Seller's sole direction, supervision and control. The Seller shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Seller's relationship and the relationship of its employees to the County shall be that of an independent Seller and not as employees and agents of the County.

The Seller does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

ARTICLE 14. NONASSIGNABILITY

The Seller shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the

same or any part thereof without the prior written consent of the County.

ARTICLE 15. INSPECTOR GENERAL REVIEWS

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Seller shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Seller's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Seller, its officers, agents, employees, Subconsultants and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Seller in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Seller or any third party.

Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General (the "Inspector General") which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Seller. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (I) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under $1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of IPSIG to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Seller, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Seller from the Inspector General or IPSIG retained by the Inspector General, the Seller shall make all applicable requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all applicable documents and records in the Seller's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the Agreement, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful Subconsultants and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

ARTICLE 16. GOVERNING LAW

This Agreement, including Attachments, and all matters relating to this Agreement whether in Agreement, statute, tort

(such as negligence, or otherwise) shall be governed and construed in accordance with the laws of the State of Florida, without application of the conflicts of law principles. The venue of any action on the Agreement shall be laid in Miami-Dade County, Florida, and any action to determine the rights of obligations of the parties hereto shall be brought in the courts of the State of Florida.

ARTICLE 17. COUNTY USER ACCESS PROGRAM (UAP)

17.1 User Access Fee: Pursuant to Miami-Dade County Budget Ordinance No. 03-192, this Contract is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%). All sales resulting from this Contract, or any contract resulting from this solicitation and the utilization of the County Contract price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all Contract usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

The Seller providing goods or Services under this Contract shall invoice the Contract price and shall accept as payment thereof the Contract price less the 2% UAP as full and complete payment for the goods and/or Services specified on the invoice. The County shall retain the 2% UAP for use by the County to help defray the cost of the procurement program. Vendor participation in this invoice reduction portion of the UAP is mandatory.

17.2 Joint Purchase: Only those entities that have been approved by the County for participation in the County's Joint Purchase and Entity Revenue Sharing Agreement are eligible to utilize or receive County Contract pricing and terms and conditions. The County will provide to approved entities a UAP Participant Validation Number. The Seller must obtain the participation number from the entity prior to filling any order placed pursuant to this section. Seller participation in this joint purchase portion of the UAP, however, is voluntary. The Seller shall notify the ordering entity, in writing, within 3 workdays of receipt of an order, of a decision to decline the order.

For all ordering entities located outside the geographical boundaries of Miami-Dade County, the Seller shall be entitled to ship goods on an "FOB Destination, Prepaid and Charged Back" basis. This allowance shall only be made when expressly authorized by a representative of the ordering entity prior to shipping the goods.

The County shall have no liability to the Seller for the cost of any purchase made by an ordering entity under the UAP and shall not be deemed to be a party thereto. All orders shall be placed directly by the ordering entity with the Seller and shall be paid by the ordering entity less the 2% UAP.

17.3 Seller Compliance: If a Seller fails to comply with this Article, that Seller may be considered in default by the County.

ARTICLE 18. ANNUAL APPROPRIATION

The County's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Board of County Commissioners. Cancellation will not cause any penalty or expense to the County, except as to the portions of payments agreed upon and for which funds have been appropriated and budgeted. There will be no early termination charges from the Seller for canceling services during the year except for charges incurred for services performed under this Agreement prior to the County's cancellation notice, and Seller will deliver to County all Deliverables performed up to the cancellation notice.

ARTICLE 19. SEVERABILITY

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

ARTICLE 20. VENDOR REGISTRATION/CONFLICT OF INTEREST

a) Vendor Registration

The Seller shall be a registered vendor with the County – Internal Services Department, Strategic Procurement Division, for the duration of this Agreement. In becoming a registered vendor with Miami-Dade County, the vendor's Federal Employer Identification Number (FEIN) must be provided, via submission of Form W-9 and 147c Letter, as required by the Internal Revenue Service (IRS). If no FEIN exists, the Social Security Number of the owner must be provided as the legal entity identifier. This number becomes Seller's "County Vendor Number." To comply with Section 119.071(5)

of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:

- **Identification of individual account records**
- **Payments to individual/Seller for goods and services provided to Miami-Dade County**
- **Tax reporting purposes**
- **Provision of unique identifier in the vendor database used for searching and sorting departmental records**

The Seller confirms its knowledge of and commitment to comply with the following:

1. ***Miami-Dade County Ownership Disclosure Affidavit***
   (Section 2-8.1 of the Code of Miami-Dade County)
2. ***Miami-Dade County Employment Disclosure Affidavit***
   (Section 2.8.1(d)(2) of the Code of Miami-Dade County)
3. ***Miami-Dade County Employment Drug-free Workplace Certification***
   (Section 2-8.1.2(b) of the Code of Miami-Dade County)
4. ***Miami-Dade County Disability and Nondiscrimination Affidavit***
   (Section 2-8.1.5 of the Code of Miami-Dade County)
5. ***Miami-Dade County Debarment Disclosure Affidavit***
   (Section 10.38 of the Code of Miami-Dade County)
6. ***Miami-Dade County Vendor Obligation to County Affidavit***
   (Section 2-8.1 of the Code of Miami-Dade County)
7. ***Miami-Dade County Code of Business Ethics Affidavit***
   (Article I, Section 2-8.1(i) of the Code of Miami-Dade County)
8. ***Miami-Dade County Family Leave Affidavit***
   (Article V of Chapter 11 of the Code of Miami-Dade County)
9. ***Miami-Dade County Living Wage Affidavit***
   (Section 2-8.9 of the Code of Miami-Dade County)
10. ***Miami-Dade County Domestic Leave and Reporting Affidavit*** *(Article VIII, Section 11A-60 - 11A-67 of the Code of Miami-Dade County)*
11. ***Miami-Dade County Verification of Employment Eligibility (E-Verify) Affidavit.***
    (Section 448.095, of the Florida State Statutes)
12. ***Miami-Dade County Pay Parity Affidavit***
    (Resolution No. R-1072-17)
13. ***Miami-Dade County Suspected Workers' Compensation Fraud Affidavit***
    (Resolution No. R-919-18)
14. ***Office of the Inspector General***
    (Section 2-1076 of the Code of Miami-Dade County)
15. **Small Business Enterprises**
    The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.1.1.1.1, 2-8.1.1.1.2 and 2-8.2.2 of the Code of Miami-Dade County and Title 49 of the Code of Federal Regulations.
16. ***Antitrust Laws***
    By acceptance of any contract, the Seller agrees to comply with all antitrust laws of the United States and the State of Florida.

b) Conflict of Interest and Code of Ethics

Section 2-11.1(d) of the Code requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethics Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. All autonomous personnel, quasi-judicial personnel, advisory personnel, and employees wishing to do business with the County are hereby advised they must comply with the applicable provisions of Section 2-11.1 of the Code relating to Conflict of Interest and Code of Ethics. In accordance with Section 2-11.1(y) of the Code, the Miami-Dade County Commission on Ethics and Public Trust shall be empowered to review, interpret, render advisory opinions and letters of instruction, and enforce the Conflict of Interest and Code of Ethics Ordinance.

ARTICLE 21. FORCE MAJEURE

21.1 Performance by each party shall be pursued with commercially reasonable efforts in all requirements under this Agreement; however, except as otherwise expressly provided herein, neither party shall be liable to the other for any loss or damage for delay due to causes that (i) were beyond the reasonable control and (ii) were not caused by the negligence or lack of commercially reasonable efforts of the affected party or its Subconsultant or suppliers. The parties agree that, provided the conditions stated in (i) and (ii) above apply, the following are causes or events of force majeure: acts of civil or military authority (including courts and regulatory agencies), acts of God (excluding normal or seasonal weather conditions), riot or insurrection, inability to obtain required permits or licenses, blockades, embargoes, sabotage, epidemics and unusually severe floods. The party affected shall provide written notice to the other party indicating the nature, cause, date of commencement thereof, the anticipated extent of such delay and whether it is anticipated that any completion or delivery dates will be affected thereby, and shall exercise due diligence to mitigate the effect of the delay.

21.2 In the event of any delay resulting from such causes, and provided the affected party has promptly notified the other and exercised commercially reasonable efforts as provided in subsection 21.1 above, the time for performance under this Agreement (including the payment of monies) shall be extended for a period of time reasonably necessary to overcome the effect of such delay.

ARTICLE 22. EXTENSION OF TIME NOT CUMULATIVE

In the event the Seller shall be delayed concurrently by two or more of the causes identified in Article 21, "Force Majeure" above, the Seller shall be entitled to a separate extension of time for each one of the causes but only one time period of extension shall be granted for the delay. In addition, the Seller shall not be entitled, by reason of a delay, to an extension of time for the completion of the overall Work unless the overall Work is necessarily affected by the delay. Accordingly, in the event of a delay, the Seller shall proceed continuously and diligently with the performance of the unaffected portions of the Work.

ARTICLE 23. SURVIVAL

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Seller and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

ARTICLE 24. FEDERAL, STATE, AND LOCAL COMPLIANCE REQUIREMENTS

As applicable, Seller shall comply, subject to applicable professional standards, with the provisions of all applicable federal, state and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including, but not limited to:

a) Equal Employment Opportunity clause provided under 41 C.F.R. Part 60-1.3 in accordance with Executive Order 11246, "Equal Employment Opportunity", as amended.

b) Miami-Dade County Small Business Enterprises Development Participation Provisions.

c) The Clean Air Act (42 U.S.C. § 7401-7671q.) and the Federal Water Pollution Contract Act (33 U.S.C. §§ 1251-1387), as amended.

d) The Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by the Department of Labor regulations (29 C.F.R. Part 5).

e) The Copeland "Anti-Kickback" Act (40 U.S.C. § 3145) as supplemented by the Department of Labor regulations (29 C.F.R. Part 2).

f) Section 2-11.1 of the Code of Miami-Dade County, "Conflict of Interest and Code of Ethics".

g) Section 10-38 of the Code of Miami-Dade County, "Debarment of Sellers from County Work".

h) Section 11A-60 - 11A-67 of the Code of Miami-Dade County, "Domestic Leave".

i) Section 21-255 of the Code of Miami-Dade County, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

j) The Equal Pay Act of 1963, as amended (29 U.S.C. § 206(d)).

k) Section 448.07 of the Florida Statutes "Wage Rate Discrimination Based on Sex Prohibited".

l) Chapter 11A of the Code of Miami-Dade County (§ 11A-1 *et seq.*) "Discrimination".

m) Chapter 22 of the Code of Miami-Dade County (§ 22-1 *et seq.*) "Wage Theft".

n) Chapter 8A, Article XIX, of the Code of Miami-Dade County (§ 8A-400 *et seq.*) "Business Regulations".

o) Any other laws prohibiting wage rate discrimination based on sex.

p) Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

q) Executive Order 12549 "Debarment and Suspension", which stipulates that no contract(s) are "to be awarded at any tier or to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs".

r) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07) and regulations issued pursuant thereto (24 C.F.R. Part 146).

Pursuant to Resolution No. R-1072-17, by entering into this Contract, the Seller is certifying that the Seller is in compliance with, and will continue to comply with, the provisions of items "f" through "k" above.

The Seller shall hold all licenses and/or certifications, obtain and pay for all permits and/or inspections, and comply with all laws, ordinances, regulations and building code requirements applicable to the work required herein. Damages, penalties, and/or fines imposed on the County or Seller for failure to obtain and maintain required licenses, certifications, permits and/or inspections shall be borne by the Seller. The Project Manager shall verify the certification(s), license(s), and permit(s) for the Seller prior to authorizing Work and as needed.

Notwithstanding any other provision of this Agreement, Seller shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Seller, constitute a violation of any law or regulation to which Seller is subject, including but not limited to laws and regulations requiring that Seller conduct its operations in a safe and sound manner.

ARTICLE 25. NONDISCRIMINATION

During the performance of this Contract, Seller agrees to not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression, status as victim of domestic violence, dating violence or stalking, or veteran status, and on housing related contracts the source of income, and will take affirmative action to ensure that employees and applicants are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract, the Seller attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Seller or any owner, subsidiary or other firm affiliated with or related to the Seller is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Seller submits a false affidavit pursuant to the Resolution or the Seller violates the Act or the Resolution during the term of this Contract, even if the Seller was not in violation at the time it submitted its affidavit.

ARTICLE 26. CONFLICT OF INTEREST

The Seller represents that:

a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment, or compensation, whether tangible or intangible, in connection with the award of this Agreement.

b) There are no undisclosed persons or entities interested with the Seller in this Agreement. This Agreement is entered into by the Seller without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent, or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:

i) is interested on behalf of or through the Seller directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the Services, Deliverables or Work, to which this Agreement relates or in any portion of the revenues; or

ii) is an employee, agent, advisor, or consultant to the Seller or to the best of the Seller's knowledge any Subconsultant or supplier to the Seller.

c) Neither the Seller nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Seller shall have an interest which is in conflict with the Seller's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Seller provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.

d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.

e) In the event Seller has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Seller shall promptly bring such information to the attention of the Project Manager. Seller shall thereafter cooperate with the County's review and investigation of such information and comply with the instructions Seller receives from the Project Manager regarding remedying the situation.

ARTICLE 27. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Seller without the express written consent of the County:

27.1 Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Seller first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and

27.2 Communicate in any way with any seller, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and

27.3 Except as may be required by law, the Seller and its employees, agents, Subconsultant and suppliers will not represent, directly or indirectly, that any product or Service provided by the Seller or such parties has been approved or endorsed by the County.

ARTICLE 28. BANKRUPTCY

The County may terminate this Contract, if, during the term of any contract the Seller has with the County, the Seller becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Seller under federal bankruptcy law or any state insolvency law.

ARTICLE 29. INTEREST OF MEMBERS, OFFICERS OR EMPLOYEES AND FORMER MEMBERS, OFFICERS OR EMPLOYEES

No member, officer, or employee of the County, no member of the governing body of the locality in which the Project is situated, no member of the governing body in which the County was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this Contract or the proceeds thereof.

ARTICLE 30. LIENS

The Seller is prohibited from placing a lien on County property. This prohibition shall apply to all Subconsultant.

ARTICLE 31. FIRST SOURCE HIRING REFERRAL PROGRAM

Pursuant to Section 2-2113 of the Code, for all contracts for goods and services, the Seller, prior to hiring to fill each vacancy arising under a County contract shall (1) first notify Career Source South Florida ("CSSF"), the designated Referral Agency, of the vacancy and list the vacancy with CSSF according to the Code, and (2) make good faith efforts as determined by the County to fill a minimum of fifty percent (50%) of its employment needs under the County contract through the CSSF. If no suitable candidates can be employed after a Referral Period of three to five days, the Seller is free to fill its vacancies from other sources. Seller will be required to provide quarterly reports to the CSSF indicating the name and number of employees hired in the previous quarter, or why referred candidates were rejected. Sanctions for non-compliance shall include, but not be limited to: (i) suspension of Contract until Seller performs obligations, if appropriate; (ii) default and/or termination; and (iii) payment of $1,500/employee, or the value of the wages that would have been earned given the noncompliance, whichever is less. Registration procedures and additional information regarding the First Source Hiring Referral Program are available at https://iapps.careersourcesfl.com/firstsource/.

ARTICLE 32. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY

The Seller shall comply with the Public Records Laws, including by not limited to, (1) keeping and maintaining all public records that ordinarily and necessarily would be required by the County in order to perform the service; (2) providing the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law; (3) ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meeting all requirements for retaining public records and transferring, at no cost, to the County all public records in possession of the Seller upon termination of the Contract and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements upon such transfer. In addition, all records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. Failure to meet any of these provisions or to comply with Florida's Public Records Laws as applicable shall be a material breach of this Agreement and shall be enforced in accordance with the terms and conditions of the Agreement.

IF THE SELLER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SELLER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 375-5773, ISD-VSS@MIAMIDADE.GOV, 111 NW 1st STREET, SUITE 1300, MIAMI, FLORIDA 33128.

ARTICLE 33. VERIFICATION OF EMPLOYMENT ELIGIBILITY (E-VERIFY)

By entering into this Contract, the Seller becomes obligated to comply with the provisions of Section 448.095 of the Florida Statutes, titled "Verification of Employment Eligibility". This includes but is not limited to utilization of the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all newly hired employees by the Seller effective January 1, 2021 and requiring all Subconsultants to provide an affidavit attesting that the Subconsultant does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply may lead to termination of this Contract, or if a Subconsultant knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination and the Seller may be liable for any additional costs incurred by the County resulting from the termination of the Contract. If this Contract is terminated for a violation of the statute by the Seller, the Seller may not be awarded a public contract for a period of one year after the date of termination. Public

and private employers must enroll in the E-Verify System (http://www.uscis.gov/e-verify) and retain the I-9 Forms for inspection.

ARTICLE 34. PREPARATION OF CONTRACT

This Agreement is the result of negotiation between the parties hereto and has been typed by one party for the convenience of both parties, and the parties covenant that this Agreement shall not be construed in favor of any of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the last date that the Agreement is executed below,

Seller	Miami-Dade County
By: Debra Langeman	By:
Name: Debra Langeman	Name: Daniella Levine Cava
Title: account leader	Title: Mayor
Date: 12-9-2022	Date:
Attest: Deborah H Smith	Attest:
Corporate Secretary/Notary Public	Clerk of the Board

Corporate Seal/Notary Seal

DEBORAH HENDERSON SMITH
Notary Public-State of Florida
Commission # HH 240420
My Commission Expires
March 14, 2026

Approved as to form
and legal sufficiency

Assistant County Attorney



Attachment 1:

IBM Delegation of Authority
IBM Client Relationship Agreement
IBM Agreement for the Exchange of Confidential Information
IBM Discounts & Pricing Structure
IBM Training & Conferences

DELEGATION OF AUTHORITY

I, Jennifer Shufelt, Associate General Counsel, IBM Global Markets, North America do hereby certify that said Associate General Counsel, in accordance with and pursuant to resolutions of the Board of Directors of International Business Machines Corporation ("IBM") duly adopted at a meeting duly held and called on April 25, 1994, and those certain Letters of Authority dated November 15, 1995, and May 6, 2011, has been duly authorized to execute and deliver in the name of and on behalf of IBM any contract or other document or instrument necessary or appropriate in the ordinary course of IBM's business, including, but not limited, to bid documents for the sale of IBM products and services to federal, state and local governments and agencies, purchase orders and sales agreements and the like, and to delegate this authorization within the IBM organization in the United States, including Puerto Rico; and that said authorization has not been modified, amended or rescinded and continues in full force and effect. So authorized, I hereby delegate said authority to execute and deliver in the name of and on behalf of IBM any such contract or other document or instrument reasonably related to, or performed in accordance with, the job duties, and/or responsibilities of the persons holding the below listed positions in the IBM organization in the United States, including Puerto Rico:

President
Treasurer
Vice President
General Manager
Chief Financial Officer

Position titles that include the words:

Attorney
Business Operations Manager
Client Manager
Client Relationship Representative
Contract Administrator
Contract Professional
Contracts & Negotiations
Counsel
Customer Fulfillment Manager; Customer Fulfillment Professional; Engagement Manager
Deal Maker
Director
Executive
IT Architect
IT Consultant
IT Specialist
Legal Corporate Matters Manager
Operations Manager
Operations Specialist
Partner
Portfolio Specialist
Practice Leader
Practice Manager
Program Manager
Quality Assurance Manager; Quality Assurance Representative
RFS Portfolio Specialist
Sales Manager
Sales Representative
Sales Specialist
Software Client Leader (SCL)
Service Delivery Manager
Software Engineer
Solution Representative
System Service Representative

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said International Business Machines Corporation on this 30 day of December 2021.

J K Shufelt

Jennifer Shufelt
Associate General Counsel

Client Relationship Agreement

This Client Relationship Agreement (CRA) and applicable Attachments and Transaction Documents (TDs) are the complete agreement regarding transactions 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). TDs detail 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, ordering documents, supplements, or invoices. Attachments provide supplemental terms that apply to certain types of Products, such as product capacity or trial services. In the event of conflict, an Attachment prevails over this CRA and a TD prevails over both the CRA and any Attachment and only apply to the specific transaction.

1. Programs

a. A Program is an IBM-branded computer program and related material available for license subject to the payment of charges. Program details are described in an Attachment called License Information (LI). Programs do not include Machine Code or Project Materials. Programs are copyrighted and licensed (not sold). When IBM accepts an order for a Program, Client is granted a nonexclusive license to: i) use the Program only up to its authorizations and subject to its LI; ii) make and install copies to support such authorized use; and iii) make a backup copy. Programs may be used by Client, its authorized employees and contractors only within Client's Enterprise, and not to provide hosting or timesharing services to any third party. Client may not sublicense, assign, or transfer the license for any Program. Additional rights may be available for additional fees or under different terms. Client is not granted unrestricted rights to use the Program nor has Client paid for all of the economic value of the Program. Certain Programs may contain third party code licensed under separate agreements identified in the LI.

b. The license granted for a Program is subject to Client:

(1) reproducing copyright notices and other markings;

(2) ensuring anyone who uses the Program does so only for Client's authorized use and complies with the license;

(3) not reverse assembling, reverse compiling, translating, or reverse engineering the Program; and

(4) not using any of the elements of the Program or related licensed material separately from the Program.

c. The metric applicable to a Program license is specified in an Attachment or TD. All licenses 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.

2. Services - Cloud Services

a. A Cloud Service is an IBM offering provided by IBM and made available via a network. Each Cloud Service is described in a TD. Cloud Services are designed to be available 24/7, subject to maintenance. Client will be notified of scheduled maintenance. Technical support and service level commitments, if applicable, are specified in an Attachment or TD.

b. When IBM accepts Client's order, IBM provides Client the authorizations specified in the TD.

c. IBM will provide the facilities, personnel, equipment, software, and other resources necessary to provide the Cloud Services and generally available user guides and documentation to support Client's use of the Cloud Service. A Cloud Service may require the use of enabling software that Client downloads to Client systems to facilitate use of the Cloud Service. Client may use enabling software only in connection with use of the Cloud Service and according to any licensing terms if specified in a TD. Enabling software is provided as-is, without warranties of any kind.

d. Client will provide hardware, software and connectivity to access and use the Cloud Service, including any required Client-specific URL addresses and associated certificates.

e. Client may access a Cloud Service only to the extent of authorizations acquired by Client. Client is responsible for use of Cloud Services by any user who accesses the Cloud Service with Client's account credentials. A Cloud Service may not be used in any jurisdiction for unlawful, obscene, offensive or fraudulent Content or activity, such as advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive or deceptive messages, viruses or harmful code, or violating third party rights. In addition, Client may not use Cloud Services if failure of the Cloud Service could lead to death, bodily injury, or property or environmental damage. Client may not: i) reverse engineer any portion of the Cloud Services; ii) assign or resell direct access to a Cloud Service to a third party outside Client's Enterprise; or iii) combine Cloud Services with Client's value add to create a commercially available Client branded solution that Client markets to its end user customers unless otherwise agreed.

f. A Cloud Service or feature of a Cloud Service is considered "Preview" when IBM makes such services 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, no-charge, or preview designated Cloud Services). Preview services are excluded from available service level agreements. A Preview service may not be covered by support and IBM may change or discontinue a Preview service at any time and without notice. IBM is not obligated to release a Preview service or make an equivalent service generally available.

2.1 Changes to Cloud Services

a. IBM may modify: i) a Cloud Service; and ii) the IBM's Data Security and Privacy Principles for IBM Cloud Services (DSP) from time to time at IBM's sole discretion and such modifications will supersede prior versions. Updates to a TD (such as a service description or statement of work) will take effect upon a new order, change effective date for ongoing services, or upon the renewal date for Cloud Services that automatically renew. The intent of any modification will be to: i) improve or clarify existing commitments; ii) maintain alignment to current adopted standards and applicable laws; or iii) provide additional features and functionality. Modifications will not degrade the security or functionality of a Cloud Service.

b. IBM may withdraw a Cloud Service on 12 months' notice, unless otherwise stated in a TD. IBM will continue to provide the Cloud Service for the remainder of Client's unexpired term or work with Client to migrate to another IBM offering.

2.2 Term and Termination of Cloud Services

a. The term of a Cloud Service begins on the date IBM notifies Client that Client can access the Cloud Service. IBM will specify whether the Cloud Service renews automatically, proceeds on a continuous use basis, or terminates 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 Service not to renew at least 30 days prior to the term expiration date, the Cloud Service will automatically renew for the specified term. For continuous use, the Cloud Service will continue to be available on a month to month basis until Client provides 30 days written notice to IBM or the IBM Business Partner involved in the Cloud Service of termination. The Cloud Service will remain available to 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 determines there is a material breach of Client's obligations, a security breach, violation of law, or breach of the terms set forth in section 2 (e). If the cause of the suspension can reasonably be remedied, IBM will provide notice of the actions Client must take to reinstate the Cloud Service. If Client fails to take such actions within a reasonable time, IBM may terminate the Cloud Service.

c. Client may terminate a Cloud Service on one month's notice: i) at the written recommendation of a government or regulatory agency following a change in either applicable law or the Cloud Services; ii) if IBM's modification to the computing environment used to provide the Cloud Service causes Client to be noncompliant with applicable laws; or iii) if IBM notifies Client of a modification that has a material adverse effect on Client's use of the Cloud Service, provided that IBM will have 90 days to work with Client to minimize such effect. In the event of such termination, IBM shall refund a portion of any prepaid amounts for the applicable Cloud Service for the period after the date of termination. If the Agreement is terminated for any other reason, Client shall pay to IBM, on the date of termination, the total amounts due per the Agreement. Upon termination, IBM may assist Client in transitioning Client's Content to an alternative technology for an additional charge and under separately agreed terms.

3. Services – Other Services

a. IBM provides consulting, installation, customization and configuration, maintenance, and other services as detailed in an Attachment or TD. Client will own the copyright in works of authorship that IBM develops for Client under a Statement of Work (SOW) (Project Materials). Project Materials exclude works of authorship delivered to Client, but not created, under the SOW, and any modifications or enhancements of such works made under the SOW (Existing Works). Some Existing Works are subject to a separate license agreement (Existing Licensed Works). A Program is an example of an Existing Licensed Work and is subject to the Program terms. 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.

b. Either party may terminate a Service if a material breach concerning the Service is not remedied within a reasonable time. IBM will provide at least 90 days' notice prior to withdrawal of Service. Client will pay charges for Services provided through the effective date of termination. If Client terminates without cause or IBM terminates for breach, Client will meet all minimum commitments and pay termination or adjustment charges specified in the SOW or TD and any additional costs IBM reasonably incurs because of early termination, such as costs relating to subcontracts or relocation. IBM will take reasonable steps to mitigate any such additional costs.

4. Machines and Appliances

a. A Machine is an IBM-branded device including its features, upgrades, and accessories. An Appliance is a Program and 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 is copyrighted and licensed (not sold). 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. 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 Attachment called IBM Authorized Use Table for Machines (AUT) available from IBM and at http://www.ibm.com/systems/support/machine_warranties/machine_code/aut.html. 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, technological or other measures. 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. 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. 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 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. This Agreement governs MC and BIC on Machines acquired from another party. Use of BIC in excess of authorizations from IBM is subject to additional charges.

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, such as consulting, maintenance, or Program support. Providing Content or otherwise using Cloud Services will not affect Client's ownership or license rights in such Content. 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 not disclosing Content except to IBM employees and contractors and only to the extent necessary to deliver the Cloud Services or perform other Services.

b. Client is responsible for obtaining all necessary rights and permissions to enable, and grants such rights and permissions to, IBM, its affiliates, and contractors of either to use, provide, store and otherwise process Content in the Cloud Services or other Services. This includes Client providing required information, making necessary disclosures and obtaining consent, if required, before providing individuals' information, including personal or other regulated data in such Content. Client is responsible for adequate back-up of Content. If any Content could be subject to governmental regulation or may require security measures beyond those specified by IBM for Cloud Services or other Services, Client will not input, provide. or allow access to such Content unless specifically permitted in the terms of the relevant TD or unless IBM has otherwise first agreed in writing to implement additional security and other measures.

c. IBM's Data Security and Privacy Principles for IBM Cloud Services (DSP), at http://www.ibm.com/cloud/data-security, apply for generally available Cloud Service offerings. Specific security features and functions of a Cloud Service may be provided in an Attachment and TDs. Client is responsible to assess the suitability of each Cloud Service for Client's intended use and Content and to take necessary actions to order, enable, or use available data protection features for a Cloud Service appropriate for the Content being used with a Cloud Service. By using the Cloud Service, Client accepts responsibility for use of the Cloud Services, and acknowledges that it meets Client's requirements and processing instructions to enable compliance with applicable laws.

d. IBM's Data Processing Addendum at http://ibm.com/dpa (DPA) and applicable DPA Exhibit(s) apply to personal data contained in Content, if and to the extent: i) European General Data Protection Regulation (EU/2016/679) (GDPR); or ii) other data protection laws identified at http://ibm.com/dpa/dpl apply.

e. Upon request by either party, IBM, Client, affiliates of either, will enter into additional agreements as required by law in the prescribed form for the protection of personal or regulated personal data included in Content. The parties agree (and will ensure that their respective affiliates agree) that such additional agreements will be subject to the terms of the Agreement.

f. 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 and Post Warranty Support

a. IBM warrants that Programs used in their specified operating environment conform to their official published specifications. The warranty period for a Program (not the Program component of an Appliance) is one year, or the initial license term if less than one year, unless another warranty period is specified in an Attachment or TD. During the

Program warranty period, IBM provides Software Subscription and Support (S&S), entitling Client to defect correction information, restrictions, bypasses, and new releases and versions IBM makes generally available. Unless Client elects to discontinue S&S, annual S&S automatically renews at then-current charges until S&S for a version or release is withdrawn. If Client elects to continue S&S for a Program at a designated Client site, Client must maintain S&S for all uses and installations of the Program at that site.

b. IBM warrants that it provides Cloud and other Services using commercially reasonable care and skill in accordance with the applicable Attachment or TD, including any completion criteria, and that Project Materials will comply with the Attachment or TD at the time of delivery. The warranty for a Service ends when the Service ends.

c. IBM warrants that Machines used in their specified operating environment conform to their official published 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. 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.

d. If a Machine 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 for a refund of the amount Client paid (for recurring charges, up to twelve months' charges) and Client's license or right to use it terminates.

e. **I**BM 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. 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 instructions provided by IBM. Preview services and non-IBM Products are sold under the Agreement as-is, without warranties of any kind. Third parties may provide their own warranties to Client.

7. Charges, Taxes, Payment and Verification

a. Client agrees to pay all applicable charges specified 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 and payable within 30 days of the invoice date to an account specified by IBM and late payment fees may apply. Prepaid Services must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid.

b. Client agrees to: i) pay withholding tax directly to the appropriate government entity where required by law; ii) furnish a tax certificate evidencing such payment to IBM; iii) pay IBM only the net proceeds after tax; and iv) fully cooperate with IBM in seeking a waiver or reduction of such taxes and promptly complete and file all relevant documents. 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. For Cloud Services, based on selected billing frequency, IBM will invoice Client the charges due at the beginning of the billing frequency term, except for overage and usage type of charges which will be invoiced in arrears. One time charges will be billed upon IBM's acceptance of an order.

d. IBM may change recurring charges, labor rates and minimum commitments on three months' notice, except for Cloud Services, which IBM may change charges on thirty days' notice unless otherwise committed to pricing during the term of the Cloud Service or as specified in a TD. A change applies on the invoice date or the first day of the charging period 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 three months after IBM's receipt of the order, the product is shipped or made available to Client.

e. Client will: i) maintain, and provide upon request, records, system tools output, and access to Client's premises, as reasonably necessary for IBM and its independent auditor to verify Client's compliance with the Agreement, including MC and Program licenses and metrics, such as sub-capacity usage; and ii) promptly order and pay for required entitlements (including associated S&S or maintenance) at IBM's then current rates and for other charges and liabilities determined as a result of such verification, as IBM specifies in an invoice. These compliance verification obligations remain in effect during the term of any TD and for two years thereafter.

8. Liability and Indemnity

a. IBM's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the product or service that is the subject of the claim, regardless of the basis of the claim. IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings. These limitations apply collectively to IBM, its affiliates, contractors, and suppliers.

b. The following amounts are not subject to the above cap: i) third party payments referred to in the paragraph below; and ii) damages that cannot be limited under applicable law.

c. If a third party asserts a claim against Client that an IBM 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, provided that Client promptly: i) notifies IBM in writing of the claim; ii) supplies information requested by IBM; and iii) allows IBM to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.

d. IBM has no responsibility for claims based on Non-IBM Products, 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 Product when an infringement claim could have been avoided by using a current version or release.

9. Termination

a. Either party may terminate this CRA: i) without cause on at least one month's notice to the other after expiration or termination of its obligations under the Agreement; or ii) immediately for cause if the other is in material breach of the Agreement, provided the one who is not complying is given notice and reasonable time to comply. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to successors and assignees. Termination of this CRA does not terminate TDs, and provisions of this CRA and Attachments as they relate to such TDs remain in effect until fulfilled or otherwise terminated in accordance with their terms. IBM may terminate Client's license to use a Program or MC if Client fails to comply with the Agreement. Client will promptly destroy all copies of the Program or MC after either party has terminated the license. Failure to pay is a material breach.

10. Governing Laws and Geographic Scope

a. Each party is responsible for complying with: i) laws and regulations applicable to its business and Content; and ii) import, export and economic sanction laws and regulations, including defense trade control regime of any jurisdiction, including the International Traffic in Arms Regulations and those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users.

b. Both parties agree to the application of the laws of the State of New York, United States without regard to conflict of law principles. The rights and obligations of each party are valid only in the country where the transaction is performed or, if IBM agrees, the country where the product is placed in productive use, except all licenses are valid as specifically granted. 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 the Cloud Service from a country outside Client's business address. 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. Parties will not disclose confidential information 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 a Cloud Service.

b. Client accepts an Attachment or TD by ordering, enrolling, using, or making a payment for, the product, offering or service. Since this CRA may apply to many future orders, IBM may modify this CRA by providing Client at least three months' written notice. Changes are not retroactive; they apply, as of the effective date, only to new orders, ongoing services that do not expire, and 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 provided above, all changes to the Agreement must be in writing accepted by both parties.

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 obligations, or assume any responsibility for Client's business or operations. IBM is an information technology provider only. Any directions, suggested usage, or guidance provided by the IBM or an IBM Product does not constitute medical, clinical, legal, accounting, or other licensed professional advice. Client should obtain its own expert advice. Client is responsible for its use of IBM Products and Non-IBM Products. 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.

d. 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.

e. IBM Business Partners who use or make available IBM Products or non-IBM products are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings.

f. IBM may offer Non-IBM Products, or an IBM Product may enable access to Non-IBM Product, that may require acceptance of third party terms presented to the Client. Linking to or use of Non-IBM Products constitutes Client's agreement with such terms. IBM is not a party to such third party agreements and is not responsible for such Non-IBM Products. Access to Non-IBM Cloud Services or other Services may be withdrawn at any time.

g. IBM, its affiliates, and contractors of either, 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 ID 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. The IBM Privacy Statement at https://www.ibm.com/privacy/us/en/ provides additional details with respect to BCI and Account Data described below.

h. Account Data is information, other than Content and BCI, that Client provides to IBM to enable Client's acquisition or use of IBM Products or Non-IBM Products or that IBM collects using tracking technologies, such as cookies and web beacons, regarding Client's acquisition or use of IBM Products or non-IBM Products. IBM, its affiliates, and contractors of either, may use Account Data, for example, to enable product features, administer use, personalize experience, and otherwise support or improve use of IBM Products and non-IBM Products.

i. Neither party may assign the Agreement, in whole or in part, without the prior written consent of the other. Assignment of IBM rights to receive payments or assignment by IBM in conjunction with the sale of the portion of IBM's business that includes a product or service is not restricted.

j. This CRA applies to IBM and Client (the signatories below) and their respective Enterprise companies who acquire IBM Products or Non-IBM Products under this CRA. The signatories shall coordinate the activities of their own Enterprise companies under this CRA. Enterprise companies include: i) companies within the same country that Client or IBM control (by owning greater than 50% of the voting shares); and ii) any other entity that controls, is controlled by or is under common control as Client or IBM and has signed a participation agreement.

k. All notices under the Agreement must be in writing and sent to the business address specified for the Agreement, unless a party designates in writing a different address. The parties consent to the use of electronic means and facsimile transmissions for communications as a signed writing. Any reproduction of the Agreement made by reliable means is considered an original. The Agreement supersedes any course of dealing, discussions or representations between the parties.

l. No right or cause of action for any third party is created by the Agreement or any transaction under it. Neither party will bring a legal action arising out of or related to the Agreement more than two years after the cause of action arose. Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control. Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations. Where approval, acceptance, consent, access, cooperation or similar action by either party is required, such action will not be unreasonably delayed or withheld.

m. IBM may use personnel and resources in locations worldwide, including third party contractors to support the delivery of IBM Products and Non-IBM Products. IBM may transfer Content, including personally identifiable information, across country borders. A list of countries where Content may be processed is described in the TD or as specified in service 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.

Agreed to:	Agreed to:
Client Company Name:	IBM Company:
By_____ Authorized signature	By_____ Authorized signature
Title:	Title:
Name (type or print):	Name (type or print):
Date:	Date:
Client number:	Agreement number:
Enterprise number:	
Client address:	IBM address:

Data Processing Addendum

This Data Processing Addendum (DPA) and its applicable DPA Exhibits apply to the Processing of Personal Data by IBM on behalf of Client (Client Personal Data) subject to the General Data Protection Regulation 2016/679 (GDPR) or any other data protection laws identified at http://www.ibm.com/dpa/dpl (together 'Data Protection Laws') in order to provide services (Services) pursuant to the Agreement between Client and IBM. DPA Exhibits for each Service will be provided in the applicable Transaction Document (TD). This DPA is incorporated into the Agreement. Capitalized terms used and not defined herein have the meanings given them in the applicable Data Protection Laws. In the event of conflict, the DPA Exhibit prevails over the DPA which prevails over the rest of the Agreement.

1. Processing

1.1 Client is: (a) a Controller of Client Personal Data; or (b) acting as Processor on behalf of other Controllers and has been instructed by and obtained the authorization of the relevant Controller(s) to agree to the Processing of Client Personal Data by IBM as Client's subprocessor as set out in this DPA. Client appoints IBM as Processor to Process Client Personal Data. If there are other Controllers, Client will identify and inform IBM of any such other Controllers prior to providing their Personal Data, in accordance with the DPA Exhibit.

1.2 A list of categories of Data Subjects, types of Client Personal Data, Special Categories of Personal Data and the processing activities is set out in the applicable DPA Exhibit for a Service. The duration of the Processing corresponds to the duration of the Service, unless otherwise stated in the DPA Exhibit. The purpose and subject matter of the Processing is the provision of the Service as described in the Agreement.

1.3 IBM will Process Client Personal Data according to Client's documented instructions. The scope of Client's instructions for the Processing of Client Personal Data is defined by the Agreement, and, if applicable, Client's and its authorized users' use and configuration of the features of the Service. Client may provide further legally required instructions regarding the Processing of Client Personal Data (Additional Instructions) as described in Section 10.2. If IBM notifies Client that an Additional Instruction is not feasible, the parties shall work together to find an alternative. If IBM notifies the Client that neither the Additional Instruction nor an alternative is feasible, Client may terminate the affected Service, in accordance with any applicable terms of the Agreement. If IBM believes an instruction violates the Data Protection Laws, IBM will immediately inform Client, and may suspend the performance of such instruction until Client has modified or confirmed its lawfulness in documented form.

1.4 Client shall serve as a single point of contact for IBM. As other Controllers may have certain direct rights against IBM, Client undertakes to exercise all such rights on their behalf and to obtain all necessary permissions from the other Controllers. IBM shall be discharged of its obligation to inform or notify another Controller when IBM has provided such information or notice to Client. Similarly, IBM will serve as a single point of contact for Client with respect to its obligations as a Processor under this DPA.

1.5 IBM will comply with all Data Protection Laws in respect of the Services applicable to IBM as Processor. IBM is not responsible for determining the requirements of laws or regulations applicable to Client's business, or that a Service meets the requirements of any such applicable laws or regulations. As between the parties, Client is responsible for the lawfulness of the Processing of the Client Personal Data. Client will not use the Services in a manner that would violate applicable Data Protection Laws.

2. Technical and organizational measures

2.1 Client and IBM agree that IBM will implement and maintain the technical and organizational measures set forth in the applicable DPA Exhibit (TOMs) which ensure a level of security appropriate to the risk for IBM's scope of responsibility. TOMs are subject to technical progress and further development. Accordingly, IBM reserves the right to modify the TOMs provided that the functionality and security of the Services are not degraded.

3. Data Subject Rights and Requests

3.1 IBM will inform Client of requests from Data Subjects exercising their Data Subject rights (e.g., including but not limited to rectification, deletion and blocking of data) addressed directly to IBM regarding Client Personal Data. Client shall be responsible to handle such requests of Data Subjects. IBM will reasonably assist Client in handling such Data Subject requests in accordance with Section 10.2.

3.2 If a Data Subject brings a claim directly against IBM for a violation of their Data Subject rights, Client will reimburse IBM for any cost, charge, damages, expenses or loss arising from such a claim, to the extent that IBM has notified Client about the claim and given Client the opportunity to cooperate with IBM in the defense and settlement of the claim. Subject to the terms of the Agreement, Client may claim from IBM damages

resulting from Data Subject claims for a violation of their Data Subject rights caused by IBM's breach of its obligations under this DPA and the respective DPA Exhibit.

4. Third Party Requests and Confidentiality

4.1 IBM will not disclose Client Personal Data to any third party, unless authorized by the Client or required by law. If a government or Supervisory Authority demands access to Client Personal Data, IBM will notify Client prior to disclosure, unless such notification is prohibited by law.

4.2 IBM requires all of its personnel authorized to Process Client Personal Data to commit themselves to confidentiality and not Process such Client Personal Data for any other purposes, except on instructions from Client or unless required by applicable law.

5. Audit

5.1 IBM shall allow for, and contribute to, audits, including inspections, conducted by the Client or another auditor mandated by the Client in accordance with the following procedures:

a. Upon Client's written request, IBM will provide Client or its mandated auditor with the most recent certifications and/or summary audit report(s), which IBM has procured to regularly test, assess and evaluate the effectiveness of the TOMs, to the extent set out in the DPA Exhibit.

b. IBM will reasonably cooperate with Client by providing available additional information concerning the TOMs, to help Client better understand such TOMs.

c. If further information is needed by Client to comply with its own or other Controllers audit obligations or a competent Supervisory Authority's request, Client will inform IBM in writing to enable IBM to provide such information or to grant access to it.

d. To the extent it is not possible to otherwise satisfy an audit right mandated by applicable law or expressly agreed by the Parties, only legally mandated entities (such as a governmental regulatory agency having oversight of Client's operations), the Client or its mandated auditor may conduct an onsite visit of the IBM facilities used to provide the Service, during normal business hours and only in a manner that causes minimal disruption to IBM's business, subject to coordinating the timing of such visit and in accordance with any audit procedures described in the DPA Exhibit in order to reduce any risk to IBM's other customers.

Any other auditor mandated by the Client shall not be a direct competitor of IBM with regard to the Services and shall be bound to an obligation of confidentiality.

5.2 Each party will bear its own costs in respect of paragraphs a. and b. of Section 5.1, otherwise Section 10.2 applies accordingly.

6. Return or Deletion of Client Personal Data

6.1 Upon termination or expiration of the Agreement IBM will either delete or return Client Personal Data in its possession as set out in the respective DPA Exhibit, unless otherwise required by applicable law.

7. Subprocessors

7.1 Client authorizes the engagement of other Processors to Process Client Personal Data (Subprocessors). A list of the current Subprocessors is set out in the respective DPA Exhibit. IBM will notify Client in advance of any addition or replacement of the Subprocessors as set out in the respective DPA Exhibit. Within 30 days after IBM's notification of the intended change, Client can object to the addition of a Subprocessor on the basis that such addition would cause Client to violate applicable legal requirements. Client's objection shall be in writing and include Client's specific reasons for its objection and options to mitigate, if any. If Client does not object within such period, the respective Subprocessor may be commissioned to Process Client Personal Data. IBM shall impose substantially similar but no less protective data protection obligations as set out in this DPA on any approved Subprocessor prior to the Subprocessor initiating any Processing of Client Personal Data.

7.2 If Client legitimately objects to the addition of a Subprocessor and IBM cannot reasonably accommodate Client's objection, IBM will notify Client. Client may terminate the affected Services as set out in the Agreement, otherwise the parties shall cooperate to find a feasible solution in accordance with the dispute resolution process.

8. Transborder Data Processing

8.1 In the case of a transfer of Client Personal Data to a country not providing an adequate level of protection pursuant to the Data Protection Laws (Non-Adequate Country), the parties shall cooperate to ensure compliance with the applicable Data Protection Laws as set out in the following Sections or at the Data

Protection Laws at http://www.ibm.com/dpa/dpl. If Client believes the measures are not sufficient to satisfy the legal requirements, Client shall notify IBM and the parties shall work together to find an alternative.

8.2 By entering into the Agreement, Client and IBM are entering into EU Standard Contractual Clauses as set out in the applicable DPA Exhibit (EU SCC) if Client, IBM, or both are located in a Non-Adequate Country. If the EU SCC are not required because both parties are located in a country considered adequate by the Data Protection Laws, but during the Service the country where IBM or Client is located becomes a Non-Adequate Country, the EU SCC will apply.

The parties acknowledge that the applicable module of the EU SCC will be determined by their role as Controller and/or Processor under the circumstances of each case and are responsible for determining the correct role undertaken in order to fulfil the appropriate obligations under the applicable module.

8.3 Client agrees that the EU SCC, including any claims arising from them, are subject to the terms set forth in the Agreement, including the limitations of liability. In case of conflict, the EU SCC shall prevail.

8.4 IBM will enter into the EU SCC with each Subprocessor located in a Non-Adequate Country as listed in the respective DPA Exhibit.

9. Personal Data Breach

9.1 IBM will notify Client without undue delay after becoming aware of a Personal Data Breach with respect to the Services. IBM will promptly investigate the Personal Data Breach if it occurred on IBM infrastructure or in another area IBM is responsible for and will assist Client as set out in Section 10.

10. Assistance

10.1 IBM will assist Client by technical and organizational measures for the fulfillment of Client's obligation to comply with the rights of Data Subjects and in ensuring compliance with Clients obligations relating to the security of Processing, the notification and communication of a Personal Data Breach and the Data Protection Impact Assessment, including prior consultation with the responsible Supervisory Authority, if required, taking into account the nature of the processing and the information available to IBM.

10.2 Client will make a written request for any assistance referred to in this DPA. IBM may charge Client no more than a reasonable charge to perform such assistance or an Additional Instruction, such charges to be set forth in a quote and agreed in writing by the parties, or as set forth in an applicable change control provision of the Agreement. If Client does not agree to the quote, the parties agree to reasonably cooperate to find a feasible solution in accordance with the dispute resolution process.

Agreement for Exchange of Confidential Information

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

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

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

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

b) subcontractors, financial and legal advisors, and then only to those who have a need to know.

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

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

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

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

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

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

Any Information is subject to change or withdrawal without notice.

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

General
Assignment. Neither party may assign, or otherwise transfer, its rights or delegate its duties or obligations under this Agreement without prior written consent of the other except as part of the divestiture of a business line where the acquirer agrees to be bound by the terms of this Agreement. Any attempt to do so is void.
Termination. Either party may terminate this Agreement by providing at least one month's written notice to the other. Any terms of this Agreement which by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees.
Modification. Only a written agreement signed by both parties can modify this Agreement.
Choice of Law. Both parties agree to the application of the laws of the State of New York to govern, interpret, and enforce all of the parties' respective rights, duties, and obligations arising from, or relating to, the subject of this Agreement, without regard to conflict of law principles.
Import/Export Compliance. Each party will comply with all applicable export and import laws and associated embargo and economic sanction regulations, including those of the United States.

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

Agreed to:	Agreed to:
<Company Full Legal Name> ("Company")	**International Business Machines Corporation ("IBM")**
By _____ Authorized Signature	By _____ Authorized Signature
Name (type or print):	Name (type or print):
Date:	Date:
Identification number:	Agreement number:
Address:	IBM address:

Discount & Pricing Structure

(1) Hardware, hardware maintenance, operating system software licenses & maintenance
(2) Software licenses/subscription/support for IBM Z Systems One Time Charge software
(3) Distributed software & subscription/support under the Passport Advantage Program including Software as a Service,
(4) IBM services - general business consulting services, infrastructure & technology services, physical security services, cloud services, educational conferences & training

As detailed herein, the discount & pricing structure shall succeed Contract No. L9130-5/19 between Miami-Dade County, Florida ("Miami-Dade County") and IBM Corporation ("IBM"), executed on August 2, 2016, and expiring on October 31, 2022, which is inclusive of the IBM Client Relationship Agreement and the Agreement for the Exchange of Confidential Information. Notwithstanding the expiration of Contract No. L9130-5/19 on October 31, 2022, Products and Maintenance Services purchased under Contract No. L9130-5/19 prior to the contract expiration date shall continue to be governed by the terms and conditions of Contract No. L9130-5/19 for the period set forth in the transaction document. Alternatively, Miami-Dade County may elect to acquire Products and Maintenance Services under the terms and conditions of the succeeding Master Contract contemplated by the parties ("this contract"). In addition, for any Products and Maintenance Services purchased under this contract, Miami-Dade County may finance such purchase through IBM Global Finance.

The Discount & Pricing Structure for transactions under this contract shall not exceed the then current IBM GSA Schedule price list, inclusive of the GSA Labor Hourly Rates. IBM may offer additional incentive discounts to Miami-Dade County at any time during the contractual term and any extensions thereof.

Prices provided under this contract are guaranteed throughout the entire contract term, to the extent specified in the then-current IBM GSA Schedule Contract price tables or as otherwise detailed in the price table attachments to this contract.

Technology Support Services for hardware maintenance: IBM is including five-year price protection from the reference date of November 1, 2022, for currently installed hardware and from the date of announcement for new products for the remainder of the contract term; IBM is including price protection for Software Maintenance for AIX, Linux & OS/400 operating system software.

For **Passport Advantage & SaaS Software** - new software licenses as well as subscription and support, pricing schedules shall be set at Passport Advantage (PPA) Commercial Discount Level J. IBM will guarantee this price level through the term of this contract. This price level is not fixed throughout the year, but rather can be subject to price changes. Should, at any time, there be a situation in which a part number in Discount Level J is higher in price than the same part number in the current IBM Level GV (Federal GSA) pricelist. IBM will grant Miami-Dade County the lesser of the two prices via a special bid process. IBM Level GV pricing is static through the Federal fiscal year, beginning on Oct 1 and ending on September 30 of each year.

For **hardware purchases**, the discount structure on current hardware & operating systems are described in the table below. When pricing IBM hardware to Miami-Dade County, the discounts presented will always meet or exceed these levels so that the pricing will be on par or below this reference point. As new hardware & operating system software is announced during the life of this contract, the same discounts will apply.

Description	**Percentage Discount**
Power Servers (current technology 9080,9040,0990)	15%
Management Consoles (7063,731	510%
Enterprise Storage (533x)	25%
Midrange Storage (466x, 207x)	15%
SAN Volume Controllers (214x)	15%
Enterprise Tape (35xx)	18%
SAN (8960)	15%
AIX, PowerHA Operating System Software	25%
HMC Operating System Software	15%
i) S Operating System Software	15%
Linux Operating System Software	10%

SLED & GSA product & services links:

For future reference a comprehensive listing of IBM State, local, & Education Contracts with products & pricing for Servers, Storage, & System Software; Software – PPA; Software – SaaS; and Maintenance can be found at: software products with corresponding GSA pricing
can also be found at the following link:

https://www.ibm.com/industries/sled-contracts/ibm-product-pricing

A comprehensive listing of products & services with corresponding GSA pricing can be found at the following link:

https://www.ibm.com/industries/federal/contracts/fsa-mas-schedule-gs35f-110da-details

IBM Training & Conferences

As a global leader in technology training and an organization committed to the idea of building a smarter planet, IBM has the expansive reach and unparalleled depth to help you gain the technical skills you'll need to take your career to the next level:

- ***Curricula across the IT spectrum –*** Thousands of courses in more than two dozen topic areas.
- ***Training paths for career development –*** Guidance to show you what courses to take, and in what order.
- ***Certification/Badge opportunities –*** Earn your credentials in IBM and IBM-partner technologies.
- ***Expert instructors, world-class content –*** Our students come back again and again for training that grows with their skills.

IBM Training roadmaps and comprehensive information can be found at bm.com/training/

You can start with free training, take a class, start a path, or earn a credential. Get certified, gain new skills, give your career a boost. Your new and improved integrated credentials experience has arrived. IBM has combined certification and all other skills-related credential information into a single, easy to navigate resource, making it easier for you to find the credentials and related learning that matter most. Training is available in software, systems,and networking disciplines. For skills development IBM uses digital badging to recognize and document what you know, what you can do, and what you have mastered to instill greater purpose and value for your learning and skill achievements.

IBM offers training in areas such as the following:

Artificial Intelligence	IT Infrastructure
Cloud Paks	Cloud
Supply Chain	Security
Automation	Cybersecurity
Data & Analytics	Systems
Business Operations	Free Digital Learning
IT Infrastructure	

IBM offers training for multiple job roles such as

Architect	Business Analyst	Consulta
Cyber security professional	Data Center Technician	Data Scientist
Deployment professional	Designer	Finance
Developer - Hardware	Developer - Software	Human Resources
IT Services	Legal	Operations
Marketing & Communications	Offering/Program Manager	Project Manager
Research	Sales	Solution Advisor
Support	Systems Administrator	Systems Integrator

IBM offers Badges in over 1,282 concentration areas and Certifications in over 168 areas.

IBM Technical Conferences

Learn about new products, get tips from development experts, gain valuable hands-on lab experience, or earn professional certification when you join leading-edge thinkers, technology gurus and business experts at any of IBM's 30+ technical conferences and seminars held worldwide each year.

As part of this contract and periodically, IBM may provide passes to technical conferences as may be required for technical knowledge & education for specific projects or hardware/software procurements and for speakers/panelists at IBM conferences at no charge to Miami-Dade County.

Attachment 2: Hardware & Maintenance:

This attachment covers hardware product lines, hardware maintenance, operating system maintenance (AIX, OS/400, SofwareXcel, Linux, etc) and optional services

Hardware Product Lines
Technical Services Attachment for Technology Support Services (TSS) for State & Local Government
TSA Optional Services
Attachment for IBM Power Systems Temporary Capacity on Demand

IBM Hardware Product Lines

IBM has several hardware product lines – zSeries servers, POWER Series servers, Storage subsystems and Networking.

The zSeries servers are the world's most scalable and reliable servers in the world. The zSeries is the gold standard that provides the highest level of reliability and availability with uptime at 99.999%. The zSeries server provides the most consistent transaction response time while managing multiple applications and databases. These versatile servers had a variety of processors for compute, integrated Linux, specialty engines tuned for WebSphere or DB2 and Encryption while running multiple operating systems - zOS, zVM, Red Hat Linux and SUSE Linux. The use of zVM provides the ability to build hundreds of virtual machines in a single frame.

The POWER series servers are the most flexible servers in the world. These servers are packaged from entry level "pizza box" servers to enterprise scale servers. The entry level servers provide low cost small servers in small - two and four rack slot - form factors while providing all of the flexibility for the variety of operating systems. There is a Linux-only entry server option. The enterprise server family provides massive scale up capability up to two hundred and fifty six processors in a single frame. These servers are designed with On Demand capabilities to turn on and off processors and memory so that you can only use (and pay) for processors and memory when you need it. This can be done dynamically without outages or downtime. These flexible servers run AIX, iOS, Red Hat Linux and SUSE Linux today.

The Storage product line includes Storage Area Network Virtualization, Flash, Disk and Tape areas.

IBM is the leader in SAN Virtualization with the SAN Volume Controller (SVC) system. The SVC is a tried and true solution, now in its ninth generation supporting petabytes of storage. The SVC supports hundreds of different storage subsystems with thousands of installations worldwide.

IBM is the industry leader with the FlashSystem product line. The IBM FlashSystems provides a level of latency for access lower than any competitive product based on a series of patented algorithms unparalleled in the industry. With the release of the fifth generation of FlashSystems subsystems IBM has an option with SVC integration into the subsystem to simplify implementation and maintenance.

In the Disk product line, we provide Enterprise, Mid-Range and Entry subsystems. The Shark product line has been the standard that all enterprise subsystems compare themselves to in reliability, performance, flexibility and scalability.

The current Enterprise Shark Model 8900 is the tenth generation of this family and provides the highest level performance are all flash solutions. The current Mid-Range Storwize subsystems includes options for flash and spinning disks copies with built in

tiering and replication. The Entry level provide ultra-thin small form factor for distributed environments.

In the Tape product line, IBM has physical and virtual tape subsystems. IBM is the dominate vendor in the physical tape market with offerings mainframe and open systems from rack mount tape drives and changers to massive libraries that support zSeries and Open Systems concurrently. These libraries are support by a variety of IBM and third party software vendors that provide backup and recovery solutions. IBM has Virtual Tape subsystems dedicated to the zSeries systems. They provide a variety of functions including encryption, compression, de-duplication, and Grid based replication among the most commonly installed.

IBM Networking falls into two categories - Storage Area Networking (SCSI) and Converged Networks (SCSI and IP). IBM provides entry and mid-range SAN switches along with enterprise SAN director class devices. These easy to manage devices provide the highest level of security and reliability for access your disk and tape data. IBM provided Converged devices provide a mix of SCSI, FCIP, IP, FOCE and ROCE support.

IBM provides different levels of hardware and software support for all of these devices to meet your specific requirements. The levels range from hardware only, hardware and software, on premise and telephone support. This support can be provided next business day, Monday through Friday business hours or full 7 x 24 onsite support.

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

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

1. Services

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

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

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

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

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

Machine Maintenance does not cover:

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

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

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

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

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

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

1.1 Warranty Service Upgrade (WSU)

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

1.2 Maintenance of IBM Machines

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

1.2.1 Hardware Support Extension

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

IBM will:

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

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

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

1.3 Maintenance of Non-IBM Machines

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

1.3.1 Multi-Vendor Service

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

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

1.4 IBM Software Maintenance

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

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

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

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

1.5 Support via USA Citizens or US Persons Option

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

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

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

1.6 Machine Control Program Remote Support

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

2. Client Responsibilities

Client agrees:

a. to provide IBM with the inventory of Eligible Products to be covered at each Specified Location and to notify IBM of inventory changes, utilizing the specified tools or systems to provide such written notice. Any changes to contracted configuration or inventory may result in a change to original charges;

b. as required for the specific Service, to designate the Primary Technical Contact (PTC), Client's country-based representative to whom IBM may direct general technical information and questions regarding the Eligible Products within the environment, in order to enable effective communication with the IBM support center;

c. to have valid licensing and subscription in place for Eligible Programs covered by a Service;

d. that all Client notices must be in writing and received by IBM 60 days prior to the effective date of a change, unless otherwise specified;

e. to limit use of any access codes to electronic diagnostic tools, information databases, or other Service delivery facilities to those authorized to use them under Client's control and only in support of Eligible Products and Services identified in TDs;

f. to provide IBM with necessary information requested, and keep such information current;

g. to access IBM Support as directed by IBM, such as by calling 1-800-IBM-SERV or the Support number for a specific country listed at https://www.ibm.com/planetwide/ and providing machine type / serial or customer number or, to obtain support electronically, use the Internet web site: http://www.ibm.com/support/ ;

h. to allow remote access to Client's system to assist in isolating the problem cause. Client remains responsible for adequately protecting its system and all data contained therein whenever IBM remotely accesses it. If Client denies remote access to its system by IBM, IBM may be limited in its ability to resolve the problem. If IBM is unable to resolve the problem without access, IBM will notify Client and close the service call;

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

3. Charges

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

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

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

For each transaction, total Service charges are adjusted when:

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

Increases to charges apply at the renewal of the term.

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

Re-establishment Fee

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

Software Maintenance After License Fee

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

a. if there is a resumption of the SWMA after a lapse of the service; or

b. when Client transfers a Software License for a Program not currently covered by IBM SWMA; or

c. when Client acquires the Software License with the purchase of a used Machine, unless Client acquires SWMA within 30 days of the acquisition. For SWMA for IBM i, the most current operating system version and release is required to be installed.

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

4. Automatic Inventory Insertion

4.1 Machine Maintenance

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

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

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

4.2 Software Maintenance

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

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

5. Renewal

The Schedule will state if Services automatically renew.

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

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

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

a. provide remote technical support for problem determination (PD) and problem source identification (PSI);

b. provide on-site technical resources, if necessary, for hardware defect resolution (for example, but not limited to, the exchange of field replaceable units (FRUs), provided that the parts are generally commercially available); and

c. determine if an applicable resolution exists, which may include existing patches or workarounds for Client installation.

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

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

7. Termination

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

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

8. Data Processing Protection

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

9. Purchase Order Clients

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

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

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

MDC049

IBM Customer Agreement
Attachment for IBM Power Systems Temporary Capacity on Demand

The terms of this Attachment for IBM Power Systems Temporary Capacity on Demand ("Attachment") are in addition to the IBM Customer Agreement (or an equivalent agreement in effect between us) identified below ("Agreement") and govern IBM's provision and Customer's acquisition and use of the IBM Power Systems On/Off Capacity on Demand offering ("On/Off CoD").

1. Definitions

Activate – to enable On-Demand Capacity for use.

Monitoring Program -- software IBM licenses to Customer (for example, the IBM Electronic Service Agent Program) that (i) monitors Activation of Temporary Capacity, and (ii) reports TCoD Units to IBM through a telecommunications connection.

On-Demand Capacity – the amount of resources, such as processors, storage, memory, that is installed on a TCoD Machine but that is not enabled for use (for example, resources which IBM documentation refers to as "on-demand processors").

Requested Units -- TCoD Units Customer specifies when Customer Activates On-Demand Capacity.

TCoD Billing Feature -- a feature, used for billing purposes, that specifies the price for each TCoD Unit. The TCoD Billing Feature is orderable in the quantity and type of TCoD Units that are Activated during a TCoD Billing Quarter.

TCoD Billing Quarter -- a calendar quarter for which Customer's Activation of Temporary Capacity is monitored for billing purposes.

TCoD Enablement Feature -- a feature which, when included in the configuration of a TCoD Machine, (i) authorizes Customer to perform Activations and use Temporary Capacity on the TCoD Machine, and (ii) provides a key (referred to in IBM documentation as the "TCoD Enablement Code") to enable Customer Activation and Customer management of Temporary Capacity on the TCoD Machine.

TCoD Machine -- an IBM Power Systems Machine that supports Temporary Capacity on Demand ("TCoD") (which may also be referred to in IBM literature or otherwise known as "On/Off Capacity on Demand," "On/Off CoD," "On/Off Capacity Upgrade on Demand," or "On/Off CUoD") and for which IBM offers TCoD features. Each TCoD Machine will be specified in an IBM Supplement for IBM Power Systems Temporary Capacity on Demand ("Supplement").

TCoD Unit Maximum -- a TCoD Enablement Feature's maximum number of TCoD Units available for Activation. Once this maximum is reached, Customer must obtain a new TCoD Enablement Feature in order to perform additional Activations.

TCoD Units -- the duration and amount of On-Demand Capacity that is Activated. For example, "Processor Days" (number of Activated processors multiplied by the number of 24-hour periods plus any partial 24-hour period), or "Memory Days" (the amount of Activated memory multiplied by the number of 24-hour periods plus any partial 24-hour period) are the TCoD Units measuring Activation of processors and memory, respectively. TCoD Units include both Requested Units and Unreturned Units.

Temporary Capacity -- On-Demand Capacity that has been Activated.
Unreturned Units -- TCoD Units that remain Activated after expiration of the duration Customer specified

when Customer Activated On-Demand Capacity.

2. Use of Temporary Capacity

Customer agrees to the following:

1. **Customer is responsible for the charges associated with each TCoD Unit measured on Customer's TCoD Machine during a TCoD Billing Quarter. This responsibility is satisfied when Customer orders a sufficient quantity of TCoD Billing Features and pays IBM or Customer's IBM Business Partner, as applicable, for the TCoD Billing Features. The amount due will be at IBM's or Customer's IBM Business Partner's, as applicable, then-current prices and payment terms for the TCoD Billing Feature applicable to the associated TCoD Billing Quarter;**
2. **no later than 30 days following the end of each TCoD Billing Quarter, Customer will place, or Customer will have Customer's IBM Business Partner place on Customer's behalf, an order with**

IBM for TCoD Billing Features in a quantity equal to all TCoD Units that were measured on Customer's TCoD Machine during that TCoD Billing Quarter. Customer authorizes IBM to place this order on Customer's behalf, and invoice Customer for the order at IBM's then current price, if Customer or Customer's IBM Business Partner fails to place such order within such time period;

c. Customer will install (unless preinstalled), configure, and maintain the Monitoring Program on each TCoD Machine in the manner specified by IBM in the Monitoring Program's documentation, for the purpose of reporting TCoD Units to IBM at the interval(s) determined solely by IBM;

4. if Customer becomes aware that the Monitoring Program is disabled, disconnected or otherwise unable to accurately report TCoD Units to IBM, Customer will promptly notify IBM, and allow IBM (or IBM's agent) to access the TCoD Machine for the sole purpose of determining, if possible, the measurement of TCoD Units for which Customer is responsible;
5. if (a) Customer removes, disables, disconnects, or otherwise prevents the Monitoring Program from accurately reporting TCoD Units to IBM; or (b) the Monitoring Program becomes disabled, disconnected or otherwise unable to accurately report TCoD Units to IBM and Customer fails to promptly notify IBM and allow access as described in Section 2.d above, then Customer will be responsible for TCoD Units as if all of the associated TCoD Machine's available On-Demand Capacity was Activated during the entire period for which the Monitoring Program did not measure or report TCoD Units to IBM. IBM retains all other remedies it may have in the event of such actions, including without limitation termination of Customer's right to use Temporary Capacity; and
6. upon reasonable notice, during normal business hours, and in a manner that minimizes disruption to Customer's business, Customer agrees to grant IBM sufficient access to TCoD Machines, including without limitation information regarding the use of IBM Programs on TCoD Machines, for the sole purpose of verifying Customer's compliance with the terms of this Attachment and IBM Program license terms.

3. Customer's Additional Responsibilities

Customer agrees to the following:

1. Customer represents and warrants that, at the time a TCoD Enablement Feature is ordered with, or for, a TCoD Machine, Customer is either the owner of the TCoD Machine or Customer has the permission from the owner and any lien holders for placing such order and Activating On-Demand Capacity;
2. IBM is not responsible to notify any of Customer's suppliers (for example, other software vendors who license their product on a per-processor basis) when Customer Activates On-Demand Capacity;
3. in addition to charges for Activation of On-Demand Capacity, Customer is also responsible for any charges resulting from, or necessary for, the Activation, including those for requisite hardware, software, (for example, software license upgrades) or services (for example, additional maintenance charges);
4. IBM reserves the right to change the process by which Temporary Capacity is made available for Customer's use. Provided such change is of no charge, Customer is provided at least 30 days written notice from IBM, and is not unreasonably burdensome to Customer, Customer will install (or if specified by IBM, allow IBM to install) and implement any such change on each applicable TCoD Machine within a commercially reasonably time period following receipt of notice from IBM or Customer's IBM Business Partner;
5. IBM reserves the right to change the Monitoring Program or the means by which IBM monitors Activation of On-Demand Capacity. Provided such new Monitoring Program is of no charge, Customer is provided at least 30 days written notice from IBM, and use of such new Monitoring Program is not unreasonably burdensome to Customer, Customer will install (or if specified by IBM, allow IBM to install) and implement any such change within a commercially reasonable time period following receipt of notice from IBM or Customer's IBM Business Partner;
6. this offering is comprised solely of the computer resource identified as On-Demand Capacity available for a TCoD Machine. Customer is responsible for providing all other computing resources (for example, memory, storage) that Customer may require, adequate in type and quantity, to satisfy the needs of Customer's computing environment;

7. Customer authorizes IBM and its subsidiaries (and their successors and assigns, contractors, and IBM Business Partners) to store and use Customer's business contact information wherever they do business in connection with IBM Products and Services or in furtherance of IBM's business relationship with Customer; and
8. prior to termination of this Attachment for a TCoD Machine, Customer will provide IBM access to the TCoD Machine for IBM's removal of the TCoD Enablement Feature. If Customer transfers possession of a TCoD Machine without providing IBM such access, Customer is, upon such transfer, responsible to IBM for the following charges associated with the transferred TCoD Machine:
    1. (1) unreported TCoD Units for Activated On-Demand Capacity, up to the TCoD Unit Maximum; and
    2. (2) any Unreturned Units, in excess of the TCoD Unit Maximum.

4. Termination

Customer may terminate this Attachment, or Customer may terminate Customer's rights under this Attachment for any specific TCoD Machine, by providing written notice to IBM. Such termination is effective the later of i) the date of termination Customer specifies in such notice or ii) the date IBM completes the removal of the TCoD Enablement Feature

from Customer's applicable TCoD Machine(s), such removal to be performed at a mutually agreed upon time.

Customer's rights under this Attachment for a TCoD Machine terminate upon the earliest of the following: i) Customer transfers possession or control of the TCoD Machine to another party (for example, Customer returns the TCoD Machine to a lessor); ii) this Attachment terminates.

Either party may terminate this Attachment if the other fails to comply with any of its terms, provided the one who is not complying is given written notice and reasonable time, not to exceed 30 days, to comply.

This Attachment terminates upon the filing of any petition or proceeding by or against Customer under any federal or state bankruptcy or insolvency law.

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

5. Warranty

Standard IBM warranty terms apply. As such, the warranty period for On-Demand Capacity commences upon the Date of Installation of the On-Demand Capacity, regardless of when or whether Customer Activates the On-Demand Capacity.

6. Machine Code

Customer's use of Machine Code on a TCoD Machine is subject to the terms and restrictions governing such use as specified in the Agreement. Customer's use of Temporary Capacity is governed by the terms and restrictions that govern Machine Code except as expressly provided in this Attachment. Machine Code does not include any Program or code provided under a separate license agreement, including without limitation an open source license agreement.

6.1 Built-in-Capacity

A TCoD Machine includes computing resources or capabilities that are to remain inactive, or the use of which is restricted, until the right to access and use the resources or capabilities is properly acquired directly from IBM or through an authorized IBM reseller (called "Built-in-Capacity"). Such computing resources and capabilities include without limitation processors, memory, storage, and/or workload specific resources or capabilities (such as limitations on the use for a specific operating system, programming language or application). If Customer is the rightful possessor of a TCoD Machine, IBM grants Customer a license to use the Machine Code (or any replacement IBM provides) on, or in conjunction with, only the TCoD Machine for which the Machine Code is provided, and only to the extent of authorizations Customer has acquired for access to and use of Built-in-Capacity. If Customer's use of Built-in-Capacity exceeds such IBM authorizations, Customer agrees to pay IBM charges based on the full price of permanent, unrestricted use of the Built-in-Capacity at the then-current price. Customer is not authorized to use such Built-in-Capacity until such payment is made.

2. **6.2 Temporary License**

For the purpose of an Activation, IBM grants Customer a temporary license to use the Machine Code on the TCoD Machine to support Customer's use of Temporary Capacity, as authorized herein. Customer's temporary license to use the Machine Code on a TCoD Machine will commence on the date Customer performs the Activation and will terminate upon the earlier of the following: i) Customer's Deactivation of the Temporary Capacity, and ii) expiration or termination of Customer's rights under this Attachment for the TCoD Machine.

3. **6.3 Circumvention of Technological Measures**

Built-in-Capacity and Activation of Temporary Capacity are limited by certain technological measures in Machine Code. Customer may not i) circumvent such technological measures or use a third party or third party product to do so, or ii) otherwise access or use unauthorized Built-in-Capacity. If IBM determines that changes are necessary to the technological measures designed to limit access to, or use of, Built-in- Capacity, IBM may provide Customer with changes to such technological measures. Customer agrees, at IBM's option, to apply or allow IBM to apply such changes.

7. Designation of Participating Business Partner

TCoD Billing Features are offered by IBM directly and by participating IBM Business Partners. To participate, an authorized IBM Business Partner must register with IBM and agree to the IBM terms of participation. If Customer has chosen to order TCoD Billing Features through a participating IBM Business Partner, Customer authorizes IBM to provide the information that IBM receives through the Monitoring Program to such IBM Business Partner each Billing Quarter to allow such IBM Business Partner to invoice Customer for applicable charges. Customer agrees that unless Customer revokes such authorization or designates a different participating IBM Business Partner with at least 60 days notice to IBM (in the manner specified by IBM, such specification being available from IBM upon Customer's request) Customer continues to authorize IBM to provide this information to the designated participating IBM Business Partner. In the event Customer revokes authorization without designating another participating IBM Business Partner, IBM will invoice Customer directly for applicable charges.

This Attachment, including its Supplements, and the Agreement are the complete agreement regarding IBM's provision of On/Off CoD, and replace any prior oral or written communications between Customer and IBM. In entering into this Attachment, including each Supplement, neither party is relying on any representation that is not specified in this Attachment including without limitation any representations concerning: i) performance or function of On/Off CoD; ii) the experiences or recommendations of other parties; or iii) results or savings Customer may achieve. Additional or different terms in any written communication from Customer (such as a purchase order) are void.

Each party accepts, on behalf of its Enterprise, the terms of this Attachment by signing this Attachment (or another document that incorporates it by reference) by hand or electronically. Once signed, i) any reproduction of this Attachment or a Supplement made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original and ii) all Temporary Capacity use is subject to it.

Agreed to:

{Customer legal name} **("Customer")** By_____

Authorized signature

Name (type or print): Date:

Customer identification number: Customer address:

Agreed to:

International Business Machines Corporation

(“IBM”)

By_____ Authorized signature

Name (type or print): Date:
Agreement number: Attachment number: IBM address:

Agreement for IBM Power Expert Care

Client acquires IBM Power Expert Care (the Service), subject to this IBM Agreement (the Agreement).

THE TERMS BELOW GOVERN CLIENT'S PURCHASE AND USE OF THIS SERVICE. THESE TERMS ARE THE COMPLETE AND EXCLUSIVE AGREEMENT REGARDING THIS SERVICE AND REPLACE ANY PRIOR ORAL OR WRITTEN COMMUNICATIONS BETWEEN CLIENT AND IBM CONCERNING THIS SERVICE.

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

Client may access IBM Support by calling 1-800-IBM-SERV or the Software Support number for Client's country, listed at https://www.ibm.com/planetwide/ and providing Client's machine type/serial on which the Eligible Product is installed or Client's client number. To obtain support electronically, please use the Internet web site: http://www.ibm.com/support

Neither party is relying on any representation not specified in this Agreement. For a change to the Agreement terms to be valid, both of us must acknowledge acceptance of the change. Additional or different terms in any written communication from Client (such as a purchase order) are void.

Service Description

When Client acquires IBM Power Systems, Client may select from IBM Power Expert Care Advanced, or IBM Power Expert Care Premium, as each is described herein, in addition to the standard Machine warranty. Client's selections are documented in the transaction document provided to Client by the seller at the time of the acquisition, such as the Purchase Supplement or invoice (the TD).

Prerequisites: IBM Software Maintenance (SWMA) and IBM Proactive Service (where available) are mandatory prerequisites for Power Expert Care and must run coterminous with the full term of Power Expert Care.

Unless IBM specifies otherwise, Power Expert Care Services apply only in the country in which the Services were purchased and may not be transferred outside that country.

IBM Power Expert Care Advanced

IBM will provide:
Machine maintenance, 24x7 same day onsite repair after warranty, for a term documented in the TD.

IBM Power Expert Care Premium

IBM will provide:

a. Machine maintenance, 24x7 same day onsite repair after warranty, for a term documented in the TD;
b. Global Total Microcode Support Services, once per year;
c. Media Retention; and
d. Enterprise Accelerated Value Program (eAVP).

Service Descriptions

Machine Maintenance

Machine Maintenance is Service, after warranty, 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 covered Eligible Machines to keep the IBM Eligible Machines in, or restore them to, conformance with their officially published specifications;
c. if available for Client's IBM Eligible Machines, installation of Service Programs to endeavor to:
   (1) detect and analyze permanent errors;
   (2) correlate temporary errors; and
   (3) identify and report media problems.
d. the services of support specialists from IBM manufacturing, engineering, and development locations as deemed necessary by IBM;
e. the planning, scheduling and installation of any engineering changes or field change orders required to improve the serviceability, performance, and safety of the IBM Eligible Machines;
f. assisting Client in establishing and implementing electronic support facilities such as IBM Electronic access; and
g. activation, for use by IBM personnel, of electronic facilities to remotely diagnose, applying fixes, and update Client's IBM Eligible Machines.

Machine Maintenance does not cover:

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

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

IBM may use tools, owned or licensed by IBM, in the performance of the Service (IBM Tools). IBM continuously develops and utilizes new IBM Tools and capabilities for the purpose of providing remote and on-site problem determination and resolution support to IBM Clients. Some IBM Tools (e.g., an application (App)), are used by on site technicians to capture and store images of the Machine and transmit the images to a remote IBM Subject Matter Expert with a goal of faster and more cost effective repair and one-visit resolution of complex issues. The images may also be modified and/or used for training and to improve maintenance services. Unless licensed in writing by IBM, Client has no right to access, retain, copy, or use the IBM Tools and no Client license or intellectual property right is granted or implied by the use of the IBM Tools used in connection with performance of the Services. IBM Tools are subject to the terms associated with them. IBM Tools are not warranted. If applicable, upon completion of the Service Client agrees to cease use of, uninstall and remove the IBM Tools from Client's Eligible Machines and facilities.

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

Global Total Microcode Support Services

IBM Global Total Microcode Support Services will consist of supporting microcode for the Eligible IBM Power Machines under this contract, for the supported microcode, firmware, and BIOS levels (not including any beta versions) for which Client has a license for the Eligible IBM Power Machines. The Analysis and Microcode Support will include Analysis and Microcode Support Update Services once per year. Power Systems Microcode Support Eligible Products must be configured in a way that the IBM Data Collection Tool can connect to retrieve Microcode information.

Global Total Microcode Support Services – Analysis

IBM will perform an analysis and verify whether the recorded Microcode levels of the contracted Eligible IBM Power Machines for Microcode Support Service are currant. Once the Microcode Support Analysis is complete, IBM will electronically deliver a Microcode Support Plan to client's Point of Contact. The Support Plan contains client's current Microcode driver and Host Bus Adapter levels on client's contracted IBM Power Machines and provides Microcode upgrade recommendations, if applicable.

Global Total Microcode Support Services – Update

In addition to the Services specified in the scope of the Microcode Support - Analysis section above, IBM will implement updates of the Microcode levels on client's contracted Eligible IBM Power Machines at the Specified Locations in the Schedule.
By providing an update of the Microcode level on an Eligible IBM Machine, IBM does not provide any further warranty concerning the Eligible IBM Machine, its Microcode, or its performance.

Client's Responsibilities for Global Total Microcode Support

Client agrees to:

a. remain responsible during the Microcode Support Analysis and Update for any decisions regarding upgrades on Client's Eligible IBM Machines, as documented in Client's Microcode Support Plan;
b. provide IBM with all information requested, which may include Client's system configuration and an outline of Client's network topology;
c. ensure that IBM will have remote access to Client's Eligible IBM Machines for querying the required system data, or, if deemed possible by IBM, ensure that Client provides IBM Representative with the required system data identified by IBM. Client hereby approves the use of programs enabling IBM to query the Microcode levels or the required data. Client remains solely responsible for security of the Client network.;
d. notify IBM of changes to Client's Eligible IBM Machines, and of updates to the Microcode, drivers, or operating systems. Client will provide IBM with the necessary access to enable IBM to perform updates simultaneously on multiple Machines at one Specified Location, in order to reduce waiting times;
e. observe and abide by the accepted license terms for the Microcode;
f. obtain recommendations and updates for Microcode of non-IBM products directly from the respective manufacturers;
g. perform backup and verification of all data stored on Eligible IBM Machines prior to starting the implementation of any updates;
h. be responsible for scheduling updates to minimize interruptions to system performance

i. install and activate, per IBM's instructions, the Microcode Data Collector programs;
j. be responsible to maintain the ID and password table of the applicable Eligible Products within the Microcode Data Collector programs where necessary;
k. remove, per IBM's instructions, the Microcode Data Collector programs;
l. make the necessary network changes to allow IBM access to your Eligible IBM Machines and your network during the hours agreed upon;
m. maintain responsibility for implementation of recommendations provided in the Support Plan and the implementation for any other technical procedures that pertain to the Microcode levels for the Machines covered under this Agreement. IBM provides knowledge and experience in providing you with a Microcode Support Plan, however IBM may not know about other Microcode levels on machines that are not covered under this Agreement. Client is solely responsible for all decisions regarding upgrades, including selections; and
n. IBM's performance is dependent upon Client's management and fulfilment of responsibilities under this Agreement. Any delay in performance of Client responsibilities may result in delays in providing the Services and additional charges for Client.

Media Retention

Media Retention allows Client to retain defective magnetic tape, CD, DVD, USB, storage flash memory cards, solid state drives, hard disk drives, optical media cartridges, and other media as mutually agreed to by the parties (collectively, Media) replaced in the course of IBM Services. If the reported problem requires the replacement of such Media, a replacement will be supplied by IBM and the removed defective Media will be provided to Client. The Products covered under Media Retention must also be covered under IBM warranty, IBM maintenance Service, or equivalent IBM Service. Client agrees to:

a. identify a Client representative to receive the retained defective Media from IBM at the time of replacement. If a Client representative is not available to receive Media at the time of replacement, IBM will retain the replaced Media as IBM property;
b. refrain from placing the defective drive into productive use;
c. dispose of all retained hard drives in compliance with applicable environmental laws and regulations;
d. not transfer faulty Media between non-Eligible and Eligible Machines; and
e. notify IBM of any Machine configuration changes.

eAccelerated Value Program (eAVP)

eAVP is an Enterprise wide solution based services program that is designed to fit each Client's desired business outcome. The eAVP program for Power 10 Rack deployments was designed to assist Client in maintaining the highest levels of availability, responsiveness, and capacity.

Power System Specific Delivery Requirements:

IBM will:

1) Schedule and conduct an initial introductory call to familiarize IBM with Client teams and review the configuration of Client's environment. eAVP will utilize two main resources for these efforts, delivered remotely in English:
   a. Resource 1: an AVL (Accelerated Value Leader – They will coordinate all activities and be the main point of contact.
   b. Resource 2: an AVS (Accelerated Value Specialist – They are the technical SME for delivering the reviews, health checks and assessments. These resources are deep skilled services level resources with specific knowledge of the technology and tools being reviewed and used.
2) Develop / customize security scripting for generation of monthly Client security reports
3) Assist Client in loading of security scripts
4) Review with Client the details of the support script output and maintenance:
5) **APM Tool Review:** Review existing APM tools for ability to monitor application process performance.
   a. If a Client has a specific APM tool (e.g., New Relic, Instana, DynaTrace) eAVP will provide a review, analysis and recommendations of the implementation as it pertains to tracking of metrics for Performance, Capacity and Availability for the Power 10 deployment.
   b. If a Client does not already have an APM toolset, eAVP will provide guidance and recommendations to the Client for APM toolsets that might meet their needs.
      NJMON Deployment Service: eAVP can also, if requested, can deploy a custom IBM Developed NMON based offering called NJMON. NJMON is an open-sourced solution that converts NMON output to JSON format. The JSON formatted output is stored in an Open-Sourced Influx DB and then graphically rendered in a Grafana Dashboard. NJMON Training LINK
      (1) eAVP will assist the Client in implementing, customizing, and testing the NJMON tool suite on a test system and then assist in a production deployment.
      (2) **Quarterly Analysis:** eAVP will perform a quarterly, remote analysis of the tool measurements and thresholds.
         (a) On a quarterly basis, eAVP will make capacity, performance, maintenance, and availability recommendations. These reviews will be done remotely as described in "Chart A1" or specific instructions based on each Client's needs.
         Translation – Interpreter Services: For Clients that do not speak English, eAVP will engage a local technical resource to provide translation services during this phase as well as the report translation phase.
         (b) Recommendations will be delivered in the form of a MS Word document as described in "Chart A2". The document will be in English but can then be translated by local IBM teams into the target language.

6) Perform 10 Power System stack review for Client:
   a. All health checks will be performed remotely either via, data config / log extract, remote access, or web session. Documented in Charts A1 and A2.
   b. All data will be Client confidential.
7) Client health check deliverable will be a document-based report detailing the status of the following areas
   a. Servers, storage, and software installed. Detailing currently installed versions vs currently available and recommended versions.
   b. Data activity review based on software being used and installed. (If data activity tracking is enabled)
   c. Application activity review via APM tooling
   d. An export of critical system configuration items
   e. An overview of vulnerabilities and threats of the system components via published threat sources
   f. User systems activity report (If tracking is enabled)
   g. File and Web activity (If tracking is enabled)
   h. Security log review (If tracking is enabled)
   i. Firewall activity log and settings review (If tracking is enabled)

Chart A – (Client Interaction)

A1. Remote Viewing:	
a)	Remote viewing of a Client's deployment can be via any number of tools or technologies that both Client and IBM mutually agree upon (e.g., Webex, MS Teams, Google Meet, etc.)
b)	Client will be responsible for the secure viewing of their internal network and resources.
A2. Data Sharing:	
a)	Sharing of log or configuration data between IBM and a Client can be accomplished by utilizing a number of common toolsets. (e.g., Box Secure Share, data encrypted email, IBM Ecurep SFTP service, etc.)
b)	Report data from IBM will be shared with Client utilizing this same channel.
c)	GDPR rules will be adhered to in regard to Client data.

Client General Responsibilities

Client agrees:

a. to designate the Client Primary Technical Contact (PTC), Client's representative for IBM to direct general technical information pertaining to the Service. The PTC must have sufficient technical knowledge regarding the Eligible Products in Client's environment to enable effective communication with the IBM support center;
b. to provide appropriate remote access to Eligible Products and provide IBM with all relevant and available diagnostic information. Client remains responsible for adequately protecting Client's system and all data contained therein whenever IBM remotely accesses it with permission. Client is solely responsible for security of the network, any data and the content of any database Client makes available to IBM in connection with these Services, the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data, and backup and recovery of the database and any stored data. If Client declines such remote system access, IBM may be limited in its ability to provide the full Service necessary to resolve the problem. If IBM is unable to do so, IBM will notify Client and close the service call;
c. to be responsible for obtaining all necessary permissions to use, provide, store and process content in Services and grants IBM permission to do the same. 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;
d. to have valid licensing and subscription in place for Eligible Programs covered by a Service;
e. 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;
f. 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 acquired hereunder;
g. to provide IBM with necessary information requested, and keep such information current;
h. 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;
i. to use the information obtained under these Services only for the support of the information processing requirements within Client's Enterprise;
j. 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;
k. 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;
l. 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;

m. 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;
n. 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;
o. 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;
p. 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;
q. that, with respect to Services under this Agreement, 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;
r. that Client cannot resell Services or transfer Services to another Machine; and
s. 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.

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.

Termination

Service. Client has committed to the term of coverage selected by Client. No credit or refund is due if Client terminates early.

IBM may withdraw a Service or support for an Eligible Product on at least three months' written notice to Client. Client will receive a credit for any remaining prepaid period associated with Services withdrawn by IBM under this provision.

Agreement. Either party may terminate this agreement: i) without cause on at least one month's notice to the other after expiration or termination of its obligations under the Agreement; or ii) immediately for cause if the other is in material breach of the Agreement, provided the one who is not complying is given notice and reasonable time to comply. Failure to pay is a material breach. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to successors and assignees.

General Terms

Warranties and Post Warranty Support

IBM warrants that it provides Services using commercially reasonable care and skill in accordance with the Service description. The warranty for a Service ends when the Service ends. IBM provides no product warranties under this Service agreement, nor does IBM provide any pass-through warranties on behalf of any supplier. IBM and its subcontractors do not warrant any non-IBM product.

IBM does not warrant uninterrupted or error-free operation of an IBM Service or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access. **These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose.** IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, failure to comply with instructions provided by IBM, or if otherwise stated.

Charges

This is a one-time charge Service that does not automatically renew. Charges for the selected Service are provided to Client at purchase of the Eligible Machine.

Service acquired from an IBM Business Partner. For Services acquired from an IBM Business Partner, the IBM Business Partner sets the charges and the terms governing charges. Client will pay the IBM Business Partner directly and IBM will provide Service to Client under the terms of this Agreement.

Service acquired directly from IBM. Charges for Services are invoiced in advance. Charges depend on the coverage period (Prime Shift or Full Shift) and the Support Period. If any authority imposes a duty, tax, levy, or fee, excluding those based on IBM's net income, upon the Service IBM supplies under this Agreement, Client agree to pay that amount as specified in the invoice or supply exemption documentation. IBM does not give refunds or credits for the unused Service. Client agrees to pay all applicable charges specified by IBM, any customs or other duty, tax, levy, or fee imposed by any authority resulting from Client's acquisitions under this Agreement, and any late payment fees. Amounts are due upon receipt of the invoice and payable

within 30 days of the invoice date to an account specified by IBM. Prepaid Services must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid.

Liability and Indemnity
IBM's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the Service that is the subject of the claim, regardless of the basis of the claim. This limit applies collectively to IBM, its subsidiaries, contractors, and suppliers. IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.

The following amounts, if a party is legally liable for them, are not subject to the above cap: i) third party payments referred to in the paragraph below; ii) damages for body injury (including death); iii) damages to real property and tangible personal property; and iv) damages that cannot be limited under applicable law.

If a third party asserts a claim against Client that an IBM Service acquired under this Agreement infringes a patent or copyright, IBM will defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM, provided that Client promptly (i) notifies IBM in writing of the claim, (ii) supplies information requested by IBM, and (iii) allows IBM to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.

IBM has no responsibility for claims based, in whole or part, on non-IBM products, items not provided by IBM, or any violation of law or third party rights caused by Client's content, materials, designs, or specifications.

Without limiting the generality of the foregoing, IBM provides no indemnity for any claim or alleged claim that all or any portion of the Linux operating system may infringe a third party's intellectual property right.

Governing Laws. Each party is responsible for complying with: i) laws and regulations applicable to its business and content, and ii) import, export and economic sanction laws and regulations, including those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. Both parties agree to the application of the laws of the country where the transaction is performed to the Agreement, without regard to conflict of law principles. In the U.S., the laws of the State of New York apply. The rights and obligations of each party are valid only in the country where the transaction is performed. 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 this Agreement.

Confidentiality. Parties will not disclose confidential information 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 agreement.

Relationship. IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any responsibility for Client's business or operations. Each party is responsible for determining the assignment of its personnel and contractors, and for their direction, control, and compensation. IBM Business Partners are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings.

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.

IBM and its affiliates, and their subcontractors, may process and store business contact information of Client personnel in connection with the performance of this Agreement wherever they do business. IBM may use personnel and resources in locations worldwide and third party suppliers to support Service delivery.

Neither party may assign the Agreement. Assignment of IBM rights to receive payments and by IBM in conjunction with the sale of the portion of IBM's business that includes the Services is not restricted.

No right or cause of action for any third party is created by this 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.

Agreement for IBM Storage Expert Care

Client acquires IBM Storage Expert Care (the Service), subject to this IBM Agreement (the Agreement).

THE TERMS BELOW GOVERN CLIENT'S PURCHASE AND USE OF THIS SERVICE. THESE TERMS ARE THE COMPLETE AND EXCLUSIVE AGREEMENT REGARDING THIS SERVICE AND REPLACE ANY PRIOR ORAL OR WRITTEN COMMUNICATIONS BETWEEN CLIENT AND IBM CONCERNING THIS SERVICE.

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

Client may access IBM Support by calling 1-800-IBM-SERV or the Software Support number for Client's country, listed at https://www.ibm.com/planetwide/ and providing Client's machine type/serial on which the Eligible Product is installed or Client's client number. To obtain support electronically, please use the Internet web site: http://www.ibm.com/support

Neither party is relying on any representation not specified in this Agreement. For a change to the Agreement terms to be valid, both of us must acknowledge acceptance of the change. Additional or different terms in any written communication from Client (such as a purchase order) are void.

Service Description

When Client acquires IBM Storage, Client may select from IBM Storage Expert Care Basic, IBM Storage Expert Care Advanced, or IBM Storage Expert Care Premium, as each is described herein, in addition to the standard Machine warranty. Client's selections are documented in the transaction document provided to Client by the seller at the time of the acquisition, such as the Purchase Supplement or invoice (the TD).

Unless IBM specifies otherwise, these Services apply only in the country in which the Services were purchased.

IBM Storage Expert Care Basic

IBM will provide, as applicable:

a. Machine maintenance, next business day 9x5 onsite repair, after expiration of warranty;
b. Warranty Service Upgrade next business day 9x5 onsite repair during the specified warranty period; and
c. Support Line software support for Machine Licensed Code or IBM Software Maintenance (SWMA).

IBM Storage Expert Care Advanced

IBM will provide, as applicable:

a. Machine maintenance, 24x7 same day onsite repair after expiration of warranty;
b. Warranty Service Upgrade, same business day 24x7 onsite repair during the specified warranty period;
c. Support Line software support for Machine Licensed Code or IBM Software Maintenance (SWMA); and
d. Predictive Support commencing at warranty start (as a Warranty Service Upgrade) and continuing after warranty for the term Expert Care is in effect.

IBM Storage Expert Care Premium

IBM will provide:

a. Machine maintenance, 24x7 same day onsite repair after warranty;
b. Warranty Service Upgrade same business day 24x7 onsite repair during the specified warranty period;
c. Support Line software support for Machine Licensed Code or IBM Software Maintenance (SWMA);
d. Predictive Support commencing at warranty start (Warranty Service Upgrade) and continuing after warranty for the term Expert Care is in effect;
e. Enhanced Response Time (Severity 1 and Severity 2) 30 Minutes;
f. Remote Code Load (2 times per calendar year, as requested by Client); and
g. Technical Account Manager (TAM).

Service Descriptions

Machine Maintenance

Machine Maintenance is Service, after the expiration of warranty, 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 or non-compliant physical or operating environment; and
f. any failure caused by a move of an Eligible Machine by non-IBM personnel (change of location). IBM may inspect the Machine for damage after such move, such inspection to be provided as a billable Service. IBM may restore the Machine to its official published specifications upon Client request, as a billable Service.

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

IBM may use tools, owned or licensed by IBM, in the performance of the Service (IBM Tools). IBM continuously develops and utilizes new IBM Tools and capabilities for the purpose of providing remote and on-site problem determination and resolution support to IBM Clients. Some IBM Tools (e.g., an application (App)), are used by on site technicians to capture and store images of the Machine and transmit the images to a remote IBM Subject Matter Expert with a goal of faster and more cost effective repair and one-visit resolution of complex issues. The images may also be modified and/or used for training and to improve maintenance services. Unless licensed in writing by IBM, Client has no right to access, retain, copy, or use the IBM Tools and no Client license or intellectual property right is granted or implied by the use of the IBM Tools used in connection with performance of the Services. IBM Tools are subject to the terms associated with them. IBM Tools are not warranted. If applicable, upon completion of the Service Client agrees to cease use of, uninstall, and remove the IBM Tools from Client's Eligible Machines and facilities.

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

Support Line – IBM Storage with Licensed Internal Code
Support Line is remote assistance with the operation of supported products and system environments (Service). The Supported Eligible Products for this Service are identified at www.ibm.com/services/supline/products/. Refer to the Support Line offering for Eligible Products. Eligible Products for storage devices are grouped by IBM storage classification.

IBM will provide remote assistance (via telephone from IBM's support center, or via an electronic search and questioning capability) in response to requests pertaining to the following:

For all Eligible Products in Client's covered support groups:
a. basic, short duration installation, usage, and configuration questions; and
b. questions regarding IBM Supported Product publications.

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.

IBM Software Maintenance – IBM Storage

Coverage Period. For Eligible Programs running on IBM Storage, Charges for Software Maintenance charge are included in the IBM Storage Expert Care charges. The Initial Software Maintenance Period begins on the date that IBM makes the Program available to Client. IBM does not issue a credit or refund for the unused portion of a Software Maintenance Period.

Software Maintenance: During the Software Maintenance Period:
(a) IBM makes available to Client the most current commercially available version, release, or update to all of the Eligible Programs for which Client acquires Software Maintenance under this Agreement, should any be made generally available. For IBM Storage under this Agreement, Client may obtain upgrades to any more recent commercially available version,

release, or update. Client'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 Software Maintenance Period if not renewed.

(b) IBM provides technical assistance for Client's 1) routine, short duration installation and usage (how-to) questions; and 2) code-related questions.

(c) IBM provides assistance via telephone and, if available, electronic access, to only Client's information systems (IS) technical support personnel during the normal business hours (IBM published prime shift hours) of IBM support center in the Client's geography. This assistance is not available to Client'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 http://www14.software.ibm.com/webapp/set2/sas/f/handbook/home.html.

(d) Software Maintenance does not include assistance for 1) the design and development of applications, 2) Client'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.

(e) Support is only provided if the Program is within its support timeframe as specified in the Software Support Lifecycle policy for the Program.

Client Responsibilities for Software Maintenance

Client agrees that when Client acquires Software Maintenance for an Eligible Program, Client 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. Client is responsible for the results obtained from the use of the Software Maintenance.

Predictive Support

IBM provides predictive alerts, during warranty and maintenance coverage periods, for defects, known issues, best practice violations, common misconfiguration issues, and other problems if Client enables IBM predictive tools. Predictive alerts will be collected and analyzed by IBM Tools or IBM representatives on a regular basis. If there is a significant need for immediate action to be taken to avoid or prevent an incident, Client will be contacted and an action plan will be discussed.

Predictive Support will commence at warranty start as a Warranty Service Upgrade and continue after warranty for the term of maintenance coverage while Expert Care is in effect. IBM Tools must be installed and allowed to run on Client's system for Predictive Support to function. If Client does not permit the use of IBM Tools or if Client does not permit Predictive Support alerts to be collected and analyzed, IBM is relieved of its obligations for Predictive Support.

Enhanced Response Time (Severity 1 & Severity 2) 30 Minutes

Response time is the elapsed time between IBM technical support's receipt of Client's problem submission and IBM's acknowledgement of the submission. The Priority Support Team uses reasonable efforts to respond within the Targeted Response Time Objectives based on the Severity of the problem and the time that Client reports the problem. IBM's initial response may resolve the problem of form the basis for determining if additional actions are required. Response Times are objectives only. IBM is not responsible for delays caused by systems and network problems.

Targeted Response Time Objectives for Severity 1 and Severity 2 and all shift times are 30 minutes.

Severity descriptions are available at: https://www.ibm.com/support/pages/node/739151

Remote Code Load

Remote Code Load (RCL) allows hardware and software code updates for the Eligible Products specified in the TD. Code updates will be performed by remote IBM support personnel, instead of an onsite Support Services Representative (SSR). IBM has implemented a remote capability to upgrade code on Client's entitled Products. RCL is the preferred code delivery method, efficient and secure for both IBM and Client.

IBM will implement updates of the code levels on Client's entitled IBM Machines using RCL Services on targeted systems as planned by Client and Technical Account Manager, twice per year, as described herein. By providing an update of the code level on an entitled IBM Machine, IBM does not provide any further warranty concerning the Eligible IBM Machine, its code, or its performance.

Client responsibilities for Remote Code Load

Client agrees to:

a. provide remote access to the systems requiring code updates,
b. remain responsible during the code update for any decisions regarding upgrades on Client's Eligible IBM Machines;
c. provide IBM with all information requested, this may include Client's system configuration and an outline of Client's network topology;
d. approve the use of programs enabling IBM to query the Code levels/perform Updates by ordering RCL; and
e. notify IBM of changes to Client's Eligible IBM Machines, and of updates to the Code, drivers, or operating systems. Client will provide IBM with the necessary access to enable IBM to perform updates simultaneously on several of Client's Eligible IBM Machines at once if possible, to reduce wait times.

Technical Account Manager (TAM)

Technical Account Manager (TAM) is a critical product-based support role that will serve as the key Client interface for in scope hardware and software, delivering partnership and consultancy, as well as direct engagement on high priority support cases. Key roles fulfilled by the TAM include:

a. Provides support and deployment requirements preparation;
b. Assists in Call Home and Predictive Support enablement;
c. Consults on software roadmap and currency;
d. Provides technical insights for Client impact avoidance;
e. Consults on recommended practices analysis;
f. Facilitates enhanced Response Times on Severity 1 and Severity 2 problems;
g. Leads direct engagement on support cases, drives case trajectory, and complex issue resolution;
h. Delivers relationship management including welcome calls, Support Plan, monthly reporting, and quarterly meetings;
i. Coordinates activity on Client's behalf with Predictive Support team;
j. Coordinates activity on Client's behalf with the Code load team;
k. Assists with critical situation integration ensuring timely root cause analysis; and
l. Consults with Client on change management.

IBM grants Client an irrevocable, nonexclusive, paid up license to use, execute, reproduce, display, perform and distribute, within Client's Enterprise only, copies of the Support Plan that will be delivered under this Agreement. IBM or its suppliers will own all right, title and interest including ownership of the copyright in the Materials. All Client's pre-existing information remains Client's sole property.

Client's General Responsibilities

Client agrees to:

a. designate the Client Primary Technical Contact (PTC), Client's representative for IBM to direct general technical information pertaining to the Service. The PTC must have sufficient technical knowledge regarding the Eligible Products in Client's environment to enable effective communication with the IBM support center;
b. enable IBM Tools to permit Predictive Support;
c. to provide appropriate remote access to Eligible Products and provide IBM with all relevant and available diagnostic information. Client remains responsible for adequately protecting Client's system and all data contained therein whenever IBM remotely accesses it with permission. Client is solely responsible for security of the network, any data and the content of any database Client makes available to IBM in connection with these Services, the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data, and backup and recovery of the database and any stored data. If Client declines such remote system access, IBM may be limited in its ability to provide the full Service necessary to resolve the problem. If IBM is unable to do so, IBM will notify Client and close the service call;
d. to be responsible for obtaining all necessary permissions to use, provide, store and process content in Services and grants IBM permission to do the same. 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;
e. ensure that any access codes IBM provides are used only by authorized personnel;
f. have valid licensing and subscription in place for Eligible Programs covered by this Service;
g. 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;
h. 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 acquired hereunder;
i. to provide IBM with necessary information requested, and keep such information current;
j. 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;
k. to use the information obtained under these Services only for the support of the information processing requirements within Client's Enterprise;
l. 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;
m. 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;
n. 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;
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 Agreement, 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.

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.

Termination

Service. Client has committed to the term of coverage selected by Client. No credit or refund is due if Client terminates early.

IBM may withdraw a Service or support for an Eligible Product on at least three months' written notice to Client. Client will receive a credit for any remaining prepaid period associated with Services withdrawn by IBM under this provision.

Agreement. Either party may terminate this agreement: i) without cause on at least one month's notice to the other after expiration or termination of its obligations under the Agreement; or ii) immediately for cause if the other is in material breach of the Agreement, provided the one who is not complying is given notice and reasonable time to comply. Failure to pay is a material breach. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to successors and assignees.

General Terms

Warranties and Post Warranty Support

IBM warrants that it provides Services using commercially reasonable care and skill in accordance with the Service description. The warranty for a Service ends when the Service ends. IBM provides no product warranties under this Service agreement, nor does IBM provide any pass-through warranties on behalf of any supplier. IBM and its subcontractors do not warrant any non-IBM product.

IBM does not warrant uninterrupted or error-free operation of an IBM Service or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access. **These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose.** IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, failure to comply with instructions provided by IBM, or if otherwise stated.

Charges

This is a one-time charge Service that does not automatically renew. Charges for the selected Service are provided to Client at purchase of the Eligible Machine.

Service acquired from an IBM Business Partner. For Services acquired from an IBM Business Partner, the IBM Business Partner sets the charges and the terms governing charges. Client will pay the IBM Business Partner directly and IBM will provide Service to Client under the terms of this Agreement.

Service acquired directly from IBM. Charges for Services are invoiced in advance. Charges depend on the coverage period (Prime Shift or Full Shift) and the Support Period. If any authority imposes a duty, tax, levy, or fee, excluding those based on IBM's net income, upon the Service IBM supplies under this Agreement, Client agree to pay that amount as specified in the invoice or supply exemption documentation. IBM does not give refunds or credits for the unused Service. Client agrees to pay all applicable charges specified by IBM, any customs or other duty, tax, levy, or fee imposed by any authority resulting from

Client's acquisitions under this Agreement, and any late payment fees. Amounts are due upon receipt of the invoice and payable within 30 days of the invoice date to an account specified by IBM. Prepaid Services must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid.

Liability and Indemnity
IBM's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the Service that is the subject of the claim, regardless of the basis of the claim. This limit applies collectively to IBM, its subsidiaries, contractors, and suppliers. IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.

The following amounts, if a party is legally liable for them, are not subject to the above cap: i) third party payments referred to in the paragraph below; ii) damages for body injury (including death); iii) damages to real property and tangible personal property; and iv) damages that cannot be limited under applicable law.

If a third party asserts a claim against Client that an IBM Service acquired under this Agreement infringes a patent or copyright, IBM will defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM, provided that Client promptly (i) notifies IBM in writing of the claim, (ii) supplies information requested by IBM, and (iii) allows IBM to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.

IBM has no responsibility for claims based, in whole or part, on non-IBM products, items not provided by IBM, or any violation of law or third party rights caused by Client's content, materials, designs, or specifications.

Without limiting the generality of the foregoing, IBM provides no indemnity for any claim or alleged claim that all or any portion of the Linux operating system may infringe a third party's intellectual property right.
Governing Laws. Each party is responsible for complying with: i) laws and regulations applicable to its business and content, and ii) import, export and economic sanction laws and regulations, including those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. Both parties agree to the application of the laws of the country where the transaction is performed to the Agreement, without regard to conflict of law principles. In the U.S., the laws of the State of New York apply. The rights and obligations of each party are valid only in the country where the transaction is performed. 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 this Agreement.
Confidentiality. Parties will not disclose confidential information 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 agreement.
Relationship. IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any responsibility for Client's business or operations. Each party is responsible for determining the assignment of its personnel and contractors, and for their direction, control, and compensation. IBM Business Partners are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings.
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.
IBM and its affiliates, and their subcontractors, may process and store business contact information of Client personnel in connection with the performance of this Agreement wherever they do business. IBM may use personnel and resources in locations worldwide and third party suppliers to support Service delivery.

Neither party may assign the Agreement. Assignment of IBM rights to receive payments and by IBM in conjunction with the sale of the portion of IBM's business that includes the Services is not restricted.

No right or cause of action for any third party is created by this 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.

Agreement for Support Line for Storage

Client acquires Support Line for Storage (the Service), subject to this IBM Agreement (the Agreement).

THE TERMS BELOW GOVERN CLIENT'S PURCHASE OF THIS SERVICE. THESE TERMS ARE THE COMPLETE AND EXCLUSIVE AGREEMENT REGARDING THIS SERVICE AND REPLACE ANY PRIOR ORAL OR WRITTEN COMMUNICATIONS BETWEEN CLIENT AND IBM CONCERNING THIS SERVICE.

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

Client may access IBM Support by calling 1-800-IBM-SERV or the Software Support number for Client's country, listed at https://www.ibm.com/planetwide/ and providing Client's machine type/serial on which the Eligible Product is installed or Client's customer number. To obtain support electronically, please use the Internet web site: http://www.ibm.com/support

Neither party is relying on any representation not specified in this Agreement. For a change to the Agreement terms to be valid, both of us must acknowledge acceptance of the change. Additional or different terms in any written communication from Client (such as a purchase order) are void.

Service Description

Support Line is remote assistance with the operation of supported products and system environments (Service). The Supported Eligible Products for this Service are identified at www.ibm.com/services/supline/products/. Refer to the Support Line offering for Eligible Products. Eligible Products for storage devices are grouped by IBM storage classification.

IBM will provide remote assistance (via telephone from IBM's support center, or via an electronic search and questioning capability) in response to requests pertaining to the following:

For all Eligible Products in Client's covered support groups —
1. basic, short duration installation, usage, and configuration questions; and
2. questions regarding IBM Supported Product publications.

IBM provides Severity 1 assistance 24 hours a day, every day of the year. Consult the IBM Software Support Guide at http://www14.software.ibm.com/webapp/set2/sas/f/handbook/home.html for details. A 24x7 (every day of the year) all-severity option may be available for an extra charge.

Service is provided solely for Eligible Products located within the United States (USA). For calls that originate from outside of the USA: a) toll free telephone access is not available, b) replies or other return communication to the caller will be via a USA telephone number provided by Client or electronic means only, and c) all support will be provided in the English language only.

Client Responsibilities

Client:
a. will designate the Client Primary Technical Contact (PTC), Client's representative for IBM to direct general technical information pertaining to the Service. The PTC must have sufficient technical knowledge regarding the Eligible Products in Client's environment to enable effective communication with the IBM support center;
b. will provide appropriate remote access to Eligible Products and provide IBM with all relevant and available diagnostic information. Client remains responsible for adequately protecting Client's system and all data contained therein whenever IBM remotely accesses it with permission. If Client declines such remote system access, IBM may be limited in its ability to provide the full Service necessary to resolve the problem. If IBM is unable to do so, IBM will notify Client and close the service call; and
c. is responsible for obtaining all necessary permissions to use, provide, store and process content in Services and grants IBM permission to do the same. 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.

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 and supplement the Agreement, if and to the extent the European General Data Protection Regulation (EU/2016/679) applies to Client Personal Data, as described in the DPA.

Termination

Product. Client may terminate Support Line for any product on 60 days' written notice to IBM, after the first full contract year. IBM does not give credits or refunds for unused prepaid Services if Client terminates. IBM may withdraw a Service or support for an Eligible Product on at least three months' written notice to Client. Client will receive a credit for any remaining prepaid period associated with Services withdrawn by IBM under this provision.

Agreement. Either party may terminate this agreement: i) without cause on at least one month's notice to the other after expiration or termination of its obligations under the Agreement; or ii) immediately for cause if the other is in material breach of the Agreement, provided the one who is not complying is given notice and reasonable time to comply. Failure to pay is a material breach. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to successors and assignees.

General Terms

Warranties and Post Warranty Support

IBM warrants that it provides Services using commercially reasonable care and skill in accordance with the Service description. The warranty for a Service ends when the Service ends. IBM provides no product warranties under this Service agreement, nor does IBM provide any pass-through warranties on behalf of any supplier. IBM and its subcontractors do not warrant any non-IBM product.

IBM does not warrant uninterrupted or error-free operation of an IBM Service or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access. **These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose.** IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, failure to comply with instructions provided by IBM, or if otherwise stated.

Charges, Taxes, and Payment

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.

Service acquired from an IBM Business Partner. For Services acquired from an IBM Business Partner, the IBM Business Partner sets the charges and the terms governing charges. Client will pay the IBM Business Partner directly and IBM will provide Service to Client under the terms of this Agreement.

Service acquired directly from IBM. Charges for Services are invoiced in advance. Charges depend on the coverage period (Prime Shift or Full Shift) and the Support Period. If any authority imposes a duty, tax, levy or fee, excluding those based on IBM's net income, upon the Service IBM supplies under this Agreement, Client agree to pay that amount as specified in the invoice or supply exemption documentation. IBM does not give refunds or credits for the unused Service. Client agrees to pay all applicable charges specified by IBM, any customs or other duty, tax, levy, or fee imposed by any authority resulting from Client's acquisitions under this Agreement, and any late payment fees. Amounts are due upon receipt of the invoice and payable within 30 days of the invoice date to an account specified by IBM. Prepaid Services must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid.

Liability and Indemnity

IBM's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the Service that is the subject of the claim, regardless of the basis of the claim. This limit applies collectively to IBM, its subsidiaries, contractors, and suppliers. IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.

The following amounts, if a party is legally liable for them, are not subject to the above cap: i) third party payments referred to in the paragraph below; ii) damages for body injury (including death); iii) damages to real property and tangible personal property; and iv) damages that cannot be limited under applicable law.

If a third party asserts a claim against Client that an IBM Service acquired under this Agreement infringes a patent or copyright, IBM will defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM, provided that Client promptly (i) notifies IBM in writing of the claim, (ii) supplies information requested by IBM, and (iii) allows IBM to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.

IBM has no responsibility for claims based, in whole or part, on non-IBM products, items not provided by IBM, or any violation of law or third party rights caused by Client's content, materials, designs, or specifications.

Without limiting the generality of the foregoing, IBM provides no indemnity for any claim or alleged claim that all or any portion of the Linux operating system may infringe a third party's intellectual property right.

Governing Laws. Each party is responsible for complying with: i) laws and regulations applicable to its business and content, and ii) import, export and economic sanction laws and regulations, including those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. Both parties agree to the application of the laws of the country where the transaction is performed to the Agreement, without regard to conflict of law principles. In the U.S., the laws of the State of New York apply. The rights and obligations of each party are valid only in the country where the transaction is performed. 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 this Agreement.

Confidentiality. Parties will not disclose confidential information 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 agreement.

Relationship. IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any responsibility for Client's business or operations. Each party is responsible for determining the assignment of its personnel and contractors, and for their direction, control, and compensation. IBM Business Partners are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings.

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.

IBM and its affiliates, and their subcontractors, may process and store business contact information of Client personnel in connection with the performance of this Agreement wherever they do business. IBM may use personnel and resources in locations worldwide and third party suppliers to support Service delivery.

Neither party may assign the Agreement. Assignment of IBM rights to receive payments and by IBM in conjunction with the sale of the portion of IBM's business that includes the Services is not restricted.

No right or cause of action for any third party is created by this 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.

Agreement for Enterprise Class Support

Client acquires Enterprise Class Support (ECS or the Service), subject to this IBM Agreement (the Agreement).

THE TERMS BELOW GOVERN CLIENT'S PURCHASE OF THIS SERVICE. THESE TERMS ARE THE COMPLETE AND EXCLUSIVE AGREEMENT REGARDING THIS SERVICE AND REPLACE ANY PRIOR ORAL OR WRITTEN COMMUNICATIONS BETWEEN CLIENT AND IBM CONCERNING THIS SERVICE.

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

Client may access IBM Support by calling 1-800-IBM-SERV or the Software Support number for Client's country, listed at https://www.ibm.com/planetwide/ and providing Client's machine type/serial or Product ID number on which the Eligible Product is installed or Client's customer number. To obtain support electronically, please use the Internet web site: http://www.ibm.com/support

Neither party is relying on any representation not specified in this Agreement. For a change to the Agreement terms to be valid, both of us must acknowledge acceptance of the change. Additional or different terms in any written communication from Client (such as a purchase order) are void.

Service Description

ECS is optional with standard base hardware and software support services (Basic Maintenance) for Eligible Products. IBM 24x7 Basic Maintenance (if available) is a prerequisite for each Eligible Product for which Client selects coverage. If 24x7 all Severity coverage is not available under Basic Maintenance for a particular Product, the most comprehensive hours of coverage available must be selected. Eligible Products are identified at www.ibm.com/services/supline/products/

There are six modules in ECS -- Priority Access, Priority Response, Priority Handling, Proactive Support, Remote Code Load, and Technical Advisor -- to provide premium remote voice and electronic entry into, and handling within, IBM's support structure to assist Client with managing and maintaining its Information Technology (IT) environment.

The Priority Support Team (PST) is the group of skilled Proactive Support specialists responsible for tasks in the following modules. IBM will assign a named member of the PST as Client's Technical Solution Manager (TSM). Members of the PST also assist the TSM with the provision of all aspects of the Service.

1. **Priority Access**
   IBM provides direct priority access to a team of skilled resources as an initial point of contact for problem submissions on Eligible Products. The TSM will ensure that Client is able to maximize the features of the Service.

   Client may submit problems via voice or by electronic problem reporting using the IBM support portal, as applicable.

2. **Priority Response**
   Response Time is the elapsed time between IBM technical support's receipt of Client's problem submission and IBM's acknowledgment of the submission. The PST uses reasonable efforts to respond within the Targeted Response Time Objectives, based on the Severity of the problem and the time that Client reports the problem. IBM's initial response may resolve the problem or form the basis for determining if additional actions are required. Response Times are objectives only. IBM is not responsible for delays caused by systems and network problems.

   Targeted Response Time Objectives - All Severity and all shift response time objective is 30 minutes.

3. **Priority Handling**
   The PST performs initial problem determination, problem source identification, and direct resolution, if possible. If additional resources are required for resolution, the PST will, based on the identified source and severity of the problem:
   a. For all Severity Eligible Program (software) problems, engage the appropriate support resources, coordinate and manage the contributions of those resources, monitor the progress of Client problem submissions, and provide regular status updates;
   b. For all Severity Hardware problems reported or routed to field resources for resolution, monitor Severity 1 problems, offer coordination and management assistance for problems handled by remote IBM support, and provide an escalation path as needed; and

c. For all Severity problems related to Eligible Products that are not covered by ECS, IBM will route the reported problem to the appropriate resources to provide support under separate terms, and provide an escalation path as needed.

4. Proactive Support

The TSM and PST will, during Prime Shift (8:00 a.m. to 5:00 p.m. in the local time zone where Client receives Service, Monday through Friday, excluding holidays), perform proactive support activities to assist Client to manage the supported IT environment, and establish and maintain a framework for technical communications and activity reporting. The TSM will:

a. remotely conduct the initial Welcome Call as described in section 2.1, and provide information related to the Proactive Services of Proactive Support;

b. provide Client's Primary Technical Contact (PTC) with a detailed questionnaire to be completed and returned to the TSM, to enable the TSM to create and deliver the Technical Support Plan (TSP) to the PTC within 30 days of the Welcome Call. The TSP will:
   1) summarize the Proactive Support Service;
   2) document and maintain the inventory listing of Eligible Products;
   3) document the Client's operational and maintenance processes, current support structure, critical applications, critical outage scenarios, and environment; and
   4) as applicable, schedule initial setup of the Proactive Support tools and provide tool details.

c. update the TSP as needed, but at least annually;

d. if applicable, verify that remote support electronic connections to the environment are functioning, and that the IBM Tools are available for use as documented in the TSP;

e. create a monthly Proactive Support review package, including delivery of Reports in Section 6, as applicable; and

f. schedule quarterly Status Calls with PTC to review monthly documentation, review tools output, provide advice on recommended practices for managing and maintaining Client's Eligible Products, and document any planned changes.

For FS7200 products only, IBM will also assist Client with the provision of:

1. Remote Code Load

a. Twice per contract year, IBM will remotely provide Remote Code Load as described herein.

b. IBM will initiate and coordinate updates of the IBM Programs on Client's Machines covered by ECS. By updating the Programs, IBM does not provide any further warranty or license concerning the IBM Programs, the covered Machine, or its performance.

2. Technical Advisor for Storage

IBM will assign a named Technical Advisor (TA), who will assist the Priority Support Team (PST) with escalation and management of Severity 1 and critical problems reported to the PST for covered Products. The TA will attend the scheduled Welcome Call and status calls agreed to by the parties. The TA will also contribute to the regular advice the PST provides on proactive maintenance tips and techniques, recommended practices, product usage, and strategic Product direction.

Client Responsibilities

Client agrees to:

a. identify and maintain the PTC, to whom IBM may direct general technical information and questions;

b. maintain, for the duration of ECS, Basic Maintenance for Eligible Products, consistent with the ECS Service being acquired;

c. provide IBM the inventory of Eligible Products to be covered at each specified location;

d. ensure that any access codes IBM provides are used only by authorized Client personnel;

e. have valid licensing and subscription (as applicable) in place for Eligible Programs covered by ECS;

f. provide appropriate remote access to Eligible Products and provide IBM with all relevant and available diagnostic information (including product or system information) pertaining to software problems. Client remains responsible for adequately protecting Client's system and all data contained therein whenever IBM remotely accesses it with permission. If Client declines such remote system access, IBM may be limited in its ability to provide the full Service necessary to resolve the problem. If IBM is unable to do so, IBM will notify Client and close the service call; and

g. be responsible for obtaining all necessary permissions to use, provide, store and process content in Services and grants IBM permission to do the same. 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.

IBM Tools

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 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. Unless licensed in writing by IBM, Client has no right to access, retain, copy, or use the IBM Tools and no Client license or intellectual property right is granted or implied by the use of the IBM Tools used in connection with performance of the Services. IBM Tools are subject to the terms associated with them. IBM Tools are not warranted. If applicable, upon completion of the Service Client agrees to cease use of, uninstall and remove the IBM Tools from Client's Eligible Machines and facilities.

Reports

IBM will deliver, or make available for download by Client, the following Project Materials, as applicable:

- Environment Questionnaire;
- Technical Support Plan (TSP); and
- Service Activity Report summarizing service activity related to reported problems, including proactive recommendations.

Client will own the copyright in Project Materials that IBM develops for Client under this Agreement. Project Materials exclude works of authorship delivered to Client, but not created, under this Agreement, and any modifications or enhancements of such works made under the Agreement (Existing Works). 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. IBM retains an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works of Project Materials.

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.

Termination

Service. This one time charge Service cannot be terminated. This Service does not auto renew.

Agreement. Either party may terminate this agreement: i) without cause on at least one month's notice to the other after expiration or termination of its obligations under the Agreement; or ii) immediately for cause if the other is in material breach of the Agreement, provided the one who is not complying is given notice and reasonable time to comply. Failure to pay is a material breach. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to successors and assignees.

General Terms

Warranties and Post Warranty Support

IBM warrants that it provides Services using commercially reasonable care and skill in accordance with the Service description. The warranty for a Service ends when the Service ends. IBM provides no product warranties under this Service agreement, nor does IBM provide any pass-through warranties on behalf of any supplier. IBM and its subcontractors do not warrant any non-IBM product.

IBM does not warrant uninterrupted or error-free operation of an IBM Service or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access. **These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose.** IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, failure to comply with instructions provided by IBM, or if otherwise stated.

Charges, Taxes, and Payment

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.

Service acquired from an IBM Business Partner. For Services acquired from an IBM Business Partner, the IBM Business Partner sets the charges and the terms governing charges. Client will pay the IBM Business Partner directly and IBM will provide Service to Client under the terms of this Agreement.

Service acquired directly from IBM. Charges for Services are invoiced in advance. Charges depend on the coverage period (Prime Shift or Full Shift) and the Support Period. If any authority imposes a duty, tax, levy or fee, excluding those based on IBM's net income, upon the Service IBM supplies under this Agreement, Client agree to pay that amount as specified in the invoice or supply exemption documentation. IBM does not give refunds or credits for the unused Service. Client agrees to pay all applicable charges specified by IBM, any customs or other duty, tax, levy, or fee imposed by any authority resulting from

Client's acquisitions under this Agreement, and any late payment fees. Amounts are due upon receipt of the invoice and payable within 30 days of the invoice date to an account specified by IBM. Prepaid Services must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid.

Liability and Indemnity
IBM's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the Service that is the subject of the claim, regardless of the basis of the claim. This limit applies collectively to IBM, its subsidiaries, contractors, and suppliers. IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.

The following amounts, if a party is legally liable for them, are not subject to the above cap: i) third party payments referred to in the paragraph below; ii) damages for body injury (including death); iii) damages to real property and tangible personal property; and iv) damages that cannot be limited under applicable law.

If a third party asserts a claim against Client that an IBM Service acquired under this Agreement infringes a patent or copyright, IBM will defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM, provided that Client promptly (i) notifies IBM in writing of the claim, (ii) supplies information requested by IBM, and (iii) allows IBM to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.

IBM has no responsibility for claims based, in whole or part, on non-IBM products, items not provided by IBM, or any violation of law or third party rights caused by Client's content, materials, designs, or specifications.

Without limiting the generality of the foregoing, IBM provides no indemnity for any claim or alleged claim that all or any portion of the Linux operating system may infringe a third party's intellectual property right.

Governing Laws. Each party is responsible for complying with: i) laws and regulations applicable to its business and content, and ii) import, export and economic sanction laws and regulations, including those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. Both parties agree to the application of the laws of the country where the transaction is performed to the Agreement, without regard to conflict of law principles. In the U.S., the laws of the State of New York apply. The rights and obligations of each party are valid only in the country where the transaction is performed. 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 this Agreement.

Confidentiality. Parties will not disclose confidential information 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 agreement.

Relationship. IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any responsibility for Client's business or operations. Each party is responsible for determining the assignment of its personnel and contractors, and for their direction, control, and compensation. IBM Business Partners are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings.

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.

IBM and its affiliates, and their subcontractors, may process and store business contact information of Client personnel in connection with the performance of this Agreement wherever they do business. IBM may use personnel and resources in locations worldwide and third party suppliers to support Service delivery.

Neither party may assign the Agreement. Assignment of IBM rights to receive payments and by IBM in conjunction with the sale of the portion of IBM's business that includes the Services is not restricted.

No right or cause of action for any third party is created by this 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.

Agreement for IBM Support Line for Embedded Linux

Client acquires IBM Support Line for Embedded Linux (the Service), subject to this IBM Agreement (the Agreement).

THE TERMS BELOW GOVERN CLIENT'S PURCHASE OF THIS SERVICE. THESE TERMS ARE THE COMPLETE AND EXCLUSIVE AGREEMENT REGARDING THIS SERVICE AND REPLACE ANY PRIOR ORAL OR WRITTEN COMMUNICATIONS BETWEEN CLIENT AND IBM CONCERNING THIS SERVICE.

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

Client may access IBM Support by calling 1-800-IBM-SERV or the Software Support number for Client's country, listed at https://www.ibm.com/planetwide/ and providing Client's machine type/serial or Product ID number on which the Eligible Product is installed or Client's customer number. To obtain support electronically, please use the Internet web site: http://www.ibm.com/support

Neither party is relying on any representation not specified in this Agreement. For a change to the Agreement terms to be valid, both of us must acknowledge acceptance of the change. Additional or different terms in any written communication from Client (such as a purchase order) are void.

Service Description

Support Line for Embedded Linux is remote assistance with the operation of supported products (Eligible Products) and system environments only. Supported versions are located at http://www-03.ibm.com/services/supline/products/ or as otherwise provided by IBM.

Client's order for the system will specify the Support Period. The Support Period begins at the start of Machine warranty. For IBM installations, support begins on the date of installation. For Client installations, support begins seven days after shipment date. For Client installations without hardware acquisitions, support begins at contract acceptance. Service will terminate at the end of the Support Period. This Service does not automatically renew.

For all Eligible Products, IBM will provide remote assistance (via telephone from IBM's support center, or electronically) in response to requests pertaining to the following:

a. basic, short-duration installation, usage, and configuration questions;
b. code-related problem questions;
c. diagnostic information review to assist in isolation of a problem cause (for example, assistance interpreting traces and dumps for installation and code-related problems); and
d. for known defects, guidance on how to obtain available corrective service information and available program patches directly from the publisher or supplier (collectively, the Supplier).

IBM will assist Client in determining the cause of the problem and provide Client with guidance on how to obtain patches, maintenance updates, or refreshes (collectively Fixes) directly from the Supplier under the Supplier's terms. IBM is not responsible for the resolution of defects in the Eligible Products supported under this Agreement. IBM is not a party to Client's acquisition of Fixes from the Supplier.

If a new defect (referenced or without known correction) is identified, IBM will report the defect to the Supplier and will inform Client of known actions taken and the availability of corrective information, if any. While IBM may report the defect to the Supplier on Client's behalf as a convenience, Client acknowledges and agrees that IBM is not a distributor, licensor, or reseller of the Linux distribution, including any Fixes.

Response Objective

IBM provides Severity 1 assistance 24 hours a day, 365 days a year, for Eligible Products for which Client selected the 24x7 option (if available). During Prime Shift, IBM's response time objective is two hours for voice and electronic problem submissions. For voice problem submissions outside of Prime Shift hours, IBM's response time objective for Severity 1 is two hours and, if available, and if Client selects the 24x7 severity option, four hours for non-critical problems. For electronic problem submissions during other than Prime Shift, IBM's response time objective is within two hours of the start of Prime Shift on the next business day. To expedite processing, have the machine type, model, and serial number available. IBM is not responsible for delays in electronic response delivery caused by systems and network problems.

Client Responsibilities

Client:

a. will designate the Client Primary Technical Contact (PTC), Client's representative for IBM to direct general technical information pertaining to the Service. The PTC must have sufficient technical knowledge regarding the Eligible Products in Client's environment to enable effective communication with the IBM support center;
b. agrees to ensure that any access codes IBM provides are used only by authorized Client personnel;
c. will have valid licensing and subscription (as applicable) in place for Eligible Programs covered by this Service;
d. will provide appropriate remote access to Eligible Products and provide IBM with all relevant and available diagnostic information (including product or system information) pertaining to software problems. Client remains responsible for adequately protecting Client's system and all data contained therein whenever IBM remotely accesses it with permission. If Client declines such remote system access, IBM may be limited in its ability to provide the full Service necessary to resolve the problem. If IBM is unable to do so, IBM will notify Client and close the service call; and
e. is responsible for obtaining all necessary permissions to use, provide, store and process content in Services and grants IBM permission to do the same. 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.

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.

Termination

Product or feature. Client may terminate Support Line for any product or any optional feature on 60 days' written notice to IBM, after the first full contract year, or otherwise as specified. IBM may withdraw a Service or support for an Eligible Product on at least three months' written notice to Client.

Agreement. Either party may terminate this agreement: i) without cause on at least one month's notice to the other after expiration or termination of its obligations under the Agreement; or ii) immediately for cause if the other is in material breach of the Agreement, provided the one who is not complying is given notice and reasonable time to comply. Failure to pay is a material breach. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to successors and assignees.

General Terms

Warranties and Post Warranty Support

IBM warrants that it provides Services using commercially reasonable care and skill in accordance with the Service description. The warranty for a Service ends when the Service ends. IBM provides no product warranties under this Service agreement, nor does IBM provide any pass-through warranties on behalf of any supplier. IBM and its subcontractors do not warrant any non-IBM product.

IBM does not warrant uninterrupted or error-free operation of an IBM Service or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access. **These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose.** IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, failure to comply with instructions provided by IBM, or if otherwise stated.

Charges, Taxes, and Payment

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.

Service acquired from an IBM Business Partner. For Services acquired from an IBM Business Partner, the IBM Business Partner sets the charges and the terms governing charges. Client will pay the IBM Business Partner directly and IBM will provide Service to Client under the terms of this Agreement.

Service acquired directly from IBM. Charges for Services are invoiced in advance. Charges depend on the coverage period (Prime Shift or Full Shift) and the Support Period. If any authority imposes a duty, tax, levy or fee, excluding those based on IBM's net income, upon the Service IBM supplies under this Agreement, Client agree to pay that amount as specified in the invoice or supply exemption documentation. IBM does not give refunds or credits for the unused Service. Client agrees to pay all applicable charges specified by IBM, any customs or other duty, tax, levy, or fee imposed by any authority resulting from Client's acquisitions under this Agreement, and any late payment fees. Amounts are due upon receipt of the invoice and payable within 30 days of the invoice date to an account specified by IBM. Prepaid Services must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid.

Liability and Indemnity
IBM's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the Service that is the subject of the claim, regardless of the basis of the claim. This limit applies collectively to IBM, its subsidiaries, contractors, and suppliers. IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.

The following amounts, if a party is legally liable for them, are not subject to the above cap: i) third party payments referred to in the paragraph below; ii) damages for body injury (including death); iii) damages to real property and tangible personal property; and iv) damages that cannot be limited under applicable law.

If a third party asserts a claim against Client that an IBM Service acquired under this Agreement infringes a patent or copyright, IBM will defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM, provided that Client promptly (i) notifies IBM in writing of the claim, (ii) supplies information requested by IBM, and (iii) allows IBM to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.

IBM has no responsibility for claims based, in whole or part, on non-IBM products, items not provided by IBM, or any violation of law or third party rights caused by Client's content, materials, designs, or specifications.

Without limiting the generality of the foregoing, IBM provides no indemnity for any claim or alleged claim that all or any portion of the operating system may infringe a third party's intellectual property right.

Governing Laws. Each party is responsible for complying with: i) laws and regulations applicable to its business and content, and ii) import, export and economic sanction laws and regulations, including those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. Both parties agree to the application of the laws of the country where the transaction is performed to the Agreement, without regard to conflict of law principles. In the U.S., the laws of the State of New York apply. The rights and obligations of each party are valid only in the country where the transaction is performed. 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 this Agreement.

Confidentiality. Parties will not disclose confidential information 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 agreement.

Relationship. IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any responsibility for Client's business or operations. Each party is responsible for determining the assignment of its personnel and contractors, and for their direction, control, and compensation. IBM Business Partners are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings.

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.

IBM and its affiliates, and their subcontractors, may process and store business contact information of Client personnel in connection with the performance of this Agreement wherever they do business. IBM may use personnel and resources in locations worldwide and third party suppliers to support Service delivery.

Neither party may assign the Agreement. Assignment of IBM rights to receive payments and by IBM in conjunction with the sale of the portion of IBM's business that includes the Services is not restricted.

No right or cause of action for any third party is created by this 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.

Statement of Work

Support Line for IBM Logo Products

Support Line is remote assistance with the operation of supported products and system environments (Service). In addition, IBM offers certain optional features as enhancements to this Service. These terms apply for each of these optional features. Supported Eligible Products for this Service are identified at www.ibm.com/services/supline/products/ Refer to the Support Line offering for Eligible Products. Eligible Products for servers are grouped by Operating System (OS) and the server types on which the OS is installed. Eligible Products for storage devices are grouped by IBM storage classification. Support is primarily delivered in English language.

Scope of Service

IBM will provide remote assistance (via telephone from IBM's support center, or via an electronic search and questioning capability) in response to requests pertaining to the following:

For all Eligible Products in Client's covered support groups —

1. basic, short duration installation, usage, and configuration questions; and
2. questions regarding IBM Supported Product publications.

For all Eligible Programs in Client's covered support groups —

1. code-related problem questions;
2. diagnostic information review to assist in isolation of a problem cause (for example, assistance interpreting traces and dumps for installation and code related problems); and
3. for known defects, available corrective service information and program fixes as entitled under the terms of the IBM license.

IBM will use commercially reasonable efforts to respond within two hours, for Client's requests classified as Severity 1 during 24x7. For all non-Severity 1 requests IBM will respond during normal business hours from 8:00 a.m. to 5:00 p.m. from Monday to Friday in the local time zone where Client receives Service (excluding public holidays). Consult the IBM Support Guide at https://www.ibm.com/support/pages/node/733923for details. A 24x7 (every day of the year) all-severity option may be available for an extra charge.

Client Responsibilities

Client agrees to:

a. designate the Primary Technical Contact (PTC), Client's representative to whom IBM may direct general technical information and questions regarding the Eligible Products within the environment, to enable effective communication with the IBM support center;

b. ensure that any access codes IBM provides are used only by authorized personnel;

c. have valid licensing and subscription in place for Eligible Programs covered by this Service;

d. maintain, for the duration of the Service, IBM basic maintenance for hardware for Eligible Products, consistent with the Service being purchased. Client must terminate IBM Support Line upon termination of the prerequisite IBM basic maintenance for hardware on Eligible Products; and

e. be responsible for the installation of microcode, firmware, and fixes which IBM recommends.

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.

This 1) Statement of Work, 2) the Technical Services Attachment for TSS Offerings (Attachment), 3) applicable Transaction Documents, and 4) the agreement specified herein (Agreement) comprise the complete agreement regarding the Services and replace any prior oral or written communications between Client and IBM. Accordingly, neither party is relying upon any representation that is not specified in the complete agreement including, without limitation, any representations concerning 1) levels of service, hours, or charges to provide any Service; 2) the experiences of other clients; or 3) results or savings Client may achieve.

Each party accepts the terms of this SOW by signing this SOW (or another document that incorporates it by reference) by hand or, where recognized by law, electronically.

Agreement for IBM Cloud Support Line for OpenStack

Client acquires IBM Cloud Support Line for OpenStack (the Service), subject to this IBM Agreement (the Agreement).

THE TERMS BELOW GOVERN CLIENT'S PURCHASE OF THIS SERVICE. THESE TERMS ARE THE COMPLETE AND EXCLUSIVE AGREEMENT REGARDING THIS SERVICE AND REPLACE ANY PRIOR ORAL OR WRITTEN COMMUNICATIONS BETWEEN CLIENT AND IBM CONCERNING THIS SERVICE.

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

Client may access IBM Support by calling 1-800-IBM-SERV or the Software Support number for Client's country, listed at https://www.ibm.com/planetwide/ and providing Client's machine type/serial or Product ID number on which the Eligible Product is installed or Client's customer number. To obtain support electronically, please use the Internet web site: http://www.ibm.com/support

Neither party is relying on any representation not specified in this Agreement. For a change to the Agreement terms to be valid, both of us must acknowledge acceptance of the change. Additional or different terms in any written communication from Client (such as a purchase order) are void.

Service Description

IBM Cloud Support Line for OpenStack is remote assistance with the operation of supported products (Eligible Products) and system environments only. Supported versions are located at http://www-03.ibm.com/services/supline/products/ or as otherwise provided by IBM.

Client's order for the IBM Machine will specify the Support Period. The Support Period begins at the start of Machine warranty. For IBM installations, support begins on the date of installation. For Client installations, support begins seven days after shipment date. For Client installations without hardware acquisitions, support begins at contract acceptance. Service will terminate at the end of the Support Period. This Service does not automatically renew.

For all Eligible Products, IBM will provide remote assistance (via telephone from IBM's support center, or electronically) in response to requests pertaining to the following:

a. basic, short-duration installation, usage, and configuration questions;
b. code-related problem questions;
c. diagnostic information review to assist in isolation of a problem cause (for example, assistance interpreting traces and dumps for installation and code-related problems); and
d. for known defects, guidance on how to obtain available corrective service information and available program patches directly from the publisher or supplier (collectively, the Supplier).

IBM will assist Client in determining the cause of the problem and provide Client with guidance on how to obtain patches, maintenance updates, or refreshes (collectively Fixes) directly from the Supplier under the Supplier's terms. IBM is not responsible for the resolution of defects in the Eligible Products supported under this Agreement. IBM is not a party to Client's acquisition of Fixes from the Supplier.

If a new defect (referenced or without known correction) is identified, IBM will report the defect to the Supplier and will inform Client of known actions taken and the availability of corrective information, if any. While IBM may report the defect to the Supplier on Client's behalf as a convenience, Client acknowledges and agrees that IBM is not a distributor, licensor, or reseller of the OpenStack distribution, including any Fixes.

Response Objective

IBM provides Severity 1 assistance 24 hours a day, 365 days a year, for Eligible Products for which Client selected the 24x7 option (if available). For hardware or software issues, select the hardware option. To expedite processing, have the machine type, model, and serial number available.

During Prime Shift, IBM's response time objective is two hours for voice and electronic problem submissions. For voice problem submissions outside of Prime Shift hours, IBM's response time objective for Severity 1 is two hours and, if available, and if Client selects the 24x7 severity option, four hours for non-critical problems. For electronic problem submissions during other than Prime Shift, IBM's response time objective is within two hours of the start of Prime Shift on the next business day. IBM is not responsible for delays in electronic response delivery caused by systems and network problems.

Client Responsibilities

Client:

a. will designate the Client Primary Technical Contact (PTC), Client's representative for IBM to direct general technical information pertaining to the Service. The PTC must have sufficient technical knowledge regarding the Eligible Products in Client's environment to enable effective communication with the IBM support center;
b. agrees to provide IBM the inventory of Eligible Products to be covered at each specified location, and to provide written notice of changes to inventory within one month after the change occurs. Such changes may cause a revision to charges;
c. agrees to ensure that any access codes IBM provides are used only by authorized Client personnel;
d. will have valid licensing and subscription (as applicable) in place for Eligible Programs covered by this Service;
e. will provide appropriate remote access to Eligible Products and provide IBM with all relevant and available diagnostic information (including product or system information) pertaining to software problems. Client remains responsible for adequately protecting Client's system and all data contained therein whenever IBM remotely accesses it with permission. If Client declines such remote system access, IBM may be limited in its ability to provide the full Service necessary to resolve the problem. If IBM is unable to do so, IBM will notify Client and close the service call; and
f. is responsible for obtaining all necessary permissions to use, provide, store and process content in Services and grants IBM permission to do the same. 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.

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 and supplement the Agreement, if and to the extent the European General Data Protection Regulation (EU/2016/679) applies to Client Personal Data, as described in the DPA.

Termination

Product or feature. Client may terminate Support Line for any product or any optional feature on 60 days' written notice to IBM, after the first full contract year, or otherwise as specified. IBM may withdraw a Service or support for an Eligible Product on at least three months' written notice to Client.

Agreement. Either party may terminate this agreement: i) without cause on at least one month's notice to the other after expiration or termination of its obligations under the Agreement; or ii) immediately for cause if the other is in material breach of the Agreement, provided the one who is not complying is given notice and reasonable time to comply. Failure to pay is a material breach. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to successors and assignees.

General Terms

Warranties and Post Warranty Support

IBM warrants that it provides Services using commercially reasonable care and skill in accordance with the Service description. The warranty for a Service ends when the Service ends. IBM provides no product warranties under this Service agreement, nor does IBM provide any pass-through warranties on behalf of any supplier. IBM and its subcontractors do not warrant any non-IBM product.

IBM does not warrant uninterrupted or error-free operation of an IBM Service or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access. **These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose.** IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, failure to comply with instructions provided by IBM, or if otherwise stated.

Charges, Taxes, and Payment

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.

Service acquired from an IBM Business Partner. For Services acquired from an IBM Business Partner, the IBM Business Partner sets the charges and the terms governing charges. Client will pay the IBM Business Partner directly and IBM will provide Service to Client under the terms of this Agreement.

Service acquired directly from IBM. Charges for Services are invoiced in advance. Charges depend on the coverage period (Prime Shift or Full Shift) and the Support Period. If any authority imposes a duty, tax, levy or fee, excluding those based on IBM's net income, upon the Service IBM supplies under this Agreement, Client agree to pay that amount as specified in the invoice or supply exemption documentation. IBM does not give refunds or credits for the unused Service. Client agrees to pay all applicable charges specified by IBM, any customs or other duty, tax, levy, or fee imposed by any authority resulting from Client's acquisitions under this Agreement, and any late payment fees. Amounts are due upon receipt of the invoice and payable

within 30 days of the invoice date to an account specified by IBM. Prepaid Services must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid.

Liability and Indemnity
IBM's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the Service that is the subject of the claim, regardless of the basis of the claim. This limit applies collectively to IBM, its subsidiaries, contractors, and suppliers. IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.

The following amounts, if a party is legally liable for them, are not subject to the above cap: i) third party payments referred to in the paragraph below; ii) damages for body injury (including death); iii) damages to real property and tangible personal property; and iv) damages that cannot be limited under applicable law.

If a third party asserts a claim against Client that an IBM Service acquired under this Agreement infringes a patent or copyright, IBM will defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM, provided that Client promptly (i) notifies IBM in writing of the claim, (ii) supplies information requested by IBM, and (iii) allows IBM to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.

IBM has no responsibility for claims based, in whole or part, on non-IBM products, items not provided by IBM, or any violation of law or third party rights caused by Client's content, materials, designs, or specifications.

Without limiting the generality of the foregoing, IBM provides no indemnity for any claim or alleged claim that all or any portion of the OpenStack distribution may infringe a third party's intellectual property right.

Governing Laws. Each party is responsible for complying with: i) laws and regulations applicable to its business and content, and ii) import, export and economic sanction laws and regulations, including those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. Both parties agree to the application of the laws of the country where the transaction is performed to the Agreement, without regard to conflict of law principles. In the U.S., the laws of the State of New York apply. The rights and obligations of each party are valid only in the country where the transaction is performed. 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 this Agreement.

Confidentiality. Parties will not disclose confidential information 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 agreement.

Relationship. IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any responsibility for Client's business or operations. Each party is responsible for determining the assignment of its personnel and contractors, and for their direction, control, and compensation. IBM Business Partners are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings.

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.

IBM and its affiliates, and their subcontractors, may process and store business contact information of Client personnel in connection with the performance of this Agreement wherever they do business. IBM may use personnel and resources in locations worldwide and third party suppliers to support Service delivery.

Neither party may assign the Agreement. Assignment of IBM rights to receive payments and by IBM in conjunction with the sale of the portion of IBM's business that includes the Services is not restricted.

No right or cause of action for any third party is created by this 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.

Agreement for Machine Setup Support

Client acquires Machine Setup Support (the Service), subject to this IBM Agreement (the Agreement).

THE TERMS BELOW GOVERN CLIENT'S PURCHASE OF THIS SERVICE. THESE TERMS ARE THE COMPLETE AND EXCLUSIVE AGREEMENT REGARDING THIS SERVICE AND REPLACE ANY PRIOR ORAL OR WRITTEN COMMUNICATIONS BETWEEN CLIENT AND IBM CONCERNING THIS SERVICE.

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

IBM will perform the Service described herein and indicated below, using standard IBM methods and diagnostic tests for the eligible Machines.

Neither party is relying on any representation not specified in this Agreement. For a change to the Agreement terms to be valid, both of us must acknowledge acceptance of the change. Additional or different terms in any written communication from Client (such as a purchase order) are void.

Service Description

Machine Setup Support is an optional independent service in addition to standard machine warranty services for eligible IBM machines. Eligible IBM machines are defined in the individual specified announcement letter.

When IBM receives Client's order, an IBM representative will contact Client to schedule the installation of the machine.

For Power Machines, IBM will perform the installation of the eligible machine in accordance with the IBM approved installations requirements, which include:

a. mount the machine, and it's corresponding IBM features purchased on the order into the Client-supplied rack. This would include the interconnection of required IBM machine cables;
b. install the machine, populating with active IBM features and attachments ordered, but excluding non-IBM alterations and attachments;
c. install Primary Hardware Management Console (PHMC), if ordered with the machine;
d. power on equipment and complete IBM testing to ensure machine is operating in accordance with its specifications; and
e. install and update the most recent version of IBM approved machine microcode, if the environment is ready.

Machine Setup for Power machines does not include installation of the rack, Power Distribution Units (PDUs), Secondary Hardware Management Console (SHMC) , configuring Logical Partitions (LPARs), updating HMC code or Input Output (IO) microcode, the installation of an operating system, or a second trip for completing microcode installation.

Machine Setup Support includes installation and rack mount support only. All planning or configuration decisions must be made by Client prior to IBM on-site arrival. Any hardware problems encountered will be resolved under a service request created by Client in accordance with the machine warranty. The use of non-IBM racks could prevent IBM from being able to complete the installation or mounting if such non-IBM racks interfere in IBM product design, service operations, or product safety.

For Storage Machines, when Machine Setup Support services are ordered and contact is established between IBM and Client, Client must ensure the planning of installation as outlined in the below sections, prior to dispatch of the IBM representative for the installation tasks. IBM will perform the installation of the eligible machine in accordance with the IBM approved installations requirements, which include:

a. physical product placement, racking, and basic initialization of designated enclosures, based on the product requirements. For some products like SAN, machine setup services are limited to racking services and powering the machines only;
b. connecting Client-provided host/network cables and interconnecting enclosure cabling as required; and
c. configuring call home if Client has planned for call home including providing worksheets for call home configuration as documented in IBM planning documentation.

Machine Setup for Storage Machines does not include installation of the rack, Power Distribution Units (PDUs), or configuring of storage software features. Client is responsible for installation planning, and site preparation as documented in the installation planning section of the applicable IBM Documentation at https://www.ibm.com/docs/en. IBM recommends Clients contact local service delivery to assist with the site planning. For some products Technical and Delivery Assessment (TDA) checklists are available at the following link https://www.ibm.com/tools/impact/actionPage.action. Clients, technical sales, and service delivery representatives should be engaged during site planning activities.

Business Hours Setup (9x5)

IBM will provide Services during normal business hours, 8:00 a.m. to 5:00p.m., Monday through Friday, except national holidays for hardware products announced with a 9x5 warranty.

After Hours Setup (24x7x365)
IBM will provide services during any hours Client requests, for hardware products announced with a 24x7x365 warranty.

Client Responsibilities

The successful and timely completion of the Services depends on the following Client responsibilities. IBM is not responsible for any delays caused by, or within the reasonable control of, Client. Client agrees to:

a. provide free physical access for IBM personnel to the locations where Service is to be performed, including free and safe parking and any required access to restricted areas, if applicable;
b. provide suitable connectivity to the internet, and other facilities, as reasonably requested and, if applicable outside of working hours, network access for IBM personal to perform their responsibilities at Client premises;
c. ensure that the designated location conforms to the IBM installation requirements for the eligible Machines; and
d. specify a suitable date and time for setup, including any installation planning requirements, and be prepared for the setup appointment. If IBM representatives arrive for the setup appointment, and Client Responsibilities are not fulfilled, IBM will invoice Client for travel expenses, travel time, and wait time, as applicable.

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 and supplement the Agreement, if and to the extent the European General Data Protection Regulation (EU/2016/679) applies to Client Personal Data, as described in the DPA.

General Terms

Warranties and Post Warranty Support

IBM warrants that it provides Services using commercially reasonable care and skill in accordance with the Service description. The warranty for a Service ends when the Service ends. IBM provides no product warranties under this Service agreement, nor does IBM provide any pass-through warranties on behalf of any supplier. IBM and its subcontractors do not warrant any non-IBM product.

IBM does not warrant uninterrupted or error-free operation of an IBM Service or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access. **These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose.** IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, failure to comply with instructions provided by IBM, or if otherwise stated.

Charges, Taxes, and Payment
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.

Service acquired from an IBM Business Partner. For Services acquired from an IBM Business Partner, the IBM Business Partner sets the charges and the terms governing charges. Client will pay the IBM Business Partner directly and IBM will provide Service to Client under the terms of this Agreement.

Service acquired directly from IBM. Charges for Services are invoiced in advance. Charges depend on the coverage period (Prime Shift or Full Shift) and the Support Period. If any authority imposes a duty, tax, levy or fee, excluding those based on IBM's net income, upon the Service IBM supplies under this Agreement, Client agree to pay that amount as specified in the invoice or supply exemption documentation. IBM does not give refunds or credits for the unused Service. Client agrees to pay all applicable charges specified by IBM, any customs or other duty, tax, levy, or fee imposed by any authority resulting from Client's acquisitions under this Agreement, and any late payment fees. Amounts are due upon receipt of the invoice and payable within 30 days of the invoice date to an account specified by IBM. Prepaid Services must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid.

Liability and Indemnity
IBM's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the Service that is the subject of the claim, regardless of the basis of the claim. This limit applies collectively to IBM, its subsidiaries, contractors, and suppliers. IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.

The following amounts, if a party is legally liable for them, are not subject to the above cap: i) third party payments referred to in the paragraph below; ii) damages for body injury (including death); iii) damages to real property and tangible personal property; and iv) damages that cannot be limited under applicable law.

If a third party asserts a claim against Client that an IBM Service acquired under this Agreement infringes a patent or copyright, IBM will defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM, provided that Client promptly (i) notifies IBM in writing of the claim, (ii) supplies information requested by IBM, and (iii) allows IBM to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.

IBM has no responsibility for claims based, in whole or part, on non-IBM products, items not provided by IBM, or any violation of law or third party rights caused by Client's content, materials, designs, or specifications.

Without limiting the generality of the foregoing, IBM provides no indemnity for any claim or alleged claim that all or any portion of the Linux operating system may infringe a third party's intellectual property right.

Governing Laws. Each party is responsible for complying with: i) laws and regulations applicable to its business and content, and ii) import, export and economic sanction laws and regulations, including those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. Both parties agree to the application of the laws of the country where the transaction is performed to the Agreement, without regard to conflict of law principles. In the U.S., the laws of the State of New York apply. The rights and obligations of each party are valid only in the country where the transaction is performed. 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 this Agreement.

Confidentiality. Parties will not disclose confidential information 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 agreement.

Relationship. IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any responsibility for Client's business or operations. Each party is responsible for determining the assignment of its personnel and contractors, and for their direction, control, and compensation. IBM Business Partners are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings.

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.

IBM and its affiliates, and their subcontractors, may process and store business contact information of Client personnel in connection with the performance of this Agreement wherever they do business. IBM may use personnel and resources in locations worldwide and third party suppliers to support Service delivery.

Neither party may assign the Agreement. Assignment of IBM rights to receive payments and by IBM in conjunction with the sale of the portion of IBM's business that includes the Services is not restricted.

No right or cause of action for any third party is created by this 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.

Termination of Agreement. Either party may terminate this agreement: i) without cause on at least one month's notice to the other after expiration or termination of its obligations under the Agreement; or ii) immediately for cause if the other is in material breach of the Agreement, provided the one who is not complying is given notice and reasonable time to comply. Failure to pay is a material breach. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to successors and assignees.

Agreement for Support Line for Linux on Power Systems

Client acquires Support Line for Linux on Power Systems (the Service), subject to this IBM Agreement (the Agreement).

THE TERMS BELOW GOVERN CLIENT'S PURCHASE OF THIS SERVICE. THESE TERMS ARE THE COMPLETE AND EXCLUSIVE AGREEMENT REGARDING THIS SERVICE AND REPLACE ANY PRIOR ORAL OR WRITTEN COMMUNICATIONS BETWEEN CLIENT AND IBM CONCERNING THIS SERVICE.

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

Client may access IBM Support by calling 1-800-IBM-SERV or the Software Support number for Client's country, listed at https://www.ibm.com/planetwide/ and providing Client's machine type/serial or Product ID number on which the Eligible Product is installed or Client's customer number. To obtain support electronically, please use the Internet web site: http://www.ibm.com/support

Neither party is relying on any representation not specified in this Agreement. For a change to the Agreement terms to be valid, both of us must acknowledge acceptance of the change. Additional or different terms in any written communication from Client (such as a purchase order) are void.

Service Description

Support Line for Linux on Power Systems is remote assistance with the operation of supported Linux products (Eligible Products) and system environments only. Supported versions are located at http://www-03.ibm.com/services/supline/products/ or as otherwise provided by IBM.

Client's order for the IBM Power System Machine will specify the Support Period. The Support Period begins at the start of Machine warranty. For IBM installations, support begins on the date of installation. For Client installations, support begins seven days after shipment date. For Client installations without hardware acquisitions, support begins at contract acceptance. Service will terminate at the end of the Support Period. This Service does not automatically renew.

For all Eligible Products, IBM will provide remote assistance (via telephone from IBM's support center, or electronically) in response to requests pertaining to the following:

a. basic, short-duration installation, usage, and configuration questions;
b. code-related problem questions;
c. diagnostic information review to assist in isolation of a problem cause (for example, assistance interpreting traces and dumps for installation and code-related problems); and
d. for known defects, guidance on how to obtain available corrective service information and available program patches directly from the Linux publisher or supplier (collectively, the Supplier).

IBM will assist Client in determining the cause of the problem and provide Client with guidance on how to obtain patches, maintenance updates, or refreshes (collectively Fixes) directly from the Supplier under the Supplier's terms. IBM is not responsible for the resolution of defects in the Eligible Products supported under this Agreement. IBM is not a party to Client's acquisition of Fixes from the Supplier.

If a new defect (referenced or without known correction) is identified, IBM will report the defect to the Supplier and will inform Client of known actions taken and the availability of corrective information, if any. While IBM may report the defect to the Supplier on Client's behalf as a convenience, Client acknowledges and agrees that IBM is not a distributor, licensor, or reseller of the Linux operating system, including any Fixes.

Response Objective

IBM provides Severity 1 assistance 24 hours a day, 365 days a year, for Eligible Products for which Client selected the 24x7 option (if available). For hardware or software issues, select the hardware option. To expedite processing, have the machine type, model, and serial number available.

During Prime Shift, IBM's response time objective is two hours for voice and electronic problem submissions. For voice problem submissions outside of Prime Shift hours, IBM's response time objective for Severity 1 is two hours and, if available, and if Client selects the 24x7 severity option, four hours for non-critical problems. For electronic problem submissions during other than Prime Shift, IBM's response time objective is within two hours of the start of Prime Shift on the next business day. IBM is not responsible for delays in electronic response delivery caused by systems and network problems.

Client Responsibilities

Client:

a. will designate the Client Primary Technical Contact (PTC), Client's representative for IBM to direct general technical information pertaining to the Service. The PTC must have sufficient technical knowledge regarding the Eligible Products in Client's environment to enable effective communication with the IBM support center;

b. agrees to provide IBM the inventory of Eligible Products to be covered at each specified location, and to provide written notice of changes to inventory within one month after the change occurs. Such changes may cause a revision to charges;
c. agrees to ensure that any access codes IBM provides are used only by authorized Client personnel;
d. will have valid licensing and subscription (as applicable) in place for Eligible Programs covered by this Service;
e. will provide appropriate remote access to Eligible Products and provide IBM with all relevant and available diagnostic information (including product or system information) pertaining to software problems. Client remains responsible for adequately protecting Client's system and all data contained therein whenever IBM remotely accesses it with permission. If Client declines such remote system access, IBM may be limited in its ability to provide the full Service necessary to resolve the problem. If IBM is unable to do so, IBM will notify Client and close the service call; and
f. is responsible for obtaining all necessary permissions to use, provide, store and process content in Services and grants IBM permission to do the same. 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.

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 and supplement the Agreement, if and to the extent the European General Data Protection Regulation (EU/2016/679) applies to Client Personal Data, as described in the DPA.

Termination

Product or feature. Client may terminate Support Line for any product or any optional feature on 60 days' written notice to IBM, after the first full contract year, or otherwise as specified. IBM may withdraw a Service or support for an Eligible Product on at least three months' written notice to Client.

Agreement. Either party may terminate this agreement: i) without cause on at least one month's notice to the other after expiration or termination of its obligations under the Agreement; or ii) immediately for cause if the other is in material breach of the Agreement, provided the one who is not complying is given notice and reasonable time to comply. Failure to pay is a material breach. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to successors and assignees.

General Terms

Warranties and Post Warranty Support

IBM warrants that it provides Services using commercially reasonable care and skill in accordance with the Service description. The warranty for a Service ends when the Service ends. IBM provides no product warranties under this Service agreement, nor does IBM provide any pass-through warranties on behalf of any supplier. IBM and its subcontractors do not warrant any non-IBM product.

IBM does not warrant uninterrupted or error-free operation of an IBM Service or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access. **These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose.** IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, failure to comply with instructions provided by IBM, or if otherwise stated.

Charges, Taxes, and Payment

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.

Service acquired from an IBM Business Partner. For Services acquired from an IBM Business Partner, the IBM Business Partner sets the charges and the terms governing charges. Client will pay the IBM Business Partner directly and IBM will provide Service to Client under the terms of this Agreement.

Service acquired directly from IBM. Charges for Services are invoiced in advance. Charges depend on the coverage period (Prime Shift or Full Shift) and the Support Period. If any authority imposes a duty, tax, levy or fee, excluding those based on IBM's net income, upon the Service IBM supplies under this Agreement, Client agree to pay that amount as specified in the invoice or supply exemption documentation. IBM does not give refunds or credits for the unused Service. Client agrees to pay all applicable charges specified by IBM, any customs or other duty, tax, levy, or fee imposed by any authority resulting from Client's acquisitions under this Agreement, and any late payment fees. Amounts are due upon receipt of the invoice and payable within 30 days of the invoice date to an account specified by IBM. Prepaid Services must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid.

Liability and Indemnity

IBM's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the Service that is the subject of the claim, regardless of the basis of the claim. This limit applies collectively to IBM, its subsidiaries, contractors, and suppliers. IBM

will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.

The following amounts, if a party is legally liable for them, are not subject to the above cap: i) third party payments referred to in the paragraph below; ii) damages for body injury (including death); iii) damages to real property and tangible personal property; and iv) damages that cannot be limited under applicable law.

If a third party asserts a claim against Client that an IBM Service acquired under this Agreement infringes a patent or copyright, IBM will defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM, provided that Client promptly (i) notifies IBM in writing of the claim, (ii) supplies information requested by IBM, and (iii) allows IBM to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.

IBM has no responsibility for claims based, in whole or part, on non-IBM products, items not provided by IBM, or any violation of law or third party rights caused by Client's content, materials, designs, or specifications.

Without limiting the generality of the foregoing, IBM provides no indemnity for any claim or alleged claim that all or any portion of the Linux operating system may infringe a third party's intellectual property right.

Governing Laws. Each party is responsible for complying with: i) laws and regulations applicable to its business and content, and ii) import, export and economic sanction laws and regulations, including those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. Both parties agree to the application of the laws of the country where the transaction is performed to the Agreement, without regard to conflict of law principles. In the U.S., the laws of the State of New York apply. The rights and obligations of each party are valid only in the country where the transaction is performed. 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 this Agreement.

Confidentiality. Parties will not disclose confidential information 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 agreement.

Relationship. IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any responsibility for Client's business or operations. Each party is responsible for determining the assignment of its personnel and contractors, and for their direction, control, and compensation. IBM Business Partners are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings.

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.

IBM and its affiliates, and their subcontractors, may process and store business contact information of Client personnel in connection with the performance of this Agreement wherever they do business. IBM may use personnel and resources in locations worldwide and third party suppliers to support Service delivery.

Neither party may assign the Agreement. Assignment of IBM rights to receive payments and by IBM in conjunction with the sale of the portion of IBM's business that includes the Services is not restricted.

No right or cause of action for any third party is created by this 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.

Agreement for Proactive Support

Client acquires Proactive Support (the Service), subject to this IBM Agreement (the Agreement).

THE TERMS BELOW GOVERN CLIENT'S PURCHASE OF THIS SERVICE. THESE TERMS ARE THE COMPLETE AND EXCLUSIVE AGREEMENT REGARDING THIS SERVICE AND REPLACE ANY PRIOR ORAL OR WRITTEN COMMUNICATIONS BETWEEN CLIENT AND IBM CONCERNING THIS SERVICE.

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

Client may access IBM Support by calling 1-800-IBM-SERV or the Software Support number for Client's country, listed at https://www.ibm.com/planetwide/ and providing Client's machine type/serial or Product ID number on which the Eligible Product is installed or Client's customer number. To obtain support electronically, please use the Internet web site: http://www.ibm.com/support

Neither party is relying on any representation not specified in this Agreement. For a change to the Agreement terms to be valid, both of us must acknowledge acceptance of the change. Additional or different terms in any written communication from Client (such as a purchase order) are void.

Service Description

Proactive Support is optional with standard base hardware and software support services (Basic Maintenance) for Eligible Products.

There are four Enhanced Service Modules in Proactive Support -- Priority Access, Priority Response, Priority Handling, and Proactive Support -- to provide premium remote voice and electronic entry into, and handling within, IBM's support structure to assist Client with managing and maintaining its Information Technology (IT) environment.

IBM 24x7 Basic Maintenance (if available) is a prerequisite for each Eligible Product for which Client selects Proactive Support coverage. If 24x7 all Severity coverage is not available under Basic Maintenance for a particular Product, the most comprehensive hours of coverage available must be selected. Eligible Products are identified at www.ibm.com/services/supline/products/

The Priority Support Team (PST) is the group of skilled Proactive Support specialists responsible for tasks in the following Enhanced Services Modules. IBM will assign a named member of the PST as Client's Technical Solution Manager (TSM). Members of the PST also assist the TSM with the provision of all aspects of Proactive Support.

1. Priority Access

IBM provides direct priority access to a team of skilled resources as an initial point of contact for problem submissions on Eligible Products. The TSM will, during the Welcome Call, provide Client with a unique Proactive Support Direct Access Code (DAC), and ensure that Client is able to maximize the features of Proactive Support.

Client may submit problems via voice using Client's unique DAC or by electronic problem reporting using the IBM support portal.

2. Priority Response

Response Time is the elapsed time between IBM technical support's receipt of Client's problem submission and IBM's acknowledgment of the submission. The PST uses reasonable efforts to respond within the Targeted Response Time Objectives, based on the Severity of the problem and the time that Client reports the problem. IBM's initial response may resolve the problem or form the basis for determining if additional actions are required. Response Times are objectives only. IBM is not responsible for delays caused by systems and network problems.

Targeted Response Time Objectives - All Severity and all shift response time objective is 30 minutes.

3. Priority Handling

The PST performs initial problem determination, problem source identification, and direct resolution, if possible. If additional resources are required for resolution, the PST will, based on the identified source and severity of the problem:

a. For all Severity Eligible Program (software) problems, engage the appropriate support resources, coordinate and manage the contributions of those resources, monitor the progress of Client problem submissions, and provide regular status updates.
b. For all Severity Hardware problems reported via Proactive Support, engage the appropriate support resources; offer coordination and management assistance for problems being handled by remote IBM support; and provide an escalation path as needed.
c. For all Severity Hardware problems reported via non-Proactive Support methods, or routed to field resources for resolution, monitor all Severity problems; offer coordination and management assistance for problems handled by remote IBM support; and provide an escalation path as needed.
d. For all Severity problems related to Eligible Products that are not covered by Proactive Support, IBM will route the reported problem to the appropriate resources to provide support under separate terms, and provide an escalation path as needed.

4. Proactive Support
The TSM and PST will, during Prime Shift (8:00 a.m. to 5:00 p.m. in the local time zone where Client receives Service, Monday through Friday, excluding holidays), perform proactive support activities to assist Client to manage the supported IT environment, and establish and maintain a framework for technical communications and activity reporting. The TSM will:

a. remotely conduct the initial Welcome Call and provide information related to the Proactive Services of Proactive Support;
b. provide Client's Primary Technical Contact (PTC) with a detailed questionnaire to be completed and returned to the TSM, to enable the TSM to create and deliver the Technical Support Plan (TSP) to the PTC within 30 days of the Welcome Call. The TSP will:
    1) summarize the Proactive Support Service;
    2) document and maintain the inventory listing of Eligible Products;
    3) document the Client's operational and maintenance processes, current support structure, critical applications, critical outage scenarios, and environment; and
    4) as applicable:
        a) schedule initial setup of the Proactive Support tools and provide tool details; and
        b) provide instructions to register for and obtain Alert reports providing maintenance details for AIX and IBM i Operating Systems.
c. update the TSP as needed, but at least annually;
d. if applicable, verify that remote support electronic connections to the environment are functioning, and that the IBM Tools are available for use as documented in the TSP;
e. create a monthly Proactive Support review package, including delivery of Reports in Section 6, as applicable; and
f. schedule Status Calls with PTC to review monthly documentation, review tools output, provide advice on recommended practices for managing and maintaining Client's Eligible Products, and document any planned changes.

Client Responsibilities

Client agrees to:

a. submit all requests using the instructions provided by IBM;
b. identify and maintain a United States (USA) PTC, to whom IBM may direct general technical information and questions;
c. maintain, for the duration of Proactive Support, Basic Maintenance for Eligible Products, consistent with the Proactive Support Service being purchased. Client must terminate Proactive Support upon termination of prerequisite Basic Maintenance on Eligible Products;
d. ensure that any access codes IBM provides are used only by authorized Client personnel;
e. have valid licensing and subscription (as applicable) in place for Eligible Programs covered by this Service;
f. provide appropriate remote access to Eligible Products and provide IBM with all relevant and available diagnostic information (including product or system information) pertaining to software problems. Client remains responsible for adequately protecting Client's system and all data contained therein whenever IBM remotely accesses it with permission. If Client declines such remote system access, IBM may be limited in its ability to provide the full Service necessary to resolve the problem. If IBM is unable to do so, IBM will notify Client and close the service call; and
g. be responsible for obtaining all necessary permissions to use, provide, store and process content in Services and grants IBM permission to do the same. 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.

IBM Tools

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 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. Unless licensed in writing by IBM, Client has no right to access, retain, copy, or use the IBM Tools and no Client license or intellectual property right is granted or implied by the use of the IBM Tools used in connection with performance of the Services. IBM Tools are subject to the terms associated with them. IBM Tools are not warranted. If applicable, upon completion of the Service Client agrees to cease use of, uninstall and remove the IBM Tools from Client's Eligible Machines and facilities.

Reports

IBM will deliver, or make available for download by Client, the following Project Materials, as applicable:
a. Alert Reports (available only for AIX and IBM i Operating Systems, delivered electronically).

Client will own the copyright in Project Materials that IBM develops for Client under this Statement of Work (SOW). Project Materials exclude works of authorship delivered to Client, but not created, under the SOW, and any modifications or enhancements of such works made under the SOW (Existing Works). 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. IBM retains an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works of Project Materials.

IBM will deliver the following Existing Works:

b. Proactive Support Environment Questionnaire;
c. Technical Support Plan (TSP); and
d. Service Activity Report summarizing service activity related to reported problems, including proactive recommendations.

For System i only, IBM will deliver the following Existing Works:

e. Maintenance Level Report; and
f. optional Remote Review Status Report.

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 and supplement the Agreement, if and to the extent the European General Data Protection Regulation (EU/2016/679) applies to Client Personal Data, as described in the DPA.

Termination of Service.

IBM will provide at least 90 days' notice prior to withdrawal of this Service. A prorated credit will apply for any prepaid Service not provided. Client cannot terminate this Service for out of productive use or convenience. This Service does not automatically renew.

General Terms

Warranties and Post Warranty Support

IBM warrants that it provides Services using commercially reasonable care and skill in accordance with the Service description. The warranty for a Service ends when the Service ends. IBM provides no product warranties under this Service agreement, nor does IBM provide any pass-through warranties on behalf of any supplier. IBM and its subcontractors do not warrant any non-IBM product.

IBM does not warrant uninterrupted or error-free operation of an IBM Service or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access. **These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose.** IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, failure to comply with instructions provided by IBM, or if otherwise stated.

Charges, Taxes, and Payment

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.

Service acquired from an IBM Business Partner. For Services acquired from an IBM Business Partner, the IBM Business Partner sets the charges and the terms governing charges. Client will pay the IBM Business Partner directly and IBM will provide Service to Client under the terms of this Agreement.

Service acquired directly from IBM. Charges for Services are invoiced in advance. Charges depend on the coverage period (Prime Shift or Full Shift) and the Support Period. If any authority imposes a duty, tax, levy or fee, excluding those based on IBM's net income, upon the Service IBM supplies under this Agreement, Client agree to pay that amount as specified in the invoice or supply exemption documentation. IBM does not give refunds or credits for the unused Service. Client agrees to pay all applicable charges specified by IBM, any customs or other duty, tax, levy, or fee imposed by any authority resulting from Client's acquisitions under this Agreement, and any late payment fees. Amounts are due upon receipt of the invoice and payable within 30 days of the invoice date to an account specified by IBM. Prepaid Services must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid.

Liability and Indemnity

IBM's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the Service that is the subject of the claim, regardless of the basis of the claim. This limit applies collectively to IBM, its subsidiaries, contractors, and suppliers. IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.

The following amounts, if a party is legally liable for them, are not subject to the above cap: i) third party payments referred to in the paragraph below; ii) damages for body injury (including death); iii) damages to real property and tangible personal property; and iv) damages that cannot be limited under applicable law.

If a third party asserts a claim against Client that an IBM Service acquired under this Agreement infringes a patent or copyright, IBM will defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM, provided that Client promptly (i) notifies IBM in writing of the claim, (ii) supplies information requested by IBM, and (iii) allows IBM to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.

IBM has no responsibility for claims based, in whole or part, on non-IBM products, items not provided by IBM, or any violation of law or third party rights caused by Client's content, materials, designs, or specifications.

Without limiting the generality of the foregoing, IBM provides no indemnity for any claim or alleged claim that all or any portion of the Linux operating system may infringe a third party's intellectual property right.

Governing Laws. Each party is responsible for complying with: i) laws and regulations applicable to its business and content, and ii) import, export and economic sanction laws and regulations, including those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users.

Both parties agree to the application of the laws of the country where the transaction is performed to the Agreement, without regard to conflict of law principles. In the U.S., the laws of the State of New York apply. The rights and obligations of each party are valid only in the country where the transaction is performed. 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 this Agreement.

Confidentiality. Parties will not disclose confidential information 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 agreement.

Relationship. IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any responsibility for Client's business or operations. Each party is responsible for determining the assignment of its personnel and contractors, and for their direction, control, and compensation. IBM Business Partners are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings.

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.

IBM and its affiliates, and their subcontractors, may process and store business contact information of Client personnel in connection with the performance of this Agreement wherever they do business. IBM may use personnel and resources in locations worldwide and third party suppliers to support Service delivery.

Neither party may assign the Agreement. Assignment of IBM rights to receive payments and by IBM in conjunction with the sale of the portion of IBM's business that includes the Services is not restricted.

No right or cause of action for any third party is created by this 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.

Termination of Agreement. Either party may terminate this agreement: i) without cause on at least one month's notice to the other after expiration or termination of its obligations under the Agreement; or ii) immediately for cause if the other is in material breach of the Agreement, provided the one who is not complying is given notice and reasonable time to comply. Failure to pay is a material breach. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to successors and assignees.

Agreement for IBM Support for Red Hat - OpenShift on Power Systems

Client acquires IBM Support for Red Hat - OpenShift on Power Systems (the Service), subject to this IBM Agreement (the Agreement).

THE TERMS BELOW GOVERN CLIENT'S PURCHASE OF THIS SERVICE. THESE TERMS ARE THE COMPLETE AND EXCLUSIVE AGREEMENT REGARDING THIS SERVICE AND REPLACE ANY PRIOR ORAL OR WRITTEN COMMUNICATIONS BETWEEN CLIENT AND IBM CONCERNING THIS SERVICE.

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

Client may access IBM Support by calling 1-800-IBM-SERV or the Software Support number for Client's country, listed at https://www.ibm.com/planetwide/ and providing Client's machine type/serial or Product ID number on which the Eligible Product is installed or Client's customer number. To obtain support electronically, please use the Internet web site: http://www.ibm.com/support

Neither party is relying on any representation not specified in this Agreement. For a change to the Agreement terms to be valid, both of us must acknowledge acceptance of the change. Additional or different terms in any written communication from Client (such as a purchase order) are void.

Service Description

Support Line for OpenShift on Power Systems is remote assistance with the operation of supported products (Eligible Products) and system environments only. Supported versions are located at http://www-03.ibm.com/services/supline/products/ or as otherwise provided by IBM.

Client's order for the IBM Power System Machine will specify the Support Period. The Support Period begins at the start of Machine warranty. For IBM installations, support begins on the date of installation. For Client installations, support begins seven days after shipment date. For Client installations without hardware acquisitions, support begins at contract acceptance. Service will terminate at the end of the Support Period. This Service does not automatically renew.

For all Eligible Products, IBM will provide remote assistance (via telephone from IBM's support center, or electronically) in response to requests pertaining to the following:

a. basic, short-duration installation, usage, and configuration questions;
b. code-related problem questions;
c. diagnostic information review to assist in isolation of a problem cause (for example, assistance interpreting traces and dumps for installation and code-related problems); and
d. for known defects, guidance on how to obtain available corrective service information and available program patches directly from the publisher or supplier (collectively, the Supplier).

IBM will assist Client in determining the cause of the problem and provide Client with guidance on how to obtain patches, maintenance updates, or refreshes (collectively Fixes) directly from the Supplier under the Supplier's terms. IBM is not responsible for the resolution of defects in the Eligible Products supported under this Agreement. IBM is not a party to Client's acquisition of Fixes from the Supplier.

If a new defect (referenced or without known correction) is identified, IBM will report the defect to the Supplier and will inform Client of known actions taken and the availability of corrective information, if any. While IBM may report the defect to the Supplier on Client's behalf as a convenience, Client acknowledges and agrees that IBM is not a distributor, licensor, or reseller of the OpenShift distribution, including any Fixes.

Response Objective

IBM provides Severity 1 assistance 24 hours a day, 365 days a year, for Eligible Products for which Client selected the 24x7 option (if available). For hardware or software issues, select the hardware option. To expedite processing, have the machine type, model, and serial number available.

During Prime Shift, IBM's response time objective is two hours for voice and electronic problem submissions. For voice problem submissions outside of Prime Shift hours, IBM's response time objective for Severity 1 is two hours and, if available, and if Client selects the 24x7 severity option, four hours for non-critical problems. For electronic problem submissions during other than Prime Shift, IBM's response time objective is within two hours of the start of Prime Shift on the next business day. IBM is not responsible for delays in electronic response delivery caused by systems and network problems.

Client Responsibilities

Client:

a. will designate the Client Primary Technical Contact (PTC), Client's representative for IBM to direct general technical information pertaining to the Service. The PTC must have sufficient technical knowledge regarding the Eligible Products in Client's environment to enable effective communication with the IBM support center;
b. agrees to ensure that any access codes IBM provides are used only by authorized Client personnel;
c. will have valid licensing and subscription (as applicable) in place for Eligible Programs covered by this Service;
d. will provide appropriate remote access to Eligible Products and provide IBM with all relevant and available diagnostic information (including product or system information) pertaining to software problems. Client remains responsible for adequately protecting Client's system and all data contained therein whenever IBM remotely accesses it with permission. If Client declines such remote system access, IBM may be limited in its ability to provide the full Service necessary to resolve the problem. If IBM is unable to do so, IBM will notify Client and close the service call; and
e. is responsible for obtaining all necessary permissions to use, provide, store and process content in Services and grants IBM permission to do the same. 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.

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 and supplement the Agreement, if and to the extent the European General Data Protection Regulation (EU/2016/679) applies to Client Personal Data, as described in the DPA.

Termination

Product or feature. Client may terminate Support Line for any product or any optional feature on 60 days' written notice to IBM, after the first full contract year, or otherwise as specified. IBM may withdraw a Service or support for an Eligible Product on at least three months' written notice to Client.

Agreement. Either party may terminate this agreement: i) without cause on at least one month's notice to the other after expiration or termination of its obligations under the Agreement; or ii) immediately for cause if the other is in material breach of the Agreement, provided the one who is not complying is given notice and reasonable time to comply. Failure to pay is a material breach. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to successors and assignees.

General Terms

Warranties and Post Warranty Support

IBM warrants that it provides Services using commercially reasonable care and skill in accordance with the Service description. The warranty for a Service ends when the Service ends. IBM provides no product warranties under this Service agreement, nor does IBM provide any pass-through warranties on behalf of any supplier. IBM and its subcontractors do not warrant any non-IBM product.

IBM does not warrant uninterrupted or error-free operation of an IBM Service or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access. **These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose.** IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, failure to comply with instructions provided by IBM, or if otherwise stated.

Charges, Taxes, and Payment

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.

Service acquired from an IBM Business Partner. For Services acquired from an IBM Business Partner, the IBM Business Partner sets the charges and the terms governing charges. Client will pay the IBM Business Partner directly and IBM will provide Service to Client under the terms of this Agreement.

Service acquired directly from IBM. Charges for Services are invoiced in advance. Charges depend on the coverage period (Prime Shift or Full Shift) and the Support Period. If any authority imposes a duty, tax, levy or fee, excluding those based on IBM's net income, upon the Service IBM supplies under this Agreement, Client agree to pay that amount as specified in the invoice or supply exemption documentation. IBM does not give refunds or credits for the unused Service. Client agrees to pay all applicable charges specified by IBM, any customs or other duty, tax, levy, or fee imposed by any authority resulting from Client's acquisitions under this Agreement, and any late payment fees. Amounts are due upon receipt of the invoice and payable within 30 days of the invoice date to an account specified by IBM. Prepaid Services must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid.

Liability and Indemnity

IBM's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the Service that is the subject of the claim, regardless of the basis of the claim. This limit applies collectively to IBM, its subsidiaries, contractors, and suppliers. IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.

The following amounts, if a party is legally liable for them, are not subject to the above cap: i) third party payments referred to in the paragraph below; ii) damages for body injury (including death); iii) damages to real property and tangible personal property; and iv) damages that cannot be limited under applicable law.

If a third party asserts a claim against Client that an IBM Service acquired under this Agreement infringes a patent or copyright, IBM will defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM, provided that Client promptly (i) notifies IBM in writing of the claim, (ii) supplies information requested by IBM, and (iii) allows IBM to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.

IBM has no responsibility for claims based, in whole or part, on non-IBM products, items not provided by IBM, or any violation of law or third party rights caused by Client's content, materials, designs, or specifications.

Without limiting the generality of the foregoing, IBM provides no indemnity for any claim or alleged claim that all or any portion of the operating system may infringe a third party's intellectual property right.

Governing Laws. Each party is responsible for complying with: i) laws and regulations applicable to its business and content, and ii) import, export and economic sanction laws and regulations, including those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. Both parties agree to the application of the laws of the country where the transaction is performed to the Agreement, without regard to conflict of law principles. In the U.S., the laws of the State of New York apply. The rights and obligations of each party are valid only in the country where the transaction is performed. 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 this Agreement.

Confidentiality. Parties will not disclose confidential information 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 agreement.

Relationship. IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any responsibility for Client's business or operations. Each party is responsible for determining the assignment of its personnel and contractors, and for their direction, control, and compensation. IBM Business Partners are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings.

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.

IBM and its affiliates, and their subcontractors, may process and store business contact information of Client personnel in connection with the performance of this Agreement wherever they do business. IBM may use personnel and resources in locations worldwide and third party suppliers to support Service delivery.

Neither party may assign the Agreement. Assignment of IBM rights to receive payments and by IBM in conjunction with the sale of the portion of IBM's business that includes the Services is not restricted.

No right or cause of action for any third party is created by this 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.

Information Bulletin for United States Clients

IBM Hourly Service

For Machines located in the United States, IBM provides hourly services not covered by another IBM agreement, as described in this Information Bulletin (Service). By ordering or receiving Service, the owner or lessee in possession of the Machine (Client): i) authorizes IBM to provide billable Service under the terms of this Information Bulletin, and ii) agrees to pay all charges for Services performed (including time and materials). Additional or different terms in any written communication from Client (such as a purchase order) are void.

1. Scope of Service

Machines are IBM-branded devices, including features, upgrades, and accessories.

Service is work to keep Machines in, or restore them to, compliance with official published specifications (i.e., preventative maintenance, repair, exchange, remedial maintenance, adjustments, and replacement of maintenance parts). Service may also include Machine installation, relocation, or discontinuance (including planning).

Any single repair must be the responsibility of either IBM or another party. IBM may work jointly with a non-IBM service representative to determine where a problem resides when correct operation of both the IBM and interconnected non-IBM equipment is in doubt.

In the case of an alteration, Service is limited to the unaltered portions of the Machine. As a condition of Service, IBM may require removal of alterations and restoration of a Machine to its official published specifications, at Client's expense.

Parts or Machines provided by IBM may be new or used (but will be in good working order and at least functionally equivalent to the item replaced), and become Client's property. Replaced Machines become IBM's property and must be returned to IBM promptly or additional charges may apply. Certain parts are provided only on an exchange basis. IBM does not accept removed parts for credit.

When a part not furnished by IBM requires replacement, IBM will replace such part (except when such part is an alteration) with a directly interchangeable IBM part.

After the effective date for withdrawal of maintenance service for identified Machine types, Service depends upon availability of skilled personnel and resources such as parts, tools, and test equipment.

If a safety hazard is identified, IBM will notify Client and further Service will be suspended until the condition is corrected.

Service does not include the provision of copies, fixes or replacements for Machine Code. Service may include installation of copies, fixes or replacements for Machine Code, to which Client was entitled and IBM provided for Machines under warranty or IBM maintenance, or under a separate written agreement which may be subject to additional charges. Machine Code is defined in the IBM License Agreement for Machine Code.

2. Order and Authorization

Client orders IBM Hourly Service by contacting IBM at 1-800-IBM-SERV (426-7378). Where Client is the lessee of a Machine, Client agrees to obtain authorization from the owner in advance. A third party requesting Service for Client must present proof of authority upon request.

3. Hours of Coverage

Service hours of coverage depend on a) resource availability, with priority given to contracted IBM hardware maintenance service agreement clients, and b) limited to normal business hours of the applicable IBM service location, Monday through Friday. Service is available outside normal business hours if the Machine failure is related to a) a federal, state or local government emergency, b) a situation with an immediate threat to life or health, or (c) a Machine failure attributed to, or requiring access to, proprietary IBM engineering information.

4. Charges

Client is required to provide IBM a credit card, a funded purchase order, or other financial instrument mutually agreed to by IBM and Client, prior to the start of Service. Any change to this Information Bulletin, including any special Client authorization or reporting procedures, requires IBM's written agreement in advance.

Invoices are due upon receipt. Service is provided at IBM's then generally available hourly service rates and minimum charges for time (including travel), parts prices then generally in effect, and charges for shipping expense, all as applicable, plus taxes as described below. Charges may vary based on the Machine type and the day and time Service is performed. A minimum charge will apply to each visit when a Service incident, although incomplete, is suspended during one visit and resumed during subsequent visits. However, when a Service action is interrupted for IBM convenience or to obtain a part, the minimum charge amount will be applied only once. If a Client at any time elects to terminate a Service call, the IBM representative will end the Service call and Client will be charged for all time, expenses, and parts provided up to the point of termination.

If IBM determines a Service activity requires the efforts of more than one representative and Client concurs, additional charges will apply for additional individuals.

5. Taxes

Client agrees to pay all applicable customs or other duty, tax, levy, or fee imposed by any authority resulting from Service.

6. Warranty

IBM warrants that it provides Services using commercially reasonable care and skill. The warranty for a Service ends when the Service ends. Machines or parts provided by IBM during Service, whether new or used, when used in their specified operating environment and in conformance with their official published specifications, are warranted for three months after delivery from IBM to be free from defects in material and workmanship. IBM's obligation under this three month limited warranty is limited to furnishing, on an exchange basis, replacements for Machines or parts which have been promptly reported by the Client as defective and are so verified by IBM upon inspection.

These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, and fitness for a particular purpose. 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 warranties will not apply if there has been misuse, modification, improper maintenance, damage not caused by IBM, or failure to comply with instructions provided by IBM.

7. Limitation of Liability

IBM's entire liability for all claims related to the Service will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid for the Service transaction that is the subject of the claim, regardless of the basis of the claim. This limit applies collectively to IBM, its subsidiaries, contractors, and suppliers. IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings. The following amounts, if IBM is legally liable for them, are not subject to the above cap: i) damages for body injury (including death); ii) damages to real property and tangible personal property; and iii) damages that cannot be limited under applicable law.

8. Data Processing Protection

IBM's Data Processing Addendum (DPA) at http://ibm.com/dpa and the DPA Exhibit at www.ibm.com/mysupport/s/content/support_privacy apply and supplement the Agreement, if the European General Data Protection Regulation (EU/2016/679) applies to Client Personal Data, as described in the DPA.

9. General

No right or cause of action for any third party is created by this Information Bulletin.

Neither party will bring a legal action arising out of or related to this Information Bulletin more than two years after the cause of action arose.

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.

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.

Before IBM exchanges a Machine or part, Client agrees to securely erase all non-IBM programs, programming, removable storage media, funds, and all data (including confidential, proprietary and personal data regarding any individual or entity) from any Machine or part returned to IBM for any reason, and ensure that it is free of any legal restrictions that would prevent its return.

Client is responsible for adequate content back up.

Neither party will disclose confidential information without a separate, signed confidentiality agreement.

IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any responsibility for Client's business or operations.

Each party is responsible for determining the assignment of its personnel and contractors, and for their direction, control, and compensation. IBM may use global resources (non-permanent residents used locally and personnel in locations worldwide) for the delivery of the Service.

IBM and its affiliates, and their subcontractors, may process and store business contact information of Client personnel in connection with the performance of this Agreement wherever they do business.

Client is responsible for obtaining all necessary permissions to use, provide, store and process content in connection with Service, and grants IBM permission to do the same. 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.

Client agrees to i) maintain, and provide upon request, records, system tools output, and access to Client's premises, as reasonably necessary for IBM and its independent auditor to verify Client's compliance with this Information Bulletin for IBM Hourly Service and the License Agreement for Machine Code, and ii) promptly order any required entitlements, pay additional charges at IBM's then current rates (including uses in excess of Client's authorizations or entitlements, associated maintenance or software subscription support), and other liabilities determined as a result of such verification. These compliance verification obligations remain in effect during the term of the License Agreement for Machine Code License and for two years thereafter.

Both parties agree to the application of the laws of the state of New York to this Information Bulletin, without regard to conflict of law principles. If any provision of the Information Bulletin is invalid or unenforceable, the remaining provisions remain in full force and effect. Nothing in the Information Bulletin 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 Information Bulletin.

IBM reserves the right to change, modify, or withdraw its offerings, policies and practices or this Information Bulletin at any time without notice, provided that such changes will only apply to Services after the effective date of the change.

Agreement for Support Line for OSS on Power Systems™

Client acquires Support Line for OSS on Power Systems™ (the Service), subject to this IBM Agreement for Support Line for OSS on Power Systems™ (the Agreement).

THE TERMS BELOW GOVERN CLIENT'S PURCHASE OF THIS SERVICE. THESE TERMS ARE THE COMPLETE AND EXCLUSIVE AGREEMENT REGARDING THIS SERVICE AND REPLACE ANY PRIOR ORAL OR WRITTEN COMMUNICATIONS BETWEEN CLIENT AND IBM CONCERNING THIS SERVICE.

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

Client may access IBM Support by calling 1-800-IBM-SERV or the Software Support number for Client's country, listed at https://www.ibm.com/planetwide/ and providing Client's machine type/serial on which the Eligible Product is installed or Client's customer number. To obtain support electronically, please use the Internet web site: http://www.ibm.com/support/

Neither party is relying on any representation not specified in this Agreement. For a change to the Agreement terms to be valid, both of us must acknowledge acceptance of the change. Additional or different terms in any written communication from Client (such as a purchase order) are void.

Service Description

Support Line for Open Source Software (OSS) on Power Systems is remote assistance with the operation of supported original software supplier (Supplier) products (Eligible Products) and system environments only. Supported Supplier versions are located at http://www-03.ibm.com/services/supline/products/, or as otherwise provided by IBM.

When Client orders the IBM Power System Machine, Client must specify one year or three years of this Service (the Support Period). The selected Support Period begins on the date Client accepts the terms of this Agreement. Service will terminate at the end of the Support Period. This Service does not automatically renew.

For all Eligible Products, IBM will provide remote assistance (via telephone from IBM's support center, or electronically) in response to requests pertaining to the following:

a. basic, short duration installation, usage, and configuration questions;
b. code-related problem questions;
c. diagnostic information review to assist in isolation of a problem cause (for example, assistance interpreting traces and dumps for installation and code-related problems); and
d. for known defects, available corrective service information and a method to obtain available program patches from the Open Source supplier.

IBM will assist Client in determining the cause of the problem and provide corrective information if it is available from the editor or the Open Source supplier. IBM is not responsible for the resolution of defects in the programs supported under this Agreement.

IBM will provide Client with guidance on how to obtain patches, maintenance updates or refreshes (collectively Fixes) directly from the Open Source supplier. For Eligible Products, IBM may also direct Client to Rogue Wave, where Fixes may be available in the form of patches under separate terms solely between Client and Rogue Wave. Rogue Wave may make such patches available to the Open Source supplier for inclusion and distribution as errata updates and patches. There is no guarantee that the patches will be created or accepted by Open Source supplier as part of the main code branch.

If a new defect (referenced or without known correction) is identified, IBM will report the defect to the Open Source supplier, and will inform Client of known actions taken and the availability of corrective information. Open Source supplier-licensed or Rogue Wave-licensed software, including Fixes, is directly distributed and licensed to Client by the Open Source supplier or Rogue Wave under the terms and conditions of the Open Source supplier's or Rogue Wave's end user license agreement (EULA). While IBM may place an order with the Open Source supplier or Rogue Wave on Client's behalf as a convenience, Client acknowledges and agrees that IBM is neither a party to the EULA nor a distributor, licensor, or reseller of the Open Source supplier-licensed software, including any Fixes. While the Open Source supplier or Rogue Wave may provide Client with certain warranties, representations, or indemnities under the EULA, IBM does not provide, whether express or implied, any warranty, representation, indemnity, or other license with respect to the Open Source supplier-licensed or Rogue Wave-licensed software and is merely providing Service under this Agreement on Client's behalf at Client's request. Without limiting the generality of the foregoing, IBM provides no indemnity for any claim or alleged claim that all or any portion of the Open Source supplier-licensed or Rogue Wave-licensed software may infringe a third party's intellectual property right.

Response Objective

IBM provides Severity 1 assistance 24 hours a day, every day of the year, for Eligible Products where the Client has selected the 24x7 option (if available). Consult the IBM Software Support Guide at http://www14.software.ibm.com/webapp/set2/sas/f/handbook/home.html for details, including the call handling process.

During Prime Shift, IBM's response time objective is two hours for voice and electronic problem submissions. For voice problem submissions outside of Prime Shift hours, IBM's response time objective for Severity 1 is two hours and, if available, and if Client selects the 24x7 severity option, four hours for non-critical problems. For electronic problem submissions during other than Prime Shift, IBM's response time objective is within two hours of the start of Prime Shift on the next business day. IBM is not responsible for delays in electronic response delivery caused by systems and network problems.

Client Responsibilities

Client:

a. will designate the Client Primary Technical Contact (PTC), Client's representative for IBM to direct general technical information pertaining to the Service. The PTC must have sufficient technical knowledge regarding the Eligible Products in Client's environment to enable effective communication with the IBM support center;
b. agrees to provide IBM the inventory of Eligible Products to be covered at each specified location, and to provide written notice of changes to inventory within one month after the change occurs. Such changes may cause a revision to charges;
c. agrees to ensure that any access codes IBM provides are used only by authorized Client personnel;
d. will have valid licensing and subscription (as applicable) in place for Eligible Programs covered by this Service;
e. will provide appropriate remote access to Eligible Products and provide IBM with all relevant and available diagnostic information (including product or system information) pertaining to software problems. Client remains responsible for adequately protecting Client's system and all data contained therein whenever IBM remotely accesses it with permission. If Client declines such remote system access, IBM may be limited in its ability to provide the full Service necessary to resolve the problem. If IBM is unable to do so, IBM will notify Client and close the service call; and
f. is responsible for obtaining all necessary permissions to use, provide, store and process content in Services and grants IBM permission to do the same. 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.

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 and supplement the Agreement, if and to the extent the European General Data Protection Regulation (EU/2016/679) applies to Client Personal Data, as described in the DPA.

Termination

Product or feature. Client may terminate Support Line for any product or any optional feature on 60 days' written notice to IBM, after the first full contract year, or otherwise as specified. IBM may withdraw a Service or support for an Eligible Product on at least three months' written notice to Client.

Agreement. Either party may terminate this agreement: i) without cause on at least one month's notice to the other after expiration or termination of its obligations under the Agreement; or ii) immediately for cause if the other is in material breach of the Agreement, provided the one who is not complying is given notice and reasonable time to comply. Failure to pay is a material breach. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to successors and assignees.

General Terms

Warranties and Post Warranty Support

IBM warrants that it provides Services using commercially reasonable care and skill in accordance with the Service description. The warranty for a Service ends when the Service ends.

IBM does not warrant uninterrupted or error-free operation of an IBM Service or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access. These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose. IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, failure to comply with instructions provided by IBM, or if otherwise stated.

Charges, Taxes, and Payment

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.

Service acquired from an IBM Business Partner.
For Services acquired from an IBM Business Partner, the IBM Business Partner sets the charges and the terms governing charges. Client will pay the IBM Business Partner directly and IBM will provide Service to Client under the terms of this Agreement.

Service acquired directly from IBM. Charges for Services are invoiced in advance. Charges depend on the coverage period (Prime Shift or Full Shift) and the support period (one year or three years). Amounts are due and payable upon receipt of invoice. Client agrees to pay accordingly, including any late payment fee. If any authority imposes a duty, tax, levy or fee,

excluding those based on IBM's net income, upon the Service IBM supplies under this Agreement, Client agree to pay that amount as specified in the invoice or supply exemption documentation. IBM does not give refunds or credits for the unused Service. Client agrees to pay all applicable charges specified by IBM, any customs or other duty, tax, levy, or fee imposed by any authority resulting from Client's acquisitions under this Agreement, and any late payment fees. Amounts are due upon receipt of the invoice and payable within 30 days of the invoice date to an account specified by IBM. Prepaid Services must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid.

Liability and Indemnity
IBM's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the Service that is the subject of the claim, regardless of the basis of the claim. This limit applies collectively to IBM, its subsidiaries, contractors, and suppliers. IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.

The following amounts, if a party is legally liable for them, are not subject to the above cap: i) third party payments referred to in the paragraph below; ii) damages for body injury (including death); iii) damages to real property and tangible personal property; and iv) damages that cannot be limited under applicable law.

If a third party asserts a claim against Client that an IBM Service acquired under this Agreement infringes a patent or copyright, IBM will defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM, provided that Client promptly (i) notifies IBM in writing of the claim, (ii) supplies information requested by IBM, and (iii) allows IBM to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.

IBM has no responsibility for claims based, in whole or part, on Non-IBM products, items not provided by IBM, or any violation of law or third party rights caused by Client's content, materials, designs, or specifications.

Governing Laws. Each party is responsible for complying with: i) laws and regulations applicable to its business and content, and ii) import, export and economic sanction laws and regulations, including those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. Both parties agree to the application of the laws of the country where the transaction is performed to the Agreement, without regard to conflict of law principles. In the U.S., the laws of the State of New York apply. The rights and obligations of each party are valid only in the country where the transaction is performed. 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 this Agreement.

Confidentiality. Parties will not disclose confidential information 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 agreement.

Relationship. IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any responsibility for Client's business or operations. Each party is responsible for determining the assignment of its personnel and contractors, and for their direction, control, and compensation. IBM Business Partners are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings.

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.

IBM and its affiliates, and their subcontractors, may process and store business contact information of Client personnel in connection with the performance of this Agreement wherever they do business. IBM may use personnel and resources in locations worldwide and third party suppliers to support Service delivery.

Neither party may assign the Agreement. Assignment of IBM rights to receive payments and by IBM in conjunction with the sale of the portion of IBM's business that includes the Services is not restricted.

No right or cause of action for any third party is created by this 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.

IBM License Supplement for IBM Power Systems – Shared Utility Capacity on Enterprise Pools 2.0

This IBM License Supplement for Power Systems - Shared Utility Capacity on Enterprise Pools 2.0 (License Supplement) between IBM and Client governs Client's use of certain Machine Code on the Authorized Machines that are used in an Enterprise Pool 2.0. In exchange for Client's Capacity Credits, IBM grants Client the licenses herein.

1. Definitions

When used in this License Supplement in capitalized form, the terms listed below have the following meanings. Other capitalized terms have the meaning ascribed to them in the terms incorporated herein.

Authorized Machine – an IBM Power Systems Machine, qualified as specified in Section 2.1 below. Each Authorized Machine may only be assigned to one Enterprise Pool.

Base Capacity – the permanently activated processor cores, memory capacity (gigabytes) and Program capacity of each Authorized Machine acquired and paid for in full by Client.

Base Pool Capacity – the aggregate Base Capacity of all Authorized Machines within an Enterprise Pool.

Capacity Credits – credits that may be automatically decremented by the Cloud Management Console on a daily basis to pay for consumption of Metered Capacity on Authorized Machines with IBM hardware and software maintenance as specified in Section 2.1 below. Capacity Credits are purchased from IBM, an IBM Business Partner or on the IBM Entitled Systems Support (ESS) site.

Cloud Management Console (CMC) – A Cloud service that offers an Enterprise Pools 2.0 application which monitors minutes of Base and Metered Capacity consumption an Enterprise Pool. .

Eligible Program – each IBM Program specified in Exhibit 1, or a generally available IBM Program which replaces an IBM Program specified in Exhibit 1.

Enterprise Pool – one to forty-eight interconnected Authorized Machines of the same Machine Type managed by a Cloud Management Console, and qualified as specified in Section 2.2 below.

Hardware Management Console (HMC) -- the IBM hardware management console available for use with Authorized Machines.

Metered Capacity – the remaining processor cores, memory and Program capacity above Base Pool Capacity. Once the Enterprise Pool is started, all Metered Capacity is activated (in addition to Base Capacity). Metered Capacity usage is monitored by the CMC and charged by the minute.

Metered Memory – Gigabytes (GB) of usage by any Authorized Machine above the Base Pool Capacity memory measured in average minutes by the Cloud Management Console.

Memory is considered used based on the assignment of memory to partitions and not based on system utilization of the memory. Only memory assigned to active partitions is tracked and consumed.

Metered Processor Cores -- usage is tracked and consumed by operating system. Pools 2.0 (CMC) has two different types of Base Processor Activation resources, and software license entitlement is monitored and metered independently of processor activations.

Metered Programs – Metered Processor Cores using IBM AIX Programs, IBM i Programs, or SUSE Linux Enterprise Server Programs.

2. Qualifying Machines and Enterprise Pools

2.1 Qualifying Machines

To qualify as an Authorized Machine, each Machine must:

a. be an IBM Power E1080 (9080-HEX), IBM Power System E980 (9080-M9S), an IBM Power System E950 (9040-MR9), an IBM Power System S922 (9009-22G), or an IBM Power System S924 (9009-42G), with a level of Machine Code designated by IBM as FW 940.10 or later;

b. have adequate license and subscription entitlements for the Programs in Exhibit 1 executing on its Base Capacity;

c. have at least one core of the Machine's processor cores permanently activated via Base Activation features;

d. have at least 256GB of installed memory;

e. for each Power E1080, Power System E980 or Power System E950, have at least 256GB of the Machine's memory permanently activated via Base Memory Activation features; and

f. have the same warranty or post-warranty service status as the rest of the Machines in the Enterprise Pool such that all Machines in the Enterprise Pool are serviced by IBM either under warranty or post-warranty maintenance service agreement.

2.2 Qualifying Enterprise Pools

To qualify for use as an Enterprise Pool 2.0, each Authorized Machine in the pool must:

a. be located in the same Enterprise and the same country as all other Machines in the pool;

b. be in Client's possession;

c. be connected to one or more Hardware Management Consoles (HMC), at least one of which is connected to a Cloud Management Console (CMC) provided via subscription to IBM Power

Systems with an IBM AIX, Linux, or IBM i operating system;

d. have an HMC at Machine Code level 940 or later with Network Time Protocol (NTP) enabled to provide time synchronized reporting of resource usage; and

e. be the same IBM Machine Type.

A maximum of 2,000 logical partitions (LPARs) may be supported on Authorized Machines by a single instance of Cloud Management Console managing one or more Enterprise Pools.

3. Machine Code License

Client acknowledges that each Authorized Machine contains Machine Code. Client agrees that although it may acquire Authorized Machines from IBM Business Partners or another party, (i) such IBM Business Partner or other party does not own and does not have the right to sell, license, sublicense or otherwise transfer rights to the Machine Code provided with the Authorized Machine, and (ii) absent a license from IBM to use IBM Machine Code, Client has no right to use the Machine Code**. IBM is the only party with the right to license IBM Programs and Machine Code**.

By executing this License Supplement, IBM grants Client a license to the Machine Code of each Authorized Machine within an Enterprise Pool under the terms of the applicable IBM License Agreement for Machine Code for only such Authorized Machine, as provided at http://www.ibm.com/servers/support/machine_warranties/support_by_product.html (Machine Code License), which is hereby incorporated by reference into this License Supplement, and as modified herein.

Additional Machine Code License Terms

The terms of this License Supplement specify rights and obligations associated with use of Machine Code which are in addition to or modify the Machine Code License (Additional Machine Code License Terms), which apply solely to each Authorized Machine used by Client within an Enterprise Pool. In the event of a conflict between the terms of this License Supplement and the Machine Code License, the terms of this License Supplement shall prevail with respect to any conflict

4. Access to Metered Capacity in Power Enterprise Pools 2.0

IBM authorizes Client to utilize the active capacity of any Authorized Machine within a Power Enterprise Pool 2.0. If Client elects to have minutes of Metered Capacity usage decremented from Capacity Credits which Client has allocated to the Enterprise Pool, and the remaining balance of allocated Capacity Credits reaches zero, Client may continue to use Metered Capacity for up to 30 days, after which access to Metered Processor Cores on each Authorized Machine will be restricted. Any balance of Capacity Credits owed for Metered Capacity usage will be deducted when additional Capacity Credits are purchased.

5. Tracking and Consumption of Capacity Credits

a. Metered Processor Cores and Metered Memory usage are tracked and consumed by the minute. Both are based on the average usage for one minute and not the peak usage during the minute. Metered Processor Core usage is tracked based on actual consumption by partitions.

b. Metered Memory usage is tracked based on the assignment of memory to partitions and is not tracked based on the operating system usage of the memory. Only memory assigned to active partitions is tracked and consumed.

Metered Processor Core usage is tracked and consumed by operating system. Pools 2.0 has two different types of Base Processor Activation resources, and Program entitlement is monitored and metered independently of processor activations; therefore, there are seven different types of core-related Metered Capacity consumption:

a. A core that may run any operating system supported on Power

b. A core that may run only Linux/VIOS

c. IBM AIX software (licensed per core)

d. IBM i software (licensed per core)

e. SUSE Linux Enterprise Server (subscription per socket-pair)

f. Red Hat Enterprise Linux (subscription per 4 cores and 4 Logical Partitions)

g. Red Hat OpenShift Container Platform (subscription per 2 cores)

No minutes of Metered Capacity will be consumed for Program entitlement of cores executing VIOS partitions.

6. Charges, Taxes, and Payment

Client is responsible for charges associated with consuming minutes of Metered Capacity in an Enterprise Pool.

For each Enterprise Pool, Client may elect to have any minutes of Metered Capacity consumption accrue and invoice to Client after the end of each month by IBM or a designated Business Partner. Client may alternatively elect to have minutes of Metered Capacity consumption debited from a balance of pre-paid Capacity Credits which have been allocated to the Enterprise Pool.

The Charges, Taxes, and Payment terms of the agreement apply; however, Client will be responsible for any tax adjustments that result from using Capacity Credits in a different taxing jurisdiction than where originally ordered. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid for Capacity Credits.

7. IBM Business Partner Acquisition

Acquisition by an IBM Business Partner (BP) for remarketing to another BP or to a Client is subject to the terms of the IBM Business Partner Agreement (BPA). This License Supplement governs Client's use of IBM Power Systems Enterprise Pools 2.0.

If Client elects to acquire Metered Capacity consumption from a BP, Client authorizes IBM to provide Cloud Management Console information regarding minutes of Metered Capacity consumed each month to such BP to enable them to invoice Client for applicable charges.

8. Capacity Entitlement Restoration and Transfer

Upon removal of an Authorized Machine from an Enterprise Pool 2.0, all Metered Processor Cores and Metered Memory activation resources exceeding the Base Processor and Memory Activation capacity will be automatically deactivated on the removed Machine.

Upon transfer of an Authorized Machine to another party (including return to a leasing company), only Base Capacity will transfer with the Machine. The additional Machine Code license terms granted under this License Supplement are not transferable and can only be granted to a party by IBM.

9. Program Licensing, Subscription, and Software Maintenance

Client is authorized by IBM to execute an Eligible Program on all active cores on an Authorized Machine for each Eligible Program for which it is licensed or to which it is subscribed adequately for its Base Capacity. Client is otherwise responsible at all times to ensure sufficient license authorizations have been obtained for all Programs executing on an Authorized Machine.

Each Authorized Machine in an Enterprise Pool must also have a valid IBM software maintenance agreement for any Eligible Program executing on the Base Capacity of the Authorized Machine.

IBM software maintenance for Metered Programs is included in Consumption Rates.

10. IBM Maintenance Service Charges

For each Authorized Machine that is under contract with IBM for maintenance Service, the charges for such maintenance Service will be based on the purchased configuration of the Authorized Machine.

IBM hardware maintenance for Metered Processor Cores is included in Consumption Rates.

11. Modification to an Enterprise Pool

Client will add to or remove Authorized Machines from an Enterprise Pool using the Cloud Management Console.

12. Verification

Client is responsible for remaining in compliance with the terms of this License Supplement and all of IBM's applicable Machine Code and Program licensing terms (independently or collectively the "Offering Terms"). Upon reasonable notice IBM may verify Client's compliance with the Offering Terms at all sites and for all environments in which Client uses or has used an Authorized Machine. Such 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 may use an independent auditor to assist with such verification provided IBM has a written confidentiality agreement in place with such auditor. Client agrees to provide to IBM and its auditors accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that Client's use of an Authorized Machine and IBM Programs licensed to an Authorized Machine is in compliance with the Offering Terms. The rights and obligations set forth in this paragraph remain in effect during the term of this License Supplement and for two years thereafter. IBM will notify Client in writing if any such verification indicates that Client has used an Authorized Machine or IBM Program in excess of its use authorizations or is otherwise not in compliance with the Offering Terms. In addition to Client's obligations to pay for any excess use, Client agrees to promptly pay directly to IBM the charges that IBM specifies in an invoice for other charges and other liabilities determined as a result of such verification.

13. Term and Termination

a. The term of this License Supplement commences upon its acceptance by both parties, and terminates as specified below.

b. Client may terminate all rights and obligations specified in this License Supplement for any reason by providing written notice to IBM. The effective date for such termination will be the later of (i) IBM's receipt of such notice, or (ii) any effective date later than item (i) specified by Client in such notice.

c. Either party may terminate this License Supplement if the other fails to comply with any of the terms, provided the party who is not complying is given written notice and reasonable time, not to exceed 30 days, to comply.

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

14. Data Privacy Protection

IBM's Data Processing Addendum (DPA) at http://ibm.com/dpa and the DPA Exhibit at 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 (EU/2016/679) (GDPR); or ii) other data protection laws identified at www.ibm.com/dpa/dpl apply.

15. Incorporated Information; Relationship to Other Agreements

By signing this License Supplement, Client represents and warrants that by acquiring an Authorized Machine, Client has reviewed and agrees to all of the IBM terms and conditions that are applicable to the Authorized Machine and incorporated by reference into this License Supplement, and agrees that such terms and conditions are enforceable between the parties.

As specified in Section 3 above, the Machine Code License is incorporated by reference into this License Supplement. In addition, if an IBM Client Agreement or an equivalent master agreement is in effect between Client and IBM, such agreement is incorporated by reference into this License Supplement; otherwise, the terms under the following headings in Part 1 and Part 2 (as applicable) of the IBM Statement of Limited Warranty (provided at the following address: http://www.ibm.com/systems/support/machine_warranties/index.html) are incorporated by reference into this License Supplement: "Limitation of Liability", "Governing Law" and "Jurisdiction". In the event of a conflict between the incorporated terms and the terms of this License Supplement, the terms of this License Supplement prevail.

16. General Terms

Client may not assign, or otherwise transfer, this License Supplement or Client's rights under this License Supplement, or delegate Client's obligations, without IBM's prior written consent. Any attempt to do so is void.

In the event that any provision of this License Supplement is held to be invalid or unenforceable, the remaining provisions of this License Supplement will remain in full force and effect.

This License Supplement (including all terms and conditions incorporated herein by reference), each Addendum, and the Client Relationship Agreement (CRA) or equivalent agreement in place between us are the complete agreement regarding Client's right to use Power Enterprise Pools 2.0 Metered Capacity on each Authorized Machine, and replace all prior communications, representations, undertakings, warranties, promises, covenants, and commitments between Client and IBM regarding use of Metered Capacity. In entering into this License Supplement, neither party is relying on any representation that is not specified in the License Supplement, including terms incorporated by reference. Additional or different terms in any written communication from Client (such as a purchase order) are void.

Each party accepts, on behalf of its Enterprise, the terms of this License Supplement by signing this License Supplement (or another document that incorporates it by reference) by hand or electronically. Once signed, i) any reproduction of this License Supplement made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original and ii) all Metered Capacity configured for use on an Authorized Machine is subject to it.

Agreed to:
{Client legal name} (Client)

By_____
Authorized signature

Name (type or print):

Date:

Client identification number:

Client address:

Agreed to:
International Business Machines Corporation (IBM)

By_____
Authorized signature

Name (type or print):

Date:

License Supplement number:

IBM address:

Exhibit 1 – List of Eligible Programs

The IBM Programs specified below are Eligible Programs under terms of the License Supplement.

IBM Program Number	Description
5765-G62	AIX V6Standard Edition
5765-AEZ	AIX V6Enterprise Edition
5765-G98 5765-2B1	AIX V7Standard Edition
5765-CD1 5765-CD3 5765-2E1	AIX V7Enterprise Edition
5765-CBA 5765-2C1	IBM Power Systems Enterprise Cloud Edition with AIX V7
5765-ECB 5765-6C1	IBM Power Systems Enterprise Cloud Edition
5770-SS1	IBM i V7
5765-SC2 5765-PSE 5765-MFA	PowerSC 2.0 PowerSC Standard Power SC MFA
5765-PVE	PowerVM Enterprise
5765-VE3	PowerVM Enterprise Edition V3
5770-HAS	PowerHA SystemMirror for i
5765-H39	PowerHA for AIX V7 Standard
5765-VCC	PowerVC for Private Cloud V2.0
5765-VCS	PowerVC Standard Edition V1.4
5765-VCD	Cloud PowerVC Manager V1.4
5639-RH8	Red Hat Enterprise Linux 8 for Power with Smart Management Premium (up to 4 cores and 4 LPARs) Subscription with Extended Update Support and High Availability for Power features.
5639-RLE	Red Hat Enterprise Linux 7 for Power with Smart Management, Premium (up to 4 cores and 4 LPARs) Subscription with Extended Update Support features.
5639-RHS	Red Hat Enterprise Linux for SAP Solutions for Power, Premium (up to 4 cores and 4 LPARs) Subscription.
5639-OCP	Red Hat OpenShift Container Platform
5639-SAP	SUSE Linux Enterprise Server for SAP Applications for Power with 1-2 Socket, Unlimited LPAR and Priority Subscription or Subscription/Support features
5639-15S 5639-12S	SUSE Linux Enterprise Server for Power with Base 1-2 Socket, Unlimited LPAR and Priority Subscription or Subscription/Support features

IBM License Supplement for IBM Power Systems – Shared Utility Capacity on Enterprise Pools 2.0

This IBM License Supplement for Power Systems - Shared Utility Capacity on Enterprise Pools 2.0 (License Supplement) between IBM and Client governs Client's use of certain Machine Code on the Authorized Machines that are used in an Enterprise Pool 2.0. In exchange for Client's Capacity Credits, IBM grants Client the licenses herein.

1. Definitions

When used in this License Supplement in capitalized form, the terms listed below have the following meanings. Other capitalized terms have the meaning ascribed to them in the terms incorporated herein.

Authorized Machine – an IBM Power Systems Machine, qualified as specified in Section 2.1 below. Each Authorized Machine may only be assigned to one Enterprise Pool.

Base Capacity – the permanently activated processor cores, memory capacity (gigabytes) and Program capacity of each Authorized Machine acquired and paid for in full by Client.

Base Pool Capacity – the aggregate Base Capacity of all Authorized Machines within an Enterprise Pool.

Capacity Credits – credits that are automatically decremented by the Cloud Management Console on a daily basis to pay for consumption of Metered Capacity on Authorized Machines with IBM hardware and software maintenance as specified in Section 2.1 below. Capacity Credits are purchased from IBM, an IBM Business Partner or on the IBM Entitled Systems Support (ESS) site.

Cloud Management Console (CMC) – A Cloud service that offers an Enterprise Pools 2.0 application which measures consumption of resources above the Base Pool Capacity and debits those minutes of Metered Capacity usage against the pool's Capacity Credits on a daily basis.

Eligible Program – each IBM Program specified in Exhibit 1, or a generally available IBM Program which replaces an IBM Program specified in Exhibit 1.

Enterprise Pool – one to forty-eight interconnected Authorized Machines of the same Machine Type managed by a Cloud Management Console, and qualified as specified in Section 2.2 below.

Hardware Management Console (HMC) -- the IBM hardware management console available for use with Authorized Machines.

Metered Capacity – the remaining processor cores, memory and Program capacity above Base Pool Capacity. Once the Enterprise Pool is started, all Metered Capacity is activated (in addition to Base Capacity). Metered Capacity usage is monitored by the minute and charged by the CMC.

Metered Memory – Gigabytes (GB) of usage by any Authorized Machine above the Base Pool Capacity memory measured in average minutes by the Cloud Management Console.

Memory is considered used based on the assignment of memory to partitions and not based on system utilization of the memory. Only memory assigned to active partitions is tracked and consumed.

Metered Processor Cores -- usage is tracked and consumed by operating system. Pools 2.0 (CMC) has two different types of Base Processor Activation resources, and software license entitlement is monitored and metered independently of processor activations.

Metered Programs – Metered Processor Cores using IBM AIX Programs, IBM i Programs, or SUSE Linux Enterprise Server Programs.

2. Qualifying Machines and Enterprise Pools

2.1 Qualifying Machines

To qualify as an Authorized Machine, each Machine must:

a. be an IBM Power System E980 (9080-M9S), an IBM Power System E950 (9040-MR9), an IBM Power System S922 (9009-22G), or an IBM Power System S924 (9009-42G), with a level of Machine Code designated by IBM as FW 940.10 or later;

b. have adequate license and subscription entitlements for the Programs in Exhibit 1 executing on its Base Capacity;

c. have at least 1 core of the Machine's processor cores permanently activated via Base Activation features;

d. have at least 256GB of installed memory;

e. for each Power System E980 or Power System E950, have at least 256GB of the Machine's memory permanently activated via Base Memory Activation features; and

f. have the same warranty or post-warranty service status as the rest of the Machines in the Enterprise Pool such that all Machines in the Enterprise Pool are serviced by IBM either under warranty or post-warranty maintenance service agreement.

2.2 Qualifying Enterprise Pools

To qualify for use as an Enterprise Pool 2.0, each Authorized Machine in the pool must:

a. be located in the same Enterprise and the same country as all other Machines in the pool;

b. be in Client's possession;

c. be connected to one or more Hardware Management Consoles (HMC), at least one of which is connected to a Cloud Management Console (CMC) provided via subscription to IBM Power Systems with an IBM AIX, Linux, or IBM i operating system;

d. have an HMC at Machine Code level 940 or later with Network Time Protocol (NTP) enabled to provide time synchronized reporting of resource usage; and

e. be the same IBM Machine Type.

A maximum of 2,000 logical partitions (LPARs) may be supported on Authorized Machines by a single instance of Cloud Management Console managing one or more Enterprise Pools.

3. Machine Code License

Client acknowledges that each Authorized Machine contains Machine Code. Client agrees that although it may acquire Authorized Machines from IBM Business Partners or another party, (i) such IBM Business Partner or other party does not own and does not have the right to sell, license, sublicense or otherwise transfer rights to the Machine Code provided with the Authorized Machine, and (ii) absent a license from IBM to use IBM Machine Code, Client has no right to use the Machine Code**. IBM is the only party who has the right to license IBM Programs and Machine Code**.

By executing this License Supplement, IBM grants Client a license to the Machine Code of each Authorized Machine within an Enterprise Pool under the terms of the applicable IBM License Agreement for Machine Code for only such Authorized Machine, as provided at http://www.ibm.com/servers/support/machine_warranties/support_by_product.html (Machine Code License), which is hereby incorporated by reference into this License Supplement, and as modified herein.

Additional Machine Code License Terms

The terms of this License Supplement specify rights and obligations associated with use of Machine Code which are in addition to or modify the Machine Code License (Additional Machine Code License Terms), which apply solely to each Authorized Machine used by Client within an Enterprise Pool. In the event of a conflict between the terms of this License Supplement and the Machine Code License, the terms of this License Supplement shall prevail with respect to any conflict

4. Access to Metered Capacity in Power Enterprise Pools 2.0

IBM authorizes Client to utilize the active capacity of any Authorized Machine within a Power Enterprise Pool 2.0.

Client agrees that any minutes of Metered Capacity usage may be decremented from Power Capacity Credits Client has purchased at the consumption rates provided in Section 5.2.

If the remaining balance of Capacity Credits reaches zero, Client may continue to use Metered Capacity for up to 30 days, after which access to Metered Processor Cores on each Authorized Machine will be restricted.

Any balance of Capacity Credits owed for Metered Capacity usage will be deducted when additional Capacity Credits are purchased.

5. Tracking and Consumption of Capacity Credits

5.1 Tracking

Metered Processor Cores and Metered Memory usage are tracked and consumed by the minute. Both are based on the average usage for one minute and not the peak usage during the minute.

a) Metered Processor Core usage is tracked based on actual consumption by partitions.

b) Metered Memory usage is tracked based on the assignment of memory to partitions and is not tracked based on the operating system usage of the memory. Only memory assigned to active partitions is tracked and consumed.

Metered Processor Core usage is tracked and consumed by operating system. Pools 2.0 has two different types of Base Processor Activation resources, and Program entitlement is monitored and metered independently of processor activations; therefore, there are four different types of core-related Metered Capacity consumption:

1) A core that may run any operating system supported on Power
2) A core that may run only Linux/VIOS
3) IBM AIX software (licensed per core)
4) IBM i software (licensed per core)
5) SUSE Linux Enterprise Server (subscription per socket-pair)

No Capacity Credits are consumed for Program entitlement of cores executing VIOS partitions.

5.2 Capacity Credits Consumption Rates

Metered Capacity consumed will be debited against 1 Capacity Credit at the following rates:

Power E980 Metered Capacity (resource type)	Consumption Rate (Quantity of Metered Minutes that consume 1 Capacity Credit)
Core Activation - any OS	20,000
Core Activation - Linux/VIOS only	40,000
AIX software license entitlement	30,000
IBM i software license entitlement	1,500
SUSE Linux Enterprise Server subscription	70,000
1GB Memory Activation	1,500,000

Power E950 Metered Capacity (resource type)	Consumption Rate (Quantity of Metered Minutes that consume 1 Capacity Credit)
Core Activation - any OS	60,000
Core Activation - Linux/VIOS only	90,000
AIX software license entitlement	50,000
SUSE Linux Enterprise Server subscription	90,000
1GB Memory Activation	5,000,000

Power S922 and S924 Metered Capacity (resource type)	Consumption Rate (Quantity of Metered Minutes that consume 1 Capacity Credit)
Core Activation - any OS	130,000
AIX software license entitlement	50,000
IBM i software license entitlement	2,000

Consumption Rates for Metered Capacity include applicable IBM hardware maintenance and software maintenance.

6. Charges, Taxes and Payment

The Charges, Taxes, and Payment terms of the agreement apply; however, Client will be responsible for any tax adjustments that result from using Capacity Credits in a different taxing jurisdiction than where originally ordered. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid for Capacity Credits.

7. IBM Business Partner Acquisition

Acquisition by an IBM Business Partner (BP) for remarketing to another Business Partner or to a Client is subject to the terms of the IBM Business Partner Agreement. This License Supplement governs Client's use of IBM Power Systems Enterprise Pools 2.0.

8. Capacity Entitlement Restoration and Transfer

Upon removal of an Authorized Machine from an Enterprise Pool 2.0, all Metered Processor Cores and Metered Memory activation resources exceeding the Base Processor and Memory Activation capacity will be automatically de-activated on the removed Machine.

Upon transfer of an Authorized Machine to another party (including return to a leasing company), only Base Capacity will transfer with the Machine. The additional Machine Code license terms granted under this License Supplement are not transferable and can only be granted to a party by IBM.

9. Program Licensing, Subscription, and Software Maintenance

Client is authorized by IBM to execute an Eligible Program on all active cores on an Authorized Machine for each Eligible Program for which it is licensed or to which it is subscribed adequately for its Base Capacity. Client is otherwise responsible at all times to ensure sufficient license authorizations have been obtained for all Programs executing on an Authorized Machine.

Each Authorized Machine in an Enterprise Pool must also have a valid IBM software maintenance agreement for any Eligible Program executing on the Base Capacity of the Authorized Machine.

IBM software maintenance for Metered Programs is included in Consumption Rates.

10. IBM Maintenance Service Charges

For each Authorized Machine that is under contract with IBM for maintenance Service, the charges for such maintenance Service will be based on the purchased configuration of the Authorized Machine.

IBM hardware maintenance for Metered Processor Cores is included in Consumption Rates.

11. Modification to an Enterprise Pool

Client will add to or remove Authorized Machines from an Enterprise Pool using the Cloud Management Console.

12. Verification

Client is responsible for remaining in compliance with the terms of this License Supplement and all of IBM's applicable Machine Code and Program licensing terms (independently or collectively the "Offering Terms"). Upon reasonable notice IBM may verify Client's compliance with the Offering Terms at all sites and for all environments in which Client uses or has used an Authorized Machine. Such 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 may use an independent auditor to assist with such verification provided IBM has a written confidentiality agreement in place with such auditor. Client agrees to provide to IBM and its auditors accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that Client's use of an Authorized Machine and IBM Programs licensed to an Authorized Machine is in compliance with the Offering Terms. The rights and obligations set forth in this paragraph remain in effect during the term of this License Supplement and for two years thereafter. IBM will notify Client in writing if any such verification indicates that Client has used an Authorized Machine or IBM Program in excess of its use authorizations or is otherwise not in compliance with the Offering Terms. In addition to Client's obligations to pay for any excess use, Client agrees to promptly pay directly to IBM the charges that IBM specifies in an invoice for other charges and other liabilities determined as a result of such verification.

13. Term and Termination

a. The term of this License Supplement commences upon its acceptance by both parties, and terminates as specified below.

b. Client may terminate all rights and obligations specified in this License Supplement for any reason by providing written notice to IBM. The effective date for such termination will be the later of (i) IBM's receipt of such notice, or (ii) any effective date later than item (i) specified by Client in such notice.

c. Either party may terminate this License Supplement if the other fails to comply with any of the terms, provided the party who is not complying is given written notice and reasonable time, not to exceed 30 days, to comply.

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

14. Data Privacy Protection

IBM's Data Processing Addendum (DPA) at http://ibm.com/dpa and the DPA Exhibit at 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 (EU/2016/679) (GDPR); or ii) other data protection laws identified at www.ibm.com/dpa/dpl apply.

15. Incorporated Information; Relationship to Other Agreements

By signing this License Supplement, Client represents and warrants that by acquiring an Authorized Machine, Client has reviewed and agrees to all of the IBM terms and conditions that are applicable to the Authorized Machine and incorporated by reference into this License Supplement, and agrees that such terms and conditions are enforceable between the parties.

As specified in Section 3 above, the Machine Code License is incorporated by reference into this License Supplement. In addition, if an IBM Client Agreement or an equivalent master agreement is in effect between Client and IBM, such agreement is incorporated by reference into this License Supplement; otherwise, the terms under the following headings in Part 1 and Part 2 (as applicable) of the IBM Statement of Limited Warranty (provided at the following address: http://www.ibm.com/systems/support/machine_warranties/index.html) are incorporated by reference into this License Supplement: "Limitation of Liability", "Governing Law" and "Jurisdiction". In the event of a conflict between the incorporated terms and the terms of this License Supplement, the terms of this License Supplement prevail.

16. General Terms

Client may not assign, or otherwise transfer, this License Supplement or Client's rights under this License Supplement, or delegate Client's obligations, without IBM's prior written consent. Any attempt to do so is void.

In the event that any provision of this License Supplement is held to be invalid or unenforceable, the remaining provisions of this License Supplement will remain in full force and effect.

This License Supplement (including all terms and conditions incorporated herein by reference), each Addendum, and the Client Relationship Agreement (CRA) or equivalent agreement in place between us are the complete agreement regarding Client's right to use Power Enterprise Pools 2.0 Metered Capacity on each Authorized Machine, and replace all prior communications, representations, undertakings, warranties, promises, covenants, and commitments between Client and IBM regarding use of

Metered Capacity. In entering into this License Supplement, neither party is relying on any representation that is not specified in the License Supplement, including terms incorporated by reference. Additional or different terms in any written communication from Client (such as a purchase order) are void.

Each party accepts, on behalf of its Enterprise, the terms of this License Supplement by signing this License Supplement (or another document that incorporates it by reference) by hand or electronically. Once signed, i) any reproduction of this License Supplement made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original and ii) all Metered Capacity configured for use on an Authorized Machine is subject to it.

Agreed to:
{Client legal name} (Client)

By_____
Authorized signature

Name (type or print):

Date:

Client identification number:

Client address:

Agreed to:
International Business Machines Corporation (IBM)

By_____
Authorized signature

Name (type or print):

Date:

License Supplement number:

IBM address:

Exhibit 1 – List of Eligible Programs

The IBM Programs specified below are Eligible Programs under terms of the License Supplement.

IBM Program Number	Description
5765-G62	AIX V6.1 Standard Edition
5765-AEZ	AIX V6.1 Enterprise Edition
5765-G98	AIX V7.1 Standard Edition
5765-CD1	AIX V7.1 Enterprise Edition
5765-CD3	AIX V7.2 Enterprise Edition
5765-CBA	IBM Power Systems Enterprise Cloud Edition with AIX V7
5765-ECB	IBM Power Systems Enterprise Cloud Edition
5770-SS1	IBM i V7.2, V7.3, V7.4
5765-PSE	PowerSC Standard
5765-PVE	PowerVM Enterprise
5765-VE3	PowerVM Enterprise Edition V3
5770-HAS	PowerHA SystemMirror for i
5765-H23	PowerHA for AIX V6 Standard
5765-H24	PowerHA for AIX V6 Enterprise
5765-H39	PowerHA for AIX V7 Standard
5765-SLE	PowerVP Standard Edition
5765-VCS	PowerVC Standard Edition V1.4
5765-VCD	Cloud PowerVC Manager V1.4
5639-SAP	SUSE Linux Enterprise Server for SAP Applications for Power with 1-2 Socket, Unlimited LPAR and Priority Subscription or Subscription/Support features
5639-15S 5639-12S	SUSE Linux Enterprise Server for Power with Base 1-2 Socket, Unlimited LPAR and Priority Subscription or Subscription/Support features

Attachment for IBM System z On/Off Capacity on Demand

The terms of this Attachment for IBM System z On/Off Capacity on Demand (On/Off CoD Attachment) are in addition to i) the IBM Client Relationship Agreement (CRA), IBM Customer Agreement (ICA), or an equivalent agreement in effect between the parties identified below (the Agreement), ii) the IBM Attachment for IBM System z Capacity on Demand Offerings identified below (CoD Attachment), iii) the IBM Attachment for IBM System z On-Line CoD Buying identified below (On-Line CoD Buying Attachment) and govern IBM's provision and Client's acquisition and use of On/Off Capacity on Demand (On/Off CoD) Upgrades through the CIU Facility.

1. Associated Attachments

This On/Off CoD Attachment, the On-Line CoD Buying Attachment and the CoD Attachment provide terms that apply to the IBM System z On/Off Capacity on Demand (OOCoD) offerings. This OOCoD Attachment is an "Associated Attachment" to the CoD Attachment.

If there is a conflict among the terms of this OOCoD Attachment and the On-Line CoD Buying Attachment or the CoD Attachment, those of this OOCoD Attachment prevail over the On-Line CoD Buying Attachment and the CoD Attachment.

2. Definitions

Capitalized terms not defined in this OOCoD Attachment or in the Agreement have the meaning ascribed to them in the CoD Attachment or the On-Line CoD Buying Attachment, as applicable.

Millions of Service Units (MSUs) -- an Eligible Machine's units of workload capacity, as determined solely by IBM and as published by IBM at http://www-1.ibm.com/servers/eserver/zseries/library/swpriceinfo/

OOCoD Capability Feature – a Capability Feature specifying that an On-Line Eligible Machine is authorized for OOCoD Upgrades.

OOCoD Eligible Machine -- an On-Line Eligible Machine for which Client has acquired and installed an OOCoD Capability Feature.

OOCoD Software Charge – the Program usage charge, applicable as announced by IBM for selected IBM Programs running on an OOCoD Eligible Machine, that results from the use of an OOCoD Upgrade on that OOCoD Eligible Machine.

OOCoD Upgrade – an Upgrade for which IBM has authorized Client's limited use of LIC to enable the activation of applicable Capacity for a specific OOCoD Eligible Machine on a temporary basis.

Reporting Period -- the period of time which begins on the second calendar day of each calendar month and ends on the first calendar day of the following calendar month.

Vital Product Data (VPD) -- an OOCoD Eligible Machine's configuration data which is stored on and automatically managed by the OOCoD Eligible Machine.

3. Temporary LIC License

Client's temporary license to use LIC on an OOCoD Eligible Machine will commence on the date Client Activates an OOCoD Upgrade and will terminate upon the later of the following: i) the date Client Deactivates the OOCoD Upgrade or ii) termination of this OOCoD Attachment for the OOCoD Eligible Machine.

4. General Terms

Client agrees as follows:

a. Client will order an OOCoD Upgrade only for an On/Off Eligible Machine, and will place such request only through the CIU Facility;

b. For each OOCoD Eligible Machine, Client will transmit the OOCoD Eligible Machine's VPD to IBM, using RSF, no less frequently than once within a fourteen calendar-day period;

c. Prior to expiration or termination of this OOCoD Attachment for an OOCoD Eligible Machine, Client will:

   (1) place an order with IBM or Client's IBM Business Partner, as applicable, for removal of the OOCoD Capability Feature from the OOCoD Eligible Machine. When ordered from IBM, such removal shall be provided for no charge. When ordered from Client's IBM Business Partner, the Business Partner will establish the removal charge and terms governing payment of the charge; and

   (2) following the placement of such order, promptly grant IBM sufficient access to the OOCoD Eligible Machine for IBM to remove the OOCoD Capability Feature. Such access will be at a time mutually agreed upon by Client and IBM but shall not be later than the date this OOCoD Attachment expires or terminates for the OOCoD Eligible Machine.

   If Client fails to place such an order or grant IBM sufficient access to remove the OOCoD Capability Feature, Client will be obligated for all charges subsequently incurred for any additional OOCoD Upgrade Activated for that OOCoD Eligible Machine even if the OOCoD Eligible Machine is not within Client's possession or control; and

d. Client may not assign, or otherwise transfer, this OOCoD Attachment, in whole or in part, or delegate Client's obligations. Any attempt to make such assignment or transfer is void.

5. OOCoD Upgrade Charges

The daily usage charge for an OOCoD Upgrade is based on the configuration of the OOCoD Upgrade when Activated on an OOCoD Eligible Machine, regardless of the extent to which Client is able to utilize the OOCoD Upgrade, and is specified by the CIU Facility for the OOCoD Upgrade.

The applicable daily usage charge is based on the largest OOCoD Upgrade Activated during a contiguous 24-hour period or partial 24-hour period. In addition, usage charges apply until such time as the OOCoD Upgrade is Deactivated.

The configuration, time of Activation, and time of Deactivation of an OOCoD Upgrade is determined by the OOCoD Eligible Machine, and reported to IBM by VPD that Client transmits to IBM.

6. OOCoD Software Charges

6.1 General OOCoD Software Terms

a. Only IBM Programs licensed under and subject to the terms of the IBM International Program License Agreement (IPLA) are eligible for OOCoD Software Charges.

b. For an IBM Program to be eligible for OOCoD Software Charges on an OOCoD Eligible Machine, Client must have IBM's authorization for use of the Program on the OOCoD Eligible Machine acquired with a one-time charge for the applicable license.

c. OOCoD Software Charges associated with Activation of an OOCoD Upgrade apply to all IBM Programs eligible for OOCoD Software Charges licensed to the OOCoD Eligible Machine on which an OOCoD Upgrade is Activated and are determined by i) the configuration of the OOCoD Upgrade and ii) the contiguous period of time the OOCoD Upgrade is Activated on the OOCoD Eligible Machine, regardless of the extent to which the OOCoD Upgrade is used. OOCoD Software Charges apply until the associated OOCoD Upgrade is Deactivated.

d. The OOCoD Software Charge unit is either a i) MSU Day for IBM Programs (one contiguous 24-hour period, or any partial 24-hour period, multiplied by the quantity of MSUs activated through the Capacity of an OOCoD Upgrade), which IBM specifies as being priced on "value units" or ii) Processor Day for IBM Programs (defined as one contiguous 24-hour period, or any partial 24-hour period, multiplied by the quantity of CPs activated through the Capacity of an OOCoD Upgrade) , which IBM specifies as being priced on a quantity of processors.

e. OOCoD Software Charges are based on the OOCoD Eligible Machine's VPD that Client transmits to IBM.

f. If Client acquires Programs for which OOCoD Software Charges apply from Client's IBM Business Partner, Client's IBM Business Partner establishes the charges and the terms governing payment of the charges.

g. OOCoD Software Charges will not accrue toward a one-time charge for a Program license.

h. Program authorizations acquired under one-time charges but not yet placed into use may be applied, at Client's direction, to meet OOCoD Software Charges.

i. If an OOCoD Upgrade is replaced on the same OOCoD Eligible Machine by a Permanent Upgrade during the Reporting Period in which the OOCoD Upgrade was installed, there will be no OOCoD Software Charge associated with that OOCoD Upgrade during the Reporting Period.

j. Installation of an OOCoD Upgrade will not result in increased IBM Software Maintenance ("SWMA") charges for Programs to which OOCoD Software Charges apply.

k. OOCoD Software Charges are not reduced by other discount offerings including volume pricing discounts, aggregated charges, no-charge complementary or trial offerings that provide no-charge OOCoD Upgrades, other than "education allowance" when such discount is specified by IBM in the IBM Program's announcement letter as being applicable to that IBM Program.

l. During the term of this Attachment and for a period of six months thereafter, IBM may verify Client's compliance with the terms for OOCoD Software Charges by conducting one or more compliance reviews. IBM will provide Client with prior notice and will conduct the review on Client's premises, during Client's normal business hours, in a manner that minimizes disruption to Client's business. IBM may require access to an OOCoD Eligible Machine, copies of system tools outputs, or other electronic or hard copy system information, as appropriate. Client agrees to provide such access and information sufficient for IBM to conduct a compliance review.

6.2 Client Responsibilities Regarding OOCoD Software Charges

Client agrees as follows:

a. when Client acquires an OOCoD Capacity Capability Feature, Client will provide IBM or Client's IBM Business Partners, as applicable, an accurate inventory of Programs licensed to Client under the IPLA Program), by Program number (for example, 5655-E61), for the OOCoD Eligible Machine for which the OOCoD Capacity Capability Feature is installed;

b. Client will notify IBM or Client's IBM Business Partners, as applicable, within five business days if Client makes a change to the inventory of IPLA Programs on an OOCoD Eligible Machine;

c. Client will notify IBM of Client's selections and the affected IPLA Program numbers and descriptions, by sending an e-mail to the ID provided at http://www.ibm.com/zseries/library/swpriceinfo if Client chooses to have OOCoD Software Charges billed to Client by an IBM Business Partners;

d. if Client has instructed IBM or Client's IBM Business Partner that it is to accept an order from Client only if that order is accompanied by Client's signed purchase order, Client hereby authorizes IBM or Client's IBM Business

Partner, as applicable, to invoice Client for increased charges for IBM Programs, as specified herein, when an OOCoD Upgrade is Activated on an OOCoD Eligible Machine in lieu of Client's signed purchase order, and that IBM or Client's IBM Business Partner, as applicable, will consider Client's such actions to be a valid Program order placed by Client for all IBM Programs licensed to or running on the OOCoD Eligible Machine as if Client had provided a signed purchase order; and

e. Client will place an order with IBM or Client's IBM Business Partner, as applicable, for the required OOCoD Software Charge features if Client executes a Program for which charges are calculated on a per-processor basis on an OOCoD Eligible Machine on which an OOCoD Upgrade is Activated.

6.3 IBM Programs Not Eligible for OOCoD Software Charges

Activation of an OOCoD Upgrade will have the following effect on IBM Programs not eligible for OOCoD Software Charges:

a. a one-time charge is increased, based on the size (measured in MSUs) of the OOCoD Upgrade;

b. if full capacity of the OOCoD Eligible Machine is used to determine a recurring charge for an IBM Program, the recurring charge is increased based on the size (measured in MSUs) of the OOCoD Upgrade for the full Reporting Period during which the OOCoD Upgrade was Activated.

c. if sub-capacity pricing is in effect for the Eligible Machine, an increase in recurring sub-capacity charges will apply only if usage of the applicable Program increases during the Reporting Period.

7. OOCoD Upgrade Capability Tests

Client is authorized to execute one OOCoD Upgrade on each OOCoD Eligible Machine for the sole purpose of testing the OOCoD Upgrade capability of that OOCoD Eligible Machine (Capability Test), subject to the following conditions:

a. Client properly indicates through the CIU Facility that an OOCoD Upgrade request will be used to conduct a Capability Test; and

b. the Capability Test does not exceed one contiguous period of 24 hours in duration, as measured from the time the OOCoD Upgrade is activated on the Eligible Machine until the time the OOCoD Upgrade is deactivated from the Eligible Machine.

Provided the above conditions are met, IBM will waive any IBM charges that result from the Capability Test.

If the above conditions are not met, i) the OOCoD Upgrade will be subject to the terms of the OOCoD Upgrade Charges section and the OOCoD Software Charges section, including without limitation Client's obligation for applicable OOCoD Upgrade usage charges and OOCoD Software charges for the entire period the OOCoD Upgrade is Activated, and ii) IBM will restore Client's authorization for one Capability Test for that Eligible Machine.

If, during a Capability Test, i) an OOCoD Upgrade is not available for download to the OOCoD Eligible Machine within three hours from the time Client requests the OOCoD Upgrade through the CIU Facility or ii) the Deactivation of the OOCoD Upgrade causes an unexpected interruption of the operation of the OOCoD Eligible Machine, IBM will restore Client's authorization for one Capability Test for the OOCoD Eligible Machine provided i) Client follows IBM's documented procedures to notify IBM, using the CIU Facility, that the Capability Test was not successful; ii) IBM accepts such notification as being a valid cause for restoration; and iii) Client provides IBM commercially reasonable details of the problem that Client encountered provided such details are requested by IBM.

8. Term and Termination

8.1 Term

The term of this OOCoD Attachment begins once the last party signs the OOCoD Attachment and ends upon termination as specified in Section 8.2 below.

8.2 Termination

Client may terminate this OOCoD Attachment, or terminate Client's rights under this OOCoD Attachment for any specific OOCoD Eligible Machine, by providing one month's prior written notice to IBM. Such a termination is effective the later of i) the date of termination Client specifies in such notice or ii) the date IBM completes the removal of the OOCoD Capability Feature from the OOCoD Eligible Machine.

Client's rights under this OOCoD Attachment for an OOCoD Eligible Machine terminate upon the earliest of the following events: i) Client transfers possession or control of the OOCoD Eligible Machine to a third party (for example, Client returns the OOCoD Eligible Machine to a leasing company at lease-end); ii) IBM withdraws from marketing of any Machine type, model or feature required to implement OOCoD Upgrades for the OOCoD Eligible Machine; iii) IBM withdraws eligibility for Service for Machines for the OOCoD Eligible Machine; iv) the On-Line CoD Buying Attachment terminates; or v) this OOCoD Attachment terminates.

Either party may terminate this OOCoD Attachment 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, not to exceed 30 days, to comply.

This OOCoD Attachment terminates the filing of any petition or proceeding by or against Client under any federal or state bankruptcy or insolvency law.

This On/Off CoD Attachment, the CoD Attachment, the On-Line CoD Buying Attachment and its Supplements, and the Agreement comprise the complete agreement regarding the IBM System z On/Off Capacity on Demand offering and replace any prior oral or written communications between Customer and IBM. In entering into this On/Off CoD Attachment, neither party is relying on any representation that is not specified in the On/Off CoD Attachment (or the documents specified in the preceding sentence), including without limitation any representations concerning: 1) performance or function of any Product or system, other than as documented in its Specifications; 2) the experiences or recommendations of other parties; or 3) results or savings Customer may achieve. Additional or different terms in any written communication from Customer (such as a purchase order) are void.

Each party accepts, on behalf of its Enterprise, the terms of this On/Off CoD Attachment by signing this On/Off CoD Attachment (or another document that incorporates it by reference) by hand or electronically. Once signed, i) any reproduction of this On/Off CoD Attachment made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original and ii) all On/Off CoD Upgrades ordered or provided under this On/Off Attachment are subject to it.

Agreed to:

{Client Legal Name} **(Client)**

By_____

Authorized signature

Name (type or print):

Date:

Client identification number:

Client address:

Agreed to:

International Business Machines Corporation (IBM)

By_____

Authorized signature

Name (type or print):

Date:

Agreement number:

CoD Attachment number:

On-Line Attachment number:

OOCoD Attachment number:

IBM address:

Statement of Work

SoftwareXcel enterprise edition for zSystems

1. Scope of Service

SoftwareXcel enterprise edition for zSystems (the Service) is remote assistance with the operation of supported Programs and system environments. Supported Eligible Programs are identified at www.ibm.com/services/supline/products/

All eligible processors at Client's Specified Location must be covered under this Service. Machines designated as disaster recovery Machines (Machines used to maintain business continuity, and not part of production, test, or development in productive use) will be exempt if Client notifies IBM in writing at swxcel@us.ibm.com

The supported Program list will change periodically to reflect the addition of new Programs or deletions (e.g., deleting Programs at the end of currency date). IBM may withdraw support for Programs on the list at any time without written notice to Client.

2. IBM Responsibilities

IBM will provide remote assistance (via an electronic submission capability) in response to requests for basic, short-duration, installation, usage, configuration questions, and information regarding IBM supported program publications.

IBM provides Service during Prime Shift (8:00 am to 5:00 pm in the local time zone, Monday through Friday, excluding national holidays). Off Shift is all hours outside of Prime Shift, and Full Shift is all hours inclusive of Prime Shift and Off Shift.

Response Time is the elapsed time between receipt of the submission by IBM technical support, and the acknowledgment of the submission. IBM's initial response may result in technical resolution of the problem or it may form the basis for determining additional actions required. See the IBM Software Support Handbook for call handling and additional information regarding support processes at http://www-304.ibm.com/webapp/set2/sas/f/handbook/home.html

2.1 Targeted Response Time Objectives

Electronic Assistance:

Severity	Prime Shift Response Time	Off Shift Response Time
All Severity	2 hours	2 hours, next business day
All Severity, code related issue, premium response requested	1 hour	Not Applicable

Telephone Support Upgrade (Prime Shift):

Severity	Prime Shift Response Time	Off Shift Response Time
All Severity	2 hours	2 hours, next business day
All Severity, code related issue, premium response requested	1 hour	Not Applicable

Telephone Support Upgrade (Full Shift):

Severity	Prime Shift Response Time	Off Shift Response Time
Severity 1	2 hours	2 hours
Severity 2-4	2 hours	4 hours
All Severity, code related issue, premium response requested	1 hour	Not Applicable

2.2 Proactive and Notification Support Service

Proactive and Notification Support Service provides electronic notification of and information about, potential problems with selected IBM Programs. It also provides electronic access to assist client in identifying and resolving problems with the operation of Eligible Programs.

IBM provides Client with:

a) automatic electronic notification of High Impact and Pervasive Authorized Program Analysis Reports (HIPER APARs) and Program Temporary Fixes (PTFs) IBM discovers to be defective (PE PTFs), based on Client's profile;
b) information regarding the installation of new releases of Eligible Programs and installation of preventive service packages;
c) the ability to order PTFs and request electronic PTF delivery;
d) the ability to order customized preventive and corrective service packages;

e) tracking of Authorized Program Analysis Reports (APARs) and PTFs;
f) the ability to electronically report code-related problems to the IBM support center and receive an electronic response;
g) access to information on the maintenance of Eligible Programs and diagnostic information on non-IBM problems;
h) access to Eligible Program technical information databases and cross-reference information, including a question and answer library; and
i) electronic monthly Status Reports.

3. Client Responsibilities

Client agrees:

a) to have valid licensing in place for Eligible Programs covered by this Service;
b) to provide IBM with written notice of changes to Client's processor inventory within one month after the change occurs, and to include any changes to Client's disaster recovery Machines;
c) to be responsible for obtaining all necessary permissions to use, provide, store and process content in the Service and grants IBM permission to do the same. 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; and
d) that if IBM detects inventory changes within Client's Enterprise at Client's Specified Locations during IBM's normal Client inventory validation processes, IBM will add or remove the Machines and update the Service based on the date the Machines were installed or removed from productive use.

4. Reports

IBM will deliver Status Reports as Project Materials, as applicable. Client will own the copyright in Project Materials that IBM develops for Client under this Statement of Work (SOW). Project Materials exclude works of authorship delivered to Client, but not created, under the SOW, and any modifications or enhancements of such works made under the SOW (Existing Works). 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. IBM retains an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works of Project Materials.

5. Termination

Client may terminate Service on 60 days' written notice, after the initial contract year. Adjustment fees may apply.

IBM may withdraw these Services upon 90 days' written notice. A prorated credit will apply for any prepaid Service not provided.

6. 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.

This 1) Statement of Work, 2) the Technical Services Attachment for TSS Offerings (Attachment), 3) applicable Transaction Documents, and 4) the agreement specified herein (Agreement) comprise the complete agreement regarding the Services and replace any prior oral or written communications between Client and IBM. Accordingly, neither party is relying upon any representation that is not specified in the complete agreement including, without limitation, any representations concerning 1) levels of service, hours, or charges to provide any Service; 2) the experiences of other clients; or 3) results or savings Client may achieve.

Each party accepts the terms of this SOW by signing this SOW (or another document that incorporates it by reference) by hand or, where recognized by law, electronically.

Statement of Work

SoftwareXcel enterprise edition for zSystems

1. Scope of Service

SoftwareXcel enterprise edition for zSystems (the Service) is remote assistance with the operation of supported Programs and system environments. Supported Eligible Programs are identified at www.ibm.com/services/supline/products/

All eligible processors at Client's Specified Location must be covered under this Service. Machines designated as disaster recovery Machines (Machines used to maintain business continuity, and not part of production, test, or development in productive use) will be exempt if Client notifies IBM in writing at swxcel@us.ibm.com

The supported Program list will change periodically to reflect the addition of new Programs or deletions (e.g., deleting Programs at the end of currency date). IBM may withdraw support for Programs on the list at any time without written notice to Client.

2. IBM Responsibilities

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Telephone Support Upgrade (Full Shift):

Severity	Prime Shift Response Time	Off Shift Response Time
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Proactive and Notification Support Service provides electronic notification of and information about, potential problems with selected IBM Programs. It also provides electronic access to assist client in identifying and resolving problems with the operation of Eligible Programs.

IBM provides Client with:

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b) information regarding the installation of new releases of Eligible Programs and installation of preventive service packages;
c) the ability to order PTFs and request electronic PTF delivery;
d) the ability to order customized preventive and corrective service packages;

e) tracking of Authorized Program Analysis Reports (APARs) and PTFs;
f) the ability to electronically report code-related problems to the IBM support center and receive an electronic response;
g) access to information on the maintenance of Eligible Programs and diagnostic information on non-IBM problems;
h) access to Eligible Program technical information databases and cross-reference information, including a question and answer library; and
i) electronic monthly Status Reports.

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Client agrees:

a) to have valid licensing in place for Eligible Programs covered by this Service;
b) to provide IBM with written notice of changes to Client's processor inventory within one month after the change occurs, and to include any changes to Client's disaster recovery Machines;
c) to be responsible for obtaining all necessary permissions to use, provide, store and process content in the Service and grants IBM permission to do the same. 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; and
d) that if IBM detects inventory changes within Client's Enterprise at Client's Specified Locations during IBM's normal Client inventory validation processes, IBM will add or remove the Machines and update the Service based on the date the Machines were installed or removed from productive use.

4. Termination

Client may terminate Service on 60 days' written notice, after the initial contract year. Adjustment fees may apply.

5. Reports

IBM will deliver Status Reports as Project Materials, as applicable. Client will own the copyright in Project Materials that IBM develops for Client under this Statement of Work (SOW). Project Materials exclude works of authorship delivered to Client, but not created, under the SOW, and any modifications or enhancements of such works made under the SOW (Existing Works). 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. IBM retains an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works of Project Materials.

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.

This Statement of Work, its applicable Transaction Documents, applicable Attachments, and the Agreement in effect between us are the complete agreement regarding Services and replace any prior oral or written communications between us. Accordingly, neither party is relying upon any representation that is not specified in the complete agreement including, without limitation, any representations concerning 1) levels of service, hours, or charges to provide any Service; 2) the experiences of other clients; or 3) results or savings Client may achieve. Each party accepts the terms of this Statement of Work by signing this Statement of Work by hand or, where recognized by law, electronically.

As used in this Statement of Work, "Client", "Customer", "you" and "your" refer to the contracting entity identified below.

Agreed to:

<Enterprise Name> (Client)

By_____

Authorized signature

Name (type or print):

Agreed to:

International Business Machines Corporation (IBM)

By_____

Authorized signature

Name (type or print):

Date:	Date:
	Reference Attachment number:
Enterprise number:	Statement of Work number:
Enterprise address:	IBM address:

Proactive Support for IBM Z

1. Service Description

This Statement of Work (SOW) applies to z/OS, z/VM, and z/VSE (collectively, IBM Z). Proactive Support is optional with standard base hardware and software support services (Basic Maintenance) for Eligible Products. IBM 24x7 basic maintenance (if available) is a prerequisite for each Eligible Product for which Client selects Proactive Support coverage. If 24x7 all Severity coverage is not available for a particular Product, the most comprehensive hours of coverage available must be selected. Eligible Products are identified at www.ibm.com/services/supline/products/ Additional information is found in the IBM Support Guide at https://www-01.ibm.com/support/docview.wss?uid=ibm10733923

1.1. Enhanced Services

There are three Enhanced Service Modules in Proactive Support to provide premium remote voice and electronic entry into, and handling within, IBM's support structure to assist Client with managing and maintaining its Information Technology (IT) environment.

- Priority Response
- Priority Handling
- Proactive Support

IBM will provide remote support to assist Client with the supported Eligible Products to establish and maintain a framework for technical communications and activity reporting. IBM will assign a remote IBM focal to Client, available during normal business hours unless expressly stated otherwise. Other members of IBM's support teams will assist the assigned IBM Focal Point with all aspects of the Service.

1.1.1. Priority Response

Response Time is the elapsed time between IBM's receipt of Client's problem submission and IBM's acknowledgment of the submission. IBM will use commercially reasonable efforts to respond within the Targeted Response Time Objectives, based on the Severity of the problem and the time that Client reports the problem. IBM's initial response may resolve the problem or form the basis for determining if additional actions are required. Response Times are objectives only. IBM is not responsible for delays caused by systems and network problems. Targeted Response Time Objective after problem submission:
Severity 1 response time objective is 30 minutes 24X7.
Severity 2 response time objective is 2 hours during normal business hours.
Severity 3 and 4 response time objectives are next business day.
Severity definitions are posted at https://www.ibm.com/support/pages/node/739151

1.1.2. Priority Handling

For problems submitted for Eligible Products, on Client's request the remote IBM Focal will:

a. be Client's focal point for problem escalations and resolution;
b. monitor open problems to ensure progress and appropriate response time;
c. provide status updates at intervals dictated by the severity level of such problems (per prerequisite support Services terms and as mutually agreed); and
d. coordinate the support activities within IBM in the case of a Client Critical Problem, including the engagement of the appropriate level of support expertise and invoking IBM's standard support escalation guidelines per the prerequisite support Services terms.

1.1.3. Proactive Support

The IBM Focal will, during normal business hours, perform proactive support activities to assist Client to manage the supported IT environment, and establish and maintain a framework for technical communications and activity reporting. The IBM Focal will:

a. remotely conduct the initial Welcome Call and provide information related to the Proactive Services of Proactive Support;
b. provide Client's Primary Technical Contact (PTC) with a detailed questionnaire to be completed and returned to the IBM Focal, to enable the IBM Focal to create and deliver the Technical Support Plan (TSP) to the PTC within 30 days of the Welcome Call. The TSP will:
    1) summarize the Proactive Support Service;
    2) document and maintain the inventory listing of Eligible Products;
    3) document Client's operational and maintenance processes, current support structure, critical applications, critical outage scenarios, and environment; and as applicable, schedule initial setup of the Proactive Support tools and provide tool details.
c. update the TSP as needed, but at least annually;
d. if applicable, verify that remote support electronic connections to the environment are functioning and that the IBM Tools are available for use as documented in the TSP;
e. create a Quarterly Proactive Support review package, including delivery of Reports; and

f. schedule quarterly Status Calls with PTC to review monthly documentation, review tools output, provide advice on recommended practices for managing and maintaining Client's Eligible Products, and document any planned changes.

1.2 Support for Operating Systems Upgrade

IBM will provide Client with access to IBM's remote support centers for a maximum of 24 consecutive hours for each Annual Service Period (the Extended Support Period) to assist Client with problems arising during the upgrade of Client's IBM Z Operating Systems that are Eligible Programs.

The Support for Operating System Upgrade must be planned and agreed upon two weeks in advance by Client's PTC and the IBM focal.

The IBM focal will inform Client about how to contact IBM during the Support for Operating System Upgrade at least two days before the beginning of the Support for Operating System Upgrade Service.

During the Support for Operating System Upgrade, IBM will use commercially reasonable efforts to respond, by telephone, to calls relating to the Operating System Upgrade within 30 minutes during the agreed upgrade period.

IBM's initial response may result in technical resolution of Client's problem or it may constitute the basis for determining, where applicable, if and what additional IBM actions are required.

The Support for Operating Systems Upgrade Service does not include installation or upgrade activities which remain Client's sole responsibility**.**

1.3 On-site problem determination support for Client Critical Problems

IBM will provide on-site problem determination for Client Critical Problems as follows. If IBM has detected a Client Critical Problem relating to an Eligible Program that cannot be remotely analyzed or resolved in an efficient way, then IBM will investigate the problem by providing on-site support at the Specified Locations in countries where IBM is able to deploy local resource. This on-site support activity will be provided at IBM's sole discretion and may be subject to travel expenses.

2. Optional Additional Services

2.1 Increased frequency of Status Calls

Beyond the default number and frequency of Reports and Status Calls defined in the base offering of Proactive Support for IBM Z, Client may choose to increase to Monthly Status Calls.

2.2 Onsite Reviews

With the Onsite Reviews, IBM will provide an IBM designated individual who will:

a. work with the IBM Focal also called Remote Technical Account Manager (TAM) to provide Proactive Support services;
b. schedule and attend review meetings with the Client's PTC, at Specified Location(s);
c. provide Status Reports;
d. provide proactive advice for Client's IT environment based on information gathered from reports and prior meetings with the Remote TAM and Client's PTC;
e. work with the Remote TAM team on the supply of Service;
f. schedule the on-site review meetings with Client's PTC;
g. attend the review meetings with Client's PTC at Client's Specified Location(s) to review the Reports;
h. represent Client's Services requirements internally within IBM, based on the information received from the on-site meetings;
i. in the case of a Client Critical Problem caused by an Eligible Program or Eligible Machine of the Support Groups covered by the Service, the onsite TAM will coordinate the support activities within IBM. This includes:
    1. engaging the appropriated level of support expertise,
    2. invoking IBM's predefined escalation guidelines; and
    3. provides follow-up status to Client's PTC until the problem is resolved.

The selected number of review meetings is specified on the Schedule.

2.3 Client Responsibilities for Optional Additional Services

Client agrees to:

a. arrange the logistics of the scheduled review meetings;
b. carry out any recommendations agreed with onsite TAM;
c. make the onsite TAM aware of all security and fire regulations relevant to the meeting location;
d. provide IBM with access to key resources and information as required to fulfil the Service; and
e. pay reasonable expenses, including travel, meal, and accommodation expenses, incurred by IBM personnel in performing the technical activities as specified in this SOW or in any other associated SOW at Client's Specified Location. Client recognises that travel to the vicinity of the Specified Location and hotel accommodation expenses prior to and after the on-site activities is reasonable.

3. Client General Responsibilities

Client agrees to:

a. identify and maintain a local PTC, to whom IBM may direct general technical information and questions;
b. maintain, for the duration of Proactive Support, Basic Maintenance for Eligible Products, consistent with the Proactive Support Service being purchased. Client must terminate Proactive Support upon termination of prerequisite Basic Maintenance on Eligible Products;
c. have valid licensing in place for Eligible Programs covered by this Service; and
d. provide appropriate remote access to Eligible Products and provide IBM with all relevant and available diagnostic information (including product or system information) pertaining to software problems. Client remains responsible for adequately protecting Client's system and all data contained therein whenever IBM remotely accesses it with permission. If Client declines such remote system access, IBM may be limited in its ability to provide the full Service necessary to resolve the problem. If IBM is unable to do so, IBM will notify Client and close the service call; and

4. Reports

IBM will deliver Status Reports as Project Materials, as applicable. Client will own the copyright in Project Materials that IBM develops for Client under this Statement of Work (SOW). Project Materials exclude works of authorship delivered to Client, but not created, under the SOW, and any modifications or enhancements of such works made under the SOW (Existing Works). 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. IBM retains an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works of Project Materials.

This Statement of Work, its applicable Transaction Documents, applicable Attachments, and the Agreement in effect between us comprise the complete agreement regarding the Services described and replace any prior oral or written communications between Client and IBM. Each party accepts the terms of this Statement of Work by signing this Statement of Work by hand or, where recognized by law, electronically.

Statement of Work

Proactive Support Service for Power and Storage

1. Scope of Service

Under IBM Proactive Support Service (the Service), IBM will provide remote voice and electronic entry into, and handling within, IBM's support structure to assist Client with managing and maintaining Client's Information Technology (IT) environment as specified in this Statement of Work (SOW) and any associated Schedules.

IBM basic maintenance for hardware and software are prerequisites for each Eligible Product for which Client selects IBM Proactive Support coverage and must be in place for the duration of the IBM Proactive Support. Eligible Products are identified at http://www-03preview.ibm.com/services/supline/products/ProdSup.html For x86 server environment, basic Hardware maintenance is recommended (but not required).

IBM will provide remote support to assist Client with the supported IT environment and establish and maintain a framework for technical communications and activity reporting.

IBM will assign an Account Advocate (AA), available during normal business hours in the local time zone where Client receives the Service, unless expressly stated otherwise. Other members of IBM's support teams will assist the AA with the provision of all aspects of the Service.

1.1 Priority Response

Response Time is the elapsed time between IBM technical support's receipt of Client's problem submission and IBM's acknowledgment of the submission. IBM uses reasonable efforts to respond within the Targeted Response Time Objectives, based on the severity of the problem and the time that Client reports the problem. IBM's initial response may resolve the problem or form the basis for determining if additional actions are required. IBM is not responsible for delays caused by systems and network problems.

Targeted Response Time Objectives

a. For Eligible Programs, IBM will respond to Severity 1 calls within 30 minutes during 7x24. All Severity 1 calls must be reported by telephone with details of the affected software component, the machine type, and serial number. A problem is not reported until this information is provided.

b. For Eligible Machines, IBM will respond to Severity 1 calls within 30 minutes during the hours of hardware maintenance coverage specified in any applicable basic maintenance contract.

c. For Severity 2, 3 or 4 calls, IBM will use commercially reasonable efforts to respond within two hours during normal business hours.

Severity Definitions are available at https://www.ibm.com/support/pages/node/739151

1.2 Priority Handling

IBM will perform initial problem determination, problem source identification, and direct resolution, if possible. IBM will:

a. for all Severity Eligible Program (software) problems, engage the appropriate support resources, coordinate and manage the contributions of those resources, monitor the progress of Client problem submissions, and provide regular status updates;

b. for all Severity hardware problems reported by voice to the AA - engage the appropriate support resources, offer coordination and management assistance for problems being handled by remote IBM support, and provide an escalation path as needed. For all Severity hardware problems reported electronically or routed to field resources for resolution - monitor all Severity problems, offer coordination and management assistance for problems handled by remote IBM support, and provide an escalation path as needed; and

c. for all Severity problems related to Eligible Products not covered by IBM Proactive Support but reported to the AA, IBM will route the reported problem to the appropriate resources to provide support under separate terms, and provide an escalation path as needed.

1.3 IBM Proactive Support

The AA will perform Proactive Support activities to assist Client to manage the supported IT environment, and establish and maintain a framework for technical communications and activity reporting.

IBM will:

a. remotely conduct the initial Welcome Call, and provide information related to Proactive Support;

b. provide Client's Primary Technical Contact (PTC) with a detailed questionnaire to be completed and returned to the IBM representative, to enable IBM to create and deliver the Technical Support Plan (TSP) to the PTC within 30 days of the Welcome Call. The TSP will:

   1) summarize the Proactive Support Service;
   2) document and maintain the inventory listing of Eligible Products;
   3) document the Client's operational and maintenance processes, current support structure, critical applications, critical outage scenarios, and environment; and
   4) as applicable, provide:
      a) details and schedule initial setup of the Proactive Support tools; and

b) instructions to register for and obtain Alert reports providing maintenance details for AIX and IBM i Operating Systems.

c. update the TSP as needed, but at least annually;
d. if applicable, verify that remote support electronic connections to the environment are functioning, and that the IBM Tools are available for use as documented in the TSP;
e. create a monthly Proactive Support review package, including delivery of Reports, as applicable; and
f. schedule quarterly Status Calls with PTC to review monthly documentation, review tools output, provide advice on recommended practices for managing and maintaining Client's Eligible Products, and document any planned changes.

1.4 IBM Proactive Support Customization

Client may select Proactive Support customization options as described in Section 2, for an additional charge. Customization of Service is based on options selected by Client and may include the following or other Services mutually agreed to as listed on the Schedule.

2. Additional Optional Services

2.1 On-site Reviews

IBM will designate a dedicated On-site Account Advocate (OAA) who will:

a. work with the Remote Account Advocate Team on the supply of Service;
b. schedule the onsite review meetings with Client's PTC;
c. attend the review meetings with Client's PTC at Client's Specified Location(s) to review the Report and provide proactive advice on Client's technical IT environment based on information gathered by the Remote Account Advocate Team and from Client's PTC via previous meetings; and
d. represent Client's Services requirements internally within IBM, based on the information received from the on-site meetings.

In the case of a Client Critical Problem (a problem with an Eligible Products, for which Client has no known work around, resulting in a critical disruption in Client's business operations) caused by an Eligible Product of the Support Groups covered by the Service, the OAA will coordinate the support activities within IBM. This includes:

a. engaging the appropriated level of support expertise,
b. invoking IBM's predefined escalation guidelines, and
c. providing follow-up status to Client's PTC until the problem is resolved.

The remote technical conference calls included under the base Proactive Support Service will be replaced by these on-site review meetings up to the number of selected meetings per annual service period.

The on-site review meetings will be scheduled pro-rated through the annual service period (e.g., quarterly for four meetings, monthly for 12 meetings). In case the Service is started during the annual service period the quantity of review meetings to be delivered will be reduced proportional. On-site review meetings not used in the current annual service period will not be refunded or cumulated in the next annual service period.

2.2 Increased frequency of Status Calls

Beyond the default number and frequency of Reports and Status Calls defined in the base offering of Proactive Support for Power and Storage, Client may choose to increase to Monthly Status Calls.

2.3 Health Checks

IBM will provide remote health checks, which validates the functional integrity of Eligible Machines and provides the status of the connections within the Clients IT environment. The charge for the Health Check is based on the number of the Health Checks.

2.4 Health Check for Power Systems

IBM will perform Health Check on the Eligible Machines. The number of Health Check selected is specified in the Schedule.

2.4.1 Health Check for IBM i includes:

a. System values and IPL attributes check;
b. Firmware version check;
c. Basic user profiles settings check;
d. Problems logged and error log check;
e. Main Storage Dump check;
f. Temporary storage check;
g. Auditing settings check;
h. Cleanup settings check;
i. Job table entries check; and
j. IBM Electronic Service Agent* configuration check.

2.4.2 Health Check for AIX includes:

a. System and AIX configuration check;
b. Error daemon and error log analysis;
c. Microcode and firmware level check;
d. Disk configuration check for the root volume group (rootvg);
e. IBM Electronic Service Agent* configuration check;
f. Status of dump device;
g. Status of system adapter configuration;
h. Review of memory and CPU setup/definition; and
i. Review network options.

*IBM Electronic Service Agent is an IBM software tool that resides on the Client's system to monitor, capture and periodically transmit to IBM hardware error logs and system inventory information.

The data required for the Health Check analysis will be collected either remotely or onsite at the Specified Location(s) as appropriate and as mutually agreed between Client and the Account Advocate (AA) team.

Upon the end of the Health Check activities the AA team will analyze the data collected and will provide Client the finding and any additional recommendations that may apply for the optimization of Client's Eligible Machines and IBM i or AIX operating systems covered by this Health Check with the first scheduled review report.

The Health Check is related to the system (without partitioning) or to a logical partition of the Eligible Machine specified by the PTC. Logical partition (LPAR) is a subset of computer's hardware resources, virtualized as a separate computer, each housing a separate operating system.

The Health Check service does not include assistance for:

a. the design and development of applications;
b. Client's use of Programs in other than their specified operating environment;
c. consultancy activities; or
d. performance related analysis.

2.5 Health Check for Storage

IBM will perform Health Check on the Eligible Machines. The number of Health Check selected is specified in the Schedule.

The IBM AA will:

a. communicate with the Client to setup a mutually agreed upon time to run the Health Check;
b. provide guidance to the Client to send the system data, (for example configuration files) to IBM;
c. gather the system data (for example, log and configuration files) when they are not sent automatically;
d. execute a Health Check to validate the internal functions;
e. document the results of the Health Check and any corrective actions in the Proactive Health Check Report; and
f. provide the Proactive Health Check Report to Client's PTC.

In addition to the above, for the following Eligible Storage Machines during the Health Check IBM will:

For DS/8000 Systems:

a. dial remotely into the DS/8000 after initialization and authorization of the Client;
b. provide guidance to the Client to send the product engineering packages (CRON job, FTP-server), if required;
c. execute an extended Health Check to validate the internal functions and the quality of the connection between the DS/8000 and the SAN (Storage Area Network) or the mainframe; and
d. execute a call home test (the call home function warns IBM via modem or Internet about any technical or error messages) if the machine is connected to IBM.

For IBM Midrange disks systems: execute a communication check to validate the quality of the connections with the environment during a six-hour time window.

2.6 Technical Advisor for Storage

In support of Client's Eligible Products, the remote Technical Advisor for Storage will:

a. conduct an initial remote welcome call with Client's PTC to:
    1) review the Services terms and any associated documents;
    2) review the Customer Support Plan (CSP), which will be sent to Client's PTC via email prior to the call. The CSP is a collection of documents which include information on problem reporting procedures, IBM support and contact processes, IBM's severity designation levels, escalation handling, and information on the help available on IBM's websites;
    3) obtain an overview of Client's Eligible Products environment to be supported under the Services at Client's Specified Location; and
    4) understand the current support structure within Client's organization;
b. maintain a valid hardware and software listing of Client's Eligible Products inventory;
c. advise Client on appropriate software levels to ensure currency and function or fix content;

d. advise Client on critical fixes or workarounds that may apply to Client's environment; and
e. monitor open reported problems to ensure that all appropriate actions are being taken and will assist with critical problems by providing additional coordination/management as needed.

2.7 Enhanced Problem Management

For problems submitted by Client for the Eligible Products, on Client's request, the remote Technical Advisor will:

a. monitor open problems to ensure progress and appropriate response time, and provide status updates at intervals dictated by the severity level outlined on https://www.ibm.com/support/pages/node/739151 and as agreed with the Client; and
b. coordinate the support activities within IBM in case of a Client Critical Problem, including the engagement of the appropriate level of support expertise and invoking IBM's standard support escalation guidelines for which Client has contracted.

2.8 Enhanced Change Management

For Client's Eligible Products, the remote Technical Advisor will:

a. assist with assessment and planning for IBM software deployment updates and maintenance to ensure suitability and avoid potential exposure;
b. serve as the primary focal point within IBM for questions related to change management of Client's Eligible Products environment;
c. review and communicate to the appropriate IBM teams all planned changes as informed by the Client, and inform Client's PTC of potential impacts, as informed by the IBM labs or support centers;
d. provide when applicable, product life cycle, and product end-of-life planning for Client's Eligible Products; and
e. consult with Client's PTC and provide insights into IBM's best practices around managing Client's systems and availability management environment.

3. Client General Responsibilities

Client agrees to:

a. identify and maintain a local PTC, to whom IBM may direct general technical information and questions;
b. work with the assigned AA to maintain the TSP;
c. maintain, for the duration of the Service, prerequisite basic maintenance for Eligible Products, consistent with the Service being purchased, as described above. Client must terminate IBM Proactive Support upon termination of prerequisite basic maintenance on Eligible Products;
d. be responsible for obtaining all necessary permissions to use, provide, store and process content in Services and grants IBM permission to do the same. 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;
e. install the appropriate Programs specified by IBM as required for the use of remote electronic tools; and
f. be responsible for the security of Client information and for maintaining procedures for the reconstruction of lost or altered files, data and programs.

3.1 Additional Client responsibilities for Onsite Reviews

Client agrees to:

a. arrange the logistics of the scheduled review meetings;
b. carry out any recommendations agreed with OAA;
c. make the OAA aware of all security and fire regulations relevant to the meeting location; and
d. provide IBM with access to key resources and information as required to fulfill the Service.
e. pay reasonable expenses, including travel, meal, and accommodation expenses, incurred by IBM personnel in performing the technical activities at Client's Specified Location as specified in this SOW. Client recognizes that travel to the vicinity of the Specified Location and hotel accommodation expenses prior to and after the on-site activities is reasonable.

3.2 Additional Client responsibilities for Health Check for Storage

Client agrees to:

a. provide IBM with Client's system data and any error logs and configuration files to the secured IBM Enhanced Customer Data Repository (ECuRep http://www.ibm.com/de/support/ecurep/);
b. review the final Proactive Health Check Report and decide whether to utilize any of the IBM recommended corrective actions;
c. install and activate, if applicable per IBM's instructions, the Microcode Data Collector program(s);
d. be responsible to maintain the ID and password table of the applicable Eligible Products within the Microcode Data Collector program(s) where necessary;
e. remove, per IBM's instructions, the Microcode Data Collector program(s);
f. ensure that IBM will have remote access to the Client's Eligible Storage Machines for querying the required system data, or, if deemed possible by the AA, ensure that the Client provides the AA with the required system data identified by IBM. Client will hereby approve the use of programs enabling IBM to query the microcode levels or the required data and be solely responsible for security of the network. Client is responsible for any data and the content of any database that the Client's makes available to IBM in connection with these Services,

the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data, and backup and recovery of the database and any stored data.

In addition to the above for the DS/8000:

a. if the Eligible DS/8000 Storage Machine is connected to IBM via modem only, the Client allows the dial-in and follows the instructions to send the error logs on the storage medium.

3.3 Additional Client responsibilities for Technical Advisor for Storage

Client agrees to:

a. participate in the Technical Advisor welcome call;

b. utilize the established procedures for all Client problem submissions;

c. ensure the appropriate personnel for activities, set out in the Technical Advisor for Storage service description, are made available by Client's organization

d. supply the environment details for Client's Eligible Products upon request by IBM.

4. Reports

IBM will deliver, or make available for download by Client, the following Project Materials, as applicable:

a. Alert Reports (available only for AIX and IBM i Operating Systems, delivered electronically).

In addition, IBM will deliver the following Existing Works:

b. Technical Support Plan (TSP); and

c. Service Activity Report on an agreed frequency, summarizing service activity related to reported problems, including proactive recommendations

Client will own the copyright in Project Materials that IBM develops for Client under this SOW. Project Materials exclude works of authorship delivered to Client, but not created, under the SOW, and any modifications or enhancements of such works made under the SOW (Existing Works). 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. IBM retains an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works of Project Materials.

This Statement of Work, its applicable Transaction Documents, applicable Attachments, and the Agreement in effect between us comprise the complete agreement regarding the Services described and replace any prior oral or written communications between Client and IBM. Each party accepts the terms of this Statement of Work by signing this Statement of Work by hand or, where recognized by law, electronically.

Statement of Work

Proactive Support for Linux

1. Scope of Service

Under IBM Proactive Support for Linux (the Service), IBM will provide remote voice and electronic entry into, and handling within, IBM's support structure to assist Client with managing and maintaining Client's Information Technology (IT) environment as specified in this Statement of Work (SOW) and any associated Schedules.

IBM basic software support is a prerequisite for each Eligible Product for which Client selects IBM Proactive Support for Linux coverage and must be in place for the duration of the IBM Proactive Support for Linux. Eligible Products are identified in Support Groups at http://www-03.ibm.com/services/supline/products/index.html . Support Group is a list of Programs and Machines that are eligible to a specific Proactive Support for Linux specified in the Schedule.

IBM will provide remote support to assist Client with the supported IT environment and establish and maintain a framework for technical communications and activity reporting.

IBM will assign an Account Advocate (AA), available during normal business hours, in the local time zone where Client receives Service, unless expressly stated otherwise. Other members of IBM's support teams will assist the AA with the provision of all aspects of the Service. Support is primarily delivered in the English language.

1.1 Priority Response

Response Time is the elapsed time between IBM technical support's receipt of Client's problem submission and IBM's acknowledgment of the submission. IBM uses reasonable efforts to respond within the Targeted Response Time Objectives, based on the severity of the problem and the time that Client reports the problem. IBM's initial response may resolve the problem or form the basis for determining if additional actions are required. IBM is not responsible for delays caused by systems and network problems.

Targeted Response Time Objectives

a. For Eligible Programs, IBM will use commercially reasonable efforts to respond to Severity 1 calls within 30 minutes during 7x24. All Severity 1 calls must be reported by telephone with details of the affected software component, the machine type, and serial number. A problem is not reported until this information is provided.
b. For Severity 2, 3 or 4 calls, IBM will use commercially reasonable efforts to respond within two hours during normal business hours.

Severity Definitions are available at https://www.ibm.com/support/pages/node/739151

1.2 Priority Handling

IBM will perform initial problem determination, problem source identification, and direct resolution, if possible. If additional resources are required for resolution IBM will, based on the identified source and severity of the problem:

a. For Severity 1 Eligible Program (software) problems:
    1. engage the appropriate support resources, and coordinate and manage the contributions of those resources;
    2. monitor the progress of Client problem submissions; and
    3. provide regular status updates.
b. For all non-Severity 1 problems, route the reported problem to the appropriate resources to assume ownership and provide support per the terms/conditions of their support contracts, and provide an escalation path as needed.

1.3 Priority Access

IBM provides direct priority access to a team of skilled resources as an initial point of contact for problem submissions on Eligible Products. The AA will, during the Welcome Call, provide Client with a unique Proactive Support Direct Access Code (DAC), and ensure that Client is able to maximize the features of Proactive Support.

Client may submit problems via voice using Client's unique DAC or by electronic problem reporting using the IBM support portal. If reporting problems electronically, Client must have the DAC in Client's IBM ID profile and select the appropriate problem type routing for Proactive Support level responses.

1.4 IBM Proactive Support

The AA will perform Proactive Support activities to assist Client to manage the supported IT environment and establish and maintain a framework for technical communications and activity reporting.

IBM will:

a. remotely conduct the initial Welcome Call, and provide information related to Proactive Support;
b. provide Client's Primary Technical Contact (PTC) with a detailed questionnaire to be completed and returned to the IBM representative, to enable IBM to create and deliver the Technical Support Plan (TSP) to the PTC within 30 days of the Welcome Call. The TSP will:
    1. summarize the Proactive Support Service;

2. document and maintain the inventory listing of Eligible Products;
3. document the Client's operational and maintenance processes, current support structure, critical applications, critical outage scenarios, and environment; and
4. as applicable, provide details and schedule initial setup of the Proactive Support tools; and

c. update the TSP as needed, but at least annually;

d. if applicable, verify that remote support electronic connections to the environment are functioning, and that the IBM Tools are available for use as documented in the TSP;

e. create a quarterly Proactive Support review package, including delivery of Reports, as applicable (see section "Deliverables);

f. schedule quarterly Status Calls with PTC to review documentation, review tools output, provide advice on recommended practices for managing and maintaining Client's Eligible Products, and document any planned changes; and

g. provide information on approaching end of service dates when related to the Client's Eligible Programs.

1.5 IBM Proactive Support Customization

Client may select Proactive Support customization options as described in Section 2, for an additional charge. Customization of Service is based on options selected by Client and may include the following or other Services mutually agreed to as listed on the Schedule.

2. Additional Optional Services

2.1 Increased frequency of Reports and Status Calls

Beyond the default number and frequency of Reports and Status Calls defined in the base offering of Proactive Support for Linux, Client may choose to increase Monthly Reports and Monthly Status Calls.

2.2 Health Check for Linux operating system

As an option to be selected and documented on the related Schedule, IBM will perform System Health Checks on the Eligible Programs, consisting of:

a. File System disk space; and

b. Eligible Programs health check including:
   (1) Kernel logs and general system parameters;
   (2) Applications; and
   (3) File System access.

The data required for the Health Check analysis will be collected either remotely or onsite at the Specified Locations as appropriate and as mutually agreed between Client and the AA team.

At the end of the Health Check activities the AA team will analyze the data collected and will provide Client the finding and any additional recommendations that may apply for the optimization of Client's Eligible Machines and Linux operating systems covered by this Health Check with the first scheduled Report review.

The selected number of Health Checks for each annual service period is defined in the Schedule. The charge for the Health Check is based on the number of Health Checks. A check is related to the Linux instances (without partitioning) or to a logical partition of the Eligible Machine specified by the PTC. Logical partition (LPAR) is a subset of computer's hardware resources, virtualized as a separate computer, each housing a separate operating system.

The System Health Check service does not include assistance for:

a. the design and development of applications;

b. Client's use of Programs in other than their specified operating environment;

c. consultancy activities; and

d. performance related analysis.

2.4 Technical Seminars

IBM will conduct, two times per year, a technical seminar on general Linux and other non-IBM software topics. If Client is interested in a particular topic in the area of Linux and or Linux various distributions, Client's PTC must inform the AA in writing one month prior to the requested seminar or during a regular meeting for reports review. Technical seminars will be delivered remotely.

The dates when the technical seminars will take place will be agreed between the AA and Client's PTC after the Welcome Call and at latest with the TSP confirmation.

3. Client General Responsibilities

Client agrees to:

a. identify and maintain a local PTC, to whom IBM may direct general technical information and questions;

b. work with the assigned AA to maintain the TSP;

c. maintain, for the duration of the Service, prerequisite basic software support service for Eligible Products, consistent with the Service being purchased. Client must terminate IBM Proactive Support for Linux upon termination of prerequisite basic maintenance on Eligible Products;

d. install the appropriate Programs and tools specified by IBM as required for the use of remote electronic tools. If not done so, IBM is relieved from its obligation to deliver the service or any affected component of the service described;

e. be responsible for the security of Client information and for maintaining procedures for the reconstruction of lost or altered files, data and programs;

f. be responsible for the content of any database, the selection and implementation of controls on its access and use, backup and recovery and the security of the stored data. This security will also include any procedures necessary to safeguard the integrity and security of software and data used in the Services from access by unauthorized personnel; and be responsible for the identification of, interpretation of, and compliance with, any applicable laws, regulations, and statutes that affect Client's existing systems, applications, programs, or data to which IBM will have access during the Services, including applicable data privacy, export, and import laws and regulations. It is Client's responsibility to ensure the systems, applications, programs, and data meet the requirements of those laws, regulations, and statutes;

g. be responsible for obtaining all necessary permissions to use, provide, store and process content in Services and grants IBM permission to do the same. 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;

h. be responsible for the installation of microcode, firmware and fixes which IBM recommends;

i. use the information obtained under the Services only for the support of the information processing requirements within Client's enterprise. Client may not resell the Services or use it to provide support to third parties;

j. ensure that appropriate backup, security, and virus-checking procedures are in place for any computer systems that are part of the Eligible Products covered by the Services; and

k. acknowledge that IBM uses global resources (non-permanent residents used locally and personnel in locations worldwide) for the delivery of Services.

3.1 Additional Client responsibilities for Health Check for Linux

Client agrees to:

a. provide IBM with Client's system data and any error logs and configuration files to the secured IBM Enhanced Customer Data Repository (ECuRep http://www.ibm.com/de/support/ecurep/);

b. review the final Proactive Health Check Report and decide whether to utilize any of the IBM recommended corrective actions;

c. install and activate, if applicable per IBM's instructions, program / tools for collecting code data and error logs;

d. be responsible to maintain the ID and password table of the applicable Eligible Products within the tool that will be used for microcode/firmware data collection where necessary;

e. remove, per IBM's instructions, the program(s) / tool(s) collecting code data and error logs; and

f. ensure that IBM will have remote access to the Client's Eligible Machines where Linux is installed for querying the required system data, or, if deemed possible by the AA, ensure that the Client provides the AA with the required system data identified by IBM. Client will hereby approve the use of programs enabling IBM to query the code levels or the required data and be solely responsible for security of the network. Client is responsible for any data and the content of any database that the Client's makes available to IBM in connection with these Services, the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data, and backup and recovery of the database and any stored data.

4. IBM Tools

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 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. Unless licensed in writing by IBM, Client has no right to access, retain, copy, or use the IBM Tools and no Client license or intellectual property right is granted or implied by the use of the IBM Tools used in connection with performance of the Services. IBM Tools are subject to the terms associated with them. IBM Tools are not warranted. If applicable, upon completion of the Service Client agrees to cease use of, uninstall and remove the IBM Tools from Client's Eligible Machines and facilities.

5. Deliverables

IBM will deliver, or make available for download by Client, the following Project Material, as applicable:

a. Technical Support Plan (TSP); and

b. Report on an agreed frequency, summarizing service activity related to reported problems, including proactive recommendations.

Client will own the copyright in Project Materials that IBM develops for Client under this SOW. Project Materials exclude works of authorship delivered to Client, but not created, under the SOW, and any modifications or enhancements of such works made under the SOW (Existing Works). 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. IBM retains an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works of Project Materials.

This Statement of Work, its applicable Transaction Documents, applicable Attachments, and the Agreement in effect between us comprise the complete agreement regarding the Services described and replace any prior oral or written communications between Client and IBM. Each party accepts the terms of this Statement of Work by signing this Statement of Work by hand or, where recognized by law, electronically.

Statement of Work

IBM Power Expert Care

Scope of Work
When Client acquires IBM Power Systems, Client may select from IBM Power Expert Care Advanced, or IBM Power Expert Care Premium, as each is described herein, in addition to the standard Machine warranty. Client's selections are documented in the transaction document provided to Client by the seller at the time of the acquisition, such as the Purchase Supplement or invoice (the TD).

Unless IBM specifies otherwise, these Services apply only in the country in which the Services were purchased and may not be transferred outside that country.

IBM Power Expert Care Advanced
IBM will provide Machine maintenance, 24x7 same day onsite repair after warranty.

IBM Power Expert Care Premium
IBM will provide:
a. Machine maintenance, 24x7 same day onsite repair after warranty;
b. Global Total Microcode Support Services, once per year;
c. Media Retention; and
d. Enterprise Accelerated Value Program (eAVP).

Service Descriptions
Machine Maintenance
Machine Maintenance is Service, after warranty, 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 covered Eligible Machines to keep the IBM Eligible Machines in, or restore them to, conformance with their officially published specifications;
c. if available for Client's IBM Eligible Machines, installation of Service Programs to endeavor to:
   (1) detect and analyze permanent errors;
   (2) correlate temporary errors; and
   (3) identify and report media problems.
d. the services of support specialists from IBM manufacturing, engineering, and development locations as deemed necessary by IBM;
e. the planning, scheduling and installation of any engineering changes or field change orders required to improve the serviceability, performance, and safety of the IBM Eligible Machines;
f. assisting Client in establishing and implementing electronic support facilities such as IBM Electronic access; and
g. activation, for use by IBM personnel, of electronic facilities to remotely diagnose, applying fixes, and update Client's IBM Eligible Machines.

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

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

IBM may use tools, owned or licensed by IBM, in the performance of the Service (IBM Tools). IBM continuously develops and utilizes new IBM Tools and capabilities for the purpose of providing remote and on-site problem determination and resolution support to IBM Clients. Some IBM Tools (e.g., an application (App)), are used by on site technicians to capture and store images of the Machine and transmit the images to a remote IBM Subject Matter Expert with a goal of faster and more cost effective repair and one-visit resolution of complex issues. The images may also be modified and/or used for training and to

improve maintenance services. Unless licensed in writing by IBM, Client has no right to access, retain, copy, or use the IBM Tools and no Client license or intellectual property right is granted or implied by the use of the IBM Tools used in connection with performance of the Services. IBM Tools are subject to the terms associated with them. IBM Tools are not warranted. If applicable, upon completion of the Service Client agrees to cease use of, uninstall and remove the IBM Tools from Client's Eligible Machines and facilities.

Global Total Microcode Support Services

IBM Global Total Microcode Support Services will consist of supporting microcode for the Eligible IBM Power Machines under this contract, for the supported microcode, firmware, and BIOS levels (not including any beta versions) for which Client has a license for the Eligible IBM Power Machines. The Analysis and Microcode Support will include Analysis and Microcode Support Update Services once per year. Power Systems Microcode Support Eligible Products must be configured in a way that the IBM Data Collection Tool can connect to retrieve Microcode information.

Global Total Microcode Support Services – Analysis

IBM will perform an analysis and verify whether the recorded Microcode levels of the contracted Eligible IBM Power Machines for Microcode Support Service are currant. Once the Microcode Support Analysis is complete, IBM will electronically deliver a Microcode Support Plan to client's Point of Contact. The Support Plan contains client's current Microcode driver and Host Bus Adapter levels on client's contracted IBM Power Machines and provides Microcode upgrade recommendations, if applicable.

Global Total Microcode Support Services – Update

In addition to the Services specified in the scope of the Microcode Support - Analysis section above, IBM will implement updates of the Microcode levels on client's contracted Eligible IBM Power Machines at the Specified Locations in the Schedule.
By providing an update of the Microcode level on an Eligible IBM Machine, IBM does not provide any further warranty concerning the Eligible IBM Machine, its Microcode, or its performance.

Client's Responsibilities for Global Total Microcode Support

Client agrees to:

a. remain responsible during the Microcode Support Analysis and Update for any decisions regarding upgrades on Client's Eligible IBM Machines, as documented in Client's Microcode Support Plan;
b. provide IBM with all information requested, which may include Client's system configuration and an outline of Client's network topology;
c. ensure that IBM will have remote access to Client's Eligible IBM Machines for querying the required system data, or, if deemed possible by IBM, ensure that Client provides IBM Representative with the required system data identified by IBM. Client hereby approves the use of programs enabling IBM to query the Microcode levels or the required data. Client remains solely responsible for security of the Client network.;
d. notify IBM of changes to Client's Eligible IBM Machines, and of updates to the Microcode, drivers, or operating systems. Client will provide IBM with the necessary access to enable IBM to perform updates simultaneously on multiple Machines at one Specified Location, in order to reduce waiting times;
e. observe and abide by the accepted license terms for the Microcode;
f. obtain recommendations and updates for Microcode of non-IBM products directly from the respective manufacturers;
g. perform backup and verification of all data stored on Eligible IBM Machines prior to starting the implementation of any updates;
h. be responsible for scheduling updates to minimize interruptions to system performance
i. install and activate, per IBM's instructions, the Microcode Data Collector programs;
j. be responsible to maintain the ID and password table of the applicable Eligible Products within the Microcode Data Collector programs where necessary;
k. remove, per IBM's instructions, the Microcode Data Collector programs;
l. make the necessary network changes to allow IBM access to your Eligible IBM Machines and your network during the hours agreed upon;
m. maintain responsibility for implementation of recommendations provided in the Support Plan and the implementation for any other technical procedures that pertain to the Microcode levels for the Machines covered under this SOW. IBM provides knowledge and experience in providing you with a Microcode Support Plan, however IBM may not know about other Microcode levels on machines that are not covered under this SOW. Client is solely responsible for all decisions regarding upgrades, including selections; and
n. IBM's performance is dependent upon Client's management and fulfilment of responsibilities under this SOW. Any delay in performance of Client responsibilities may result in delays in providing the Services and additional charges for Client.

Media Retention

Media Retention allows Client to retain defective magnetic tape, CD, DVD, USB, storage flash memory cards, solid state drives, hard disk drives, optical media cartridges, and other media as mutually agreed to by the parties (collectively, Media) replaced in the course of IBM Services. If the reported problem requires the replacement of such Media, a replacement will be supplied by IBM and the removed defective Media will be provided to Client. The Products covered under Media Retention must also be covered under IBM warranty, IBM maintenance Service, or equivalent IBM Service.

Client agrees to:

a. identify a Client representative to receive the retained defective Media from IBM at the time of replacement. If a Client representative is not available to receive Media at the time of replacement, IBM will retain the replaced Media as IBM property;
b. refrain from placing the defective drive into productive use;
c. dispose of all retained hard drives in compliance with applicable environmental laws and regulations;
d. not transfer faulty Media between non-Eligible and Eligible Machines; and
e. notify IBM of any Machine configuration changes.

eAccelerated Value Program (eAVP)

eAVP is an Enterprise wide solution based services program that is designed to fit each Client's desired business outcome. The eAVP program for Power 10 Rack deployments was designed to assist Client in maintaining the highest levels of availability, responsiveness, and capacity.

Power System Specific Delivery Requirements:

IBM will:

1) Schedule and conduct an initial introductory call to familiarize IBM with Client teams and review the configuration of Client's environment. eAVP will utilize two main resources for these efforts, delivered remotely in English:
   a. Resource 1: an AVL (Accelerated Value Leader) – They will coordinate all activities and be the main point of contact.
   b. Resource 2: an AVS (Accelerated Value Specialist) – They are the technical SME for delivering the reviews, health checks and assessments. These resources are deep skilled services level resources with specific knowledge of the technology and tools being reviewed and used.
2) Develop / customize security scripting for generation of monthly Client security reports
3) Assist Client in loading of security scripts
4) Review with Client the details of the support script output and maintenance:
5) **APM Tool Review:** Review existing APM tools for ability to monitor application process performance.
   a. If a Client has a specific APM tool (e.g., New Relic, Instana, DynaTrace) eAVP will provide a review, analysis and recommendations of the implementation as it pertains to tracking of metrics for Performance, Capacity and Availability for the Power 10 deployment.
   b. If a Client does not already have an APM toolset, eAVP will provide guidance and recommendations to the Client for APM toolsets that might meet their needs.
      NJMON Deployment Service: eAVP can also, if requested, can deploy a custom IBM Developed NMON based offering called NJMON. NJMON is an open-sourced solution that converts NMON output to JSON format. The JSON formatted output is stored in an Open-Sourced Influx DB and then graphically rendered in a Grafana Dashboard. NJMON Training is available at this URL: https://www.ibm.com/support/pages/get-free-nmon-njmon-training-level-1-2-performance-monitoring
      (1) eAVP will assist the Client in implementing, customizing, and testing the NJMON tool suite on a test system and then assist in a production deployment.
      (2) **Quarterly Analysis:** eAVP will perform a quarterly, remote analysis of the tool measurements and thresholds.
         (a) On a quarterly basis, eAVP will make capacity, performance, maintenance, and availability recommendations. These reviews will be done remotely as described in "Chart A1" or specific instructions based on each Client's needs.
         Translation – Interpreter Services: For Clients that do not speak English, eAVP will engage a local technical resource to provide translation services during this phase as well as the report translation phase.
         (b) Recommendations will be delivered in the form of a MS Word document as described in "Chart A2". The document will be in English but can then be translated by local IBM teams into the target language.
6) Perform 10 Power System stack review for Client:
   a. All health checks will be performed remotely either via, data config / log extract, remote access, or web session. Documented in Charts A1 and A2.
   b. All data will be Client confidential.
7) Client health check deliverable will be a document-based report detailing the status of the following areas:
   a. Servers, storage, and software installed, with currently installed versions vs currently available and recommended versions.
   b. Data activity review based on software being used and installed. (if data activity tracking is enabled)
   c. Application activity review via APM tooling
   d. An export of critical system configuration items
   e. An overview of vulnerabilities and threats of the system components via published threat sources
   f. User systems activity report (if tracking is enabled)
   g. File and Web activity (if tracking is enabled)
   h. Security log review (if tracking is enabled)
   i. Firewall activity log and settings review (if tracking is enabled)

Chart A – (Client Interaction)

A1. Remote Viewing:
a) Remote viewing of a Client's deployment can be via any number of tools or technologies that both Client and IBM mutually agree upon (e.g., Webex, MS Teams, Google Meet, etc.)
b) Client will be responsible for the secure viewing of their internal network and resources.
A2. Data Sharing:
a) Sharing of log or configuration data between IBM and a Client can be accomplished by utilizing a number of common toolsets. (e.g., Box Secure Share, data encrypted email, IBM Ecurep SFTP service, etc.)
b) Report data from IBM will be shared with Client utilizing this same channel.
c) GDPR rules will be adhered to in regard to Client data.

Client's General Responsibilities

Client:

1. will 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;
2. agrees to ensure that any access codes IBM provides are used only by authorized personnel;
3. will have valid licensing and subscription in place for Eligible Programs covered by this Service; and
4. agrees to enable IBM Tools to permit Predictive Support.

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.

This Statement of Work, its applicable Transaction Documents, applicable Attachments, and the Agreement in effect between the parties are the complete agreement regarding Services and replace any prior oral or written communications between us. Accordingly, neither party is relying upon any representation that is not specified in the complete agreement including, without limitation, any representations concerning 1) levels of service, hours, or charges to provide any Service; 2) the experiences of other clients; or 3) results or savings Client may achieve. Each party accepts the terms of this Statement of Work by signing this Statement of Work by hand or, where recognized by law, electronically.

IBM Storage Expert Care

Scope of Work

When Client acquires IBM Storage, Client may select from IBM Storage Expert Care Basic, IBM Storage Expert Care Advanced, or IBM Storage Expert Care Premium, as each is described herein, in addition to the standard Machine warranty. Client's selections are documented in the transaction document provided to Client by the seller at the time of the acquisition (the TD).

Unless IBM specifies otherwise, these Services apply only in the country in which the Services were purchased.

IBM Storage Expert Care Basic

IBM will provide, as applicable:

a. Machine maintenance, next business day 9x5 onsite repair, after expiration of warranty;
b. Warranty Service Upgrade next business day 9x5 onsite repair during the specified warranty period; and
c. Support Line software support for Machine Licensed Code or IBM Software Maintenance (SWMA).

IBM Storage Expert Care Advanced

IBM will provide, as applicable:

a. Machine maintenance, 24x7 same day onsite repair after expiration of warranty;
b. Warranty Service Upgrade, same business day 24x7 onsite repair during the specified warranty period;
c. Support Line software support for Machine Licensed Code or IBM Software Maintenance (SWMA); and
d. Predictive Support commencing at warranty start (as a Warranty Service Upgrade) and continuing after warranty for the term Expert Care is in effect.

IBM Storage Expert Care Premium

IBM will provide:

a. Machine maintenance, 24x7 same day onsite repair after warranty;
b. Warranty Service Upgrade same business day 24x7 onsite repair during the specified warranty period;
c. Support Line software support for Machine Licensed Code or IBM Software Maintenance (SWMA);
d. Predictive Support commencing at warranty start (Warranty Service Upgrade) and continuing after warranty for the term Expert Care is in effect;
e. Enhanced Response Time (Severity 1 and Severity 2) 30 Minutes;
f. Remote Code Load (2 times per calendar year, as requested by Client); and
g. Technical Account Manager (TAM).

Service Descriptions

In addition to the terms of the TSS Attachment, the following terms apply:

Support Line – IBM Storage with Licensed Internal Code

Support Line is remote assistance with the operation of supported products and system environments (Service). The Supported Eligible Products for this Service are identified at www.ibm.com/services/supline/products/. Refer to the Support Line offering for Eligible Products. Eligible Products for storage devices are grouped by IBM storage classification.

IBM will provide remote assistance (via telephone from IBM's support center, or via an electronic search and questioning capability) in response to requests pertaining to the following:

For all Eligible Products in Client's covered support groups:

a. basic, short duration installation, usage, and configuration questions; and
b. questions regarding IBM Supported Product publications.

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.

IBM Software Maintenance – IBM Storage

Coverage Period. For Eligible Programs running on IBM Storage, Charges for Software Maintenance charge are included in the IBM Storage Expert Care charges. The Initial Software Maintenance Period begins on the date that IBM makes the Program available to Client. IBM does not issue a credit or refund for the unused portion of a Software Maintenance Period.

Predictive Support

IBM provides predictive alerts, during warranty and maintenance coverage periods, for defects, known issues, best practice violations, common misconfiguration issues, and other problems if Client enables IBM predictive tools. Predictive alerts will be collected and analyzed by IBM Tools or IBM representatives on a regular basis. If there is a significant need for immediate action to be taken to avoid or prevent an incident, Client will be contacted and an action plan will be discussed.

Predictive Support will commence at warranty start as a Warranty Service Upgrade and continue after warranty for the term of maintenance coverage while Expert Care is in effect. IBM Tools must be installed and allowed to run on Client's system for Predictive Support to function. If Client does not permit the use of IBM Tools or if Client does not permit Predictive Support alerts to be collected and analyzed, IBM is relieved of its obligations for Predictive Support.

Enhanced Response Time (Severity 1 & Severity 2) 30 Minutes

Response time is the elapsed time between IBM technical support's receipt of Client's problem submission and IBM's acknowledgement of the submission. The Priority Support Team uses reasonable efforts to respond within the Targeted Response Time Objectives based on the Severity of the problem and the time that Client reports the problem. IBM's initial response may resolve the problem of form the basis for determining if additional actions are required. Response Times are objectives only. IBM is not responsible for delays caused by systems and network problems.

Targeted Response Time Objectives for Severity 1 and Severity 2 and all shift times are 30 minutes.

Severity descriptions are available at: https://www.ibm.com/support/pages/node/739151

Remote Code Load

Remote Code Load (RCL) allows hardware and software code updates for the Eligible Products specified in the TD. Code updates will be performed by remote IBM support personnel, instead of an onsite Support Services Representative (SSR). IBM has implemented a remote capability to upgrade code on Client's entitled Products. RCL is the preferred code delivery method, efficient and secure for both IBM and Client.

IBM will implement updates of the code levels on Client's entitled IBM Machines using RCL Services on targeted systems as planned by Client and Technical Account Manager, twice per year, as described herein. By providing an update of the code level on an entitled IBM Machine, IBM does not provide any further warranty concerning the Eligible IBM Machine, its code, or its performance.

Client responsibilities for Remote Code Load

Client agrees to:

a. provide remote access to the systems requiring code updates,
b. remain responsible during the code update for any decisions regarding upgrades on Client's Eligible IBM Machines;
c. provide IBM with all information requested, this may include Client's system configuration and an outline of Client's network topology;
d. approve the use of programs enabling IBM to query the Code levels/perform Updates by ordering RCL; and
e. notify IBM of changes to Client's Eligible IBM Machines, and of updates to the Code, drivers, or operating systems. Client will provide IBM with the necessary access to enable IBM to perform updates simultaneously on several of Client's Eligible IBM Machines at once if possible, to reduce wait times.

Technical Account Manager (TAM)

Technical Account Manager (TAM) is a critical product-based support role that will serve as the key Client interface for in scope hardware and software, delivering partnership and consultancy, as well as direct engagement on high priority support cases. Key roles fulfilled by the TAM include:

a. Provides support and deployment requirements preparation;
b. Assists in Call Home and Predictive Support enablement;
c. Consults on software roadmap and currency;
d. Provides technical insights for Client impact avoidance;
e. Consults on recommended practices analysis;
f. Facilitates enhanced Response Times on Severity 1 and Severity 2 problems;
g. Leads direct engagement on support cases, drives case trajectory, and complex issue resolution;
h. Delivers relationship management including welcome calls, Support Plan, monthly reporting, and quarterly meetings;
i. Coordinates activity on Client's behalf with Predictive Support team;
j. Coordinates activity on Client's behalf with the Code load team;
k. Assists with critical situation integration ensuring timely root cause analysis; and
l. Consults with Client on change management.

IBM grants Client an irrevocable, nonexclusive, paid up license to use, execute, reproduce, display, perform and distribute, within Client's Enterprise only, copies of the Support Plan that will be delivered under this SOW. IBM or its suppliers will own all right, title and interest including ownership of the copyright in the Materials. All Client's pre-existing information remains Client's sole property.

Client's General Responsibilities

Client agrees to:

1. 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;
2. ensure that any access codes IBM provides are used only by authorized personnel;
3. have valid licensing and subscription in place for Eligible Programs covered by this Service; and
4. enable IBM Tools to permit Predictive Support.

Termination

Client has committed to the term of coverage selected by Client. No credit or refund is due if Client terminates early.

IBM may withdraw a Service or support for an Eligible Product on at least three months' written notice to Client. Client will receive a credit for any remaining prepaid period associated with Services withdrawn by IBM under this provision.

This Statement of Work, its applicable Transaction Documents, applicable Attachments, and the Agreement in effect between the parties are the complete agreement regarding Services and replace any prior oral or written communications between us. Accordingly, neither party is relying upon any representation that is not specified in the complete agreement including, without limitation, any representations concerning 1) levels of service, hours, or charges to provide any Service; 2) the experiences of other clients; or 3) results or savings Client may achieve. Each party accepts the terms of this Statement of Work by signing this Statement of Work by hand or, where recognized by law, electronically.

Statement of Work

Support Line

Support Line is remote assistance with the operation of supported products and system environments (Service). In addition, IBM offers certain optional features as enhancements to this Service. These terms apply for each of these optional features. Supported Eligible Products for this Service are identified at www.ibm.com/services/supline/products/ Refer to the Support Line offering for Eligible Products. Eligible Products for servers are grouped by Operating System (OS) and the server types on which the OS is installed. Eligible Products for storage devices are grouped by IBM storage classification.

Scope of Work

IBM will provide remote assistance (via telephone from IBM's support center, or via an electronic search and questioning capability) in response to requests pertaining to the following:

For all Eligible Products in Client's covered support groups —

1. basic, short duration installation, usage, and configuration questions; and
2. questions regarding IBM Supported Product publications.

For all IBM Eligible Programs in Client's covered support groups —

1. code-related problem questions;
2. diagnostic information review to assist in isolation of a problem cause (for example, assistance interpreting traces and dumps for installation and code related problems); and
3. for known defects, available corrective service information and program fixes as entitled under the terms of the IBM license.

IBM provides Severity 1 assistance 24 hours a day, every day of the year. Consult the IBM Software Support Guide at http://www14.software.ibm.com/webapp/set2/sas/f/handbook/home.html for details. A 24x7 (every day of the year) all-severity option may be available for an extra charge.*

Service is provided solely for Eligible Products located within the United States (USA). For calls that originate from outside of the USA: a) toll free telephone access is not available, b) "local time zone" is defined as the time zone where Client's USA Eligible Programs are installed, Monday through Friday (excluding national holidays), c) replies or other return communication to the caller will be via a USA telephone number provided by Client or electronic means only, d) software "traps" or other tools that may be necessary to diagnose problems will be sent only to the USA Eligible Programs location, e) the diagnosis and repair of data encryption will be discussed only with personnel at the USA Eligible Programs location, and f) all support will be provided in the English language only.

Support via USA Citizens

In addition to IBM Support Line for storage and Linux only, Client may purchase IBM Support via USA Citizens feature, which provides an IBM continental USA Citizen contact to manage IBM remote support for Client. IBM will provide USA Citizen remote support agents to interact with Client. Client data submitted for diagnostic purposes may be stored and accessed outside the USA and may be viewed or handled by non-USA Citizens. Client agrees not to send protected or sensitive data to IBM. IBM Support via USA Citizens is available via voice support, during prime shift only. Each time Client calls IBM, Client must identify itself as a Support via USA Citizens Client. IBM will verify Client's entitlement then transfer Client to the USA Citizen contact.

Supported Products

For supported RedHat, Microsoft, Ubuntu, SUSE, Open Source, and VMware products, IBM will assist with isolating the problem cause and provide recovery information, if available from the vendor. If a new (unknown) defect is identified, IBM will report it to the appropriate vendor and notify Client of the report. IBM support is limited to providing updates made generally available by the vendor. Any updates provided by IBM will be via electronic download only. Resolution of defects is the responsibility of the vendor.

IBM does not distribute Microsoft updates directly to clients. Microsoft updates are only provided directly by Microsoft, via download, under the Microsoft License between Client and Microsoft. IBM is not a party to the Microsoft License and has no responsibility for any updates made available by Microsoft.

Red Hat, SUSE

IBM may make available emergency source code fixes for new defects for supported Red Hat and SUSE Enterprise releases to Open Source components of the Linux operating system and licensed products. Any patches, maintenance updates, refreshes, or fixes are made available via electronic download only. The distributor provides fixes, patches, maintenance updates and refreshes directly to Client on IBM's behalf, under the distributor's terms. IBM makes emergency source code fixes available to the distributors and the Open Source maintainers for inclusion and distribution as errata updates and patches. IBM will support and maintain these new emergency source code fixes until such time that the

distributor or Open Source maintainer incorporates them or develops an alternate fix and distributes as errata update or patch. At such point, IBM support is complete.

Ubuntu
IBM provides Level 1 and Level 2 support for Ubuntu products. Canonical provides Level 3 support for Ubuntu and Open Source products on IBM's behalf. The distributor provides fixes, patches, and maintenance updates directly to Client on IBM's behalf, under the distributor's terms.

Rogue Wave
IBM provides Level 1 and Level 2 support for Rogue Wave supported products. Rogue Wave provides Level 3 support for Rogue Wave and Open Source products on IBM's behalf. The Open Source distributor provides fixes, patches, and maintenance updates directly to Client on IBM's behalf, under the distributor's terms.

Product Subscription or Level 3 Option
For Eligible Programs Client may also order this subscription option as an added Support Line feature. Subscription products are only available via electronic download. Client will identify a subscription coordinator who will be the focal point for all supplier-licensed subscription product orders and deliveries under this Support Line feature. The distributor provides fixes, patches, maintenance updates, and refreshes directly to Client on IBM's behalf, under the distributor's terms.

The supplier-licensed software is directly distributed and licensed by the supplier under the terms and conditions of the supplier's end user license agreement (EULA). While IBM may have placed the order with the supplier for the supplier-licensed software on Client's behalf as a convenience, Client acknowledges and understands that IBM is neither a party to the EULA nor a distributor, licensor, or reseller of the supplier-licensed software. While the supplier may provide Client with certain warranties, representations, or indemnities under the EULA, IBM, as a provider of Services, does not provide, whether express or implied, any warranty, representation, indemnity, or other license with respect to the supplier-licensed software. IBM has no responsibility for claims based, in whole or part, on non-IBM Products.

Client Responsibilities

Client:

1. will designate the Primary Technical Contact (PTC), Client's USA 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;
2. agrees to ensure that any access codes IBM provides are used only by authorized personnel;
3. will have valid licensing and subscription in place for Eligible Programs covered by this Service;
4. will provide appropriate remote access to Eligible Products;
5. is responsible for obtaining all necessary permissions to use, provide, store and process content in Services and grants IBM permission to do the same. 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.

This Statement of Work, its applicable Transaction Documents, applicable Attachments, and the Agreement in effect between us are the complete agreement regarding Services and replace any prior oral or written communications between us. Accordingly, neither party is relying upon any representation that is not specified in the complete agreement including, without limitation, any representations concerning 1) levels of service, hours, or charges to provide any Service; 2) the experiences of other clients; or 3) results or savings Client may achieve. Client accepts the terms of this Transaction Document by 1) ordering, paying for, or using the Service referenced herein, or 2) signing it (or another document that incorporates it by reference) by hand or electronically where recognized by law, if signature is required by either party.

Statement of Work

Software Support Extension

1. Scope of Work

Service Extension Support (Service) includes remote assistance (from IBM's support center or by electronic access as specified below) in response to problems discovered after a Program version reaches end of service as announced by IBM.

Program-specific terms, if any, will be specified in an Appendix A. The selected support level, supported products, charges, coverage period dates, and other details are specified in the Schedule.

IBM Software Maintenance, IBM Passport Advantage, or equivalent coverage must be maintained for Programs covered by Software Support Extension.

IBM will provide assistance for routine, short duration installation and usage (how-to) questions and code related questions, via electronic access and if available, telephone, only to Client's Information Systems (IS) technical support personnel during normal business hours. IBM provides Severity 1 assistance 24 hours a day, every day of the year. Consult the IBM Support Guide for additional details on response criteria and call handling process by severity at https://www.ibm.com/support/pages/ibm-support-guide

Assistance is provided only to Client's technical support personnel within Client's enterprise and not to Client's end users. IBM does not warrant uninterrupted or error-free operation of an IBM Product or Service or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access.

2. Software Support Extension Support Levels

2.1 **Usage Support Only -** IBM will provide remote assistance for how-to, usage, configuration and product documentation questions for the Eligible Machines and supported products. This Service does not include preventive service, or the creation of patches, bypasses or fixes or the development of any software, including those designed to address security.

2.2 **Defect Support Only -** IBM will provide remote assistance for new and known defects for the supported products as follows:

a. provide assistance with questions regarding product documentation related to the supported products;
b. review diagnostic information to assist in the isolation of a problem cause (which would include, assistance interpreting traces and dumps for installation problems);
c. provide technical assistance to address **known defects** for which available corrective service information and program fixes are available under the IBM Program license for the supported product. For the avoidance of doubt, Defect Support does not include: (1) preventive service, or (2) the creation of patches, bypasses, or fixes, or the development of any new software, including those that are designed to address security; and
d. if it is determined that the supported product contains defects such that it does not conform to program specifications when properly used in the supported operating system environment for which the program was designed, IBM will use commercially reasonable efforts to provide a corrective restriction, bypass, or fix package, which may require prerequisite or co-requisite fix packages. Any fix is provided at the then-current maintenance level on the release for the supported product. For the avoidance of doubt, IBM will not always be able to provide a corrective restriction, bypass, update, patch, or fix for a security issue. For example, IBM may determine at its sole discretion that a resolution is not feasible due to size, complexity, or risk factors associated with code implementation and dependent architectural modifications.

2.3 **Usage and Known Defect Support -** IBM will provide assistance for routine, short-duration installation and usage (how-to) questions and code related questions. IBM will also assist on supported product known defects for which corrective service information and fixes are available. For the avoidance of doubt, this Service does not include: (1) preventive service, and (2) the creation of patches, bypasses, or fixes, or the development of any new software, including those that are designed to address security.

2.4 **New Defect Support** - If the supported Product contains a defect such that it does not conform to Program specifications when properly used in the supported operating system environment for which the Program was designed. IBM will use commercially reasonable efforts to provide a corrective restriction, bypass, update, patch, or fix, that may require prerequisite or co-requisite fix packages. A fix, if any, is provided at the then-current maintenance level for the supported Product. For the avoidance of doubt, IBM will not always be able to provide a corrective restriction, bypass, update, patch, or fix for a security issue. For example, IBM may determine at its sole discretion that a resolution is not feasible due to size, complexity, or risk factors associated with code implementation and dependent architectural modifications.

3. Client Responsibilities

Client agrees to:

a. ensure that any access codes IBM provides are used only by Client's authorized personnel;
b. install the latest available corrective service level, if requested;
c. not apply any fixes obtained from non-IBM sources;
d. maintain IBM Software Maintenance, IBM Passport Advantage, or an equivalent agreement for Programs covered by Software Support Extension; and
e. provide IBM with all relevant diagnostic information (including product or system information) that pertains to the software problem management record.

In addition to the above Client Responsibilities, for Support levels that include Defect Support, Client agrees to:

a. perform a regression test before accepting any fix, to verify its integrity within Client's System z environment; and
b. apply all fixes supplied by IBM that pass regression testing to update software to assist with problem resolution. If the fix package does not pass Client's regression test, IBM will use commercially reasonable efforts to re-work the problem.

4. Termination

IBM may withdraw this Service upon 90 days' written notice. Client may terminate the Service upon one month's written notice, after the Service has been in effect for at least two months for each of the Eligible Machines and supported Products or Programs. Client will receive a credit for any remaining prepaid period associated with the terminated Service. This Service does not automatically renew.

This Statement of Work, its applicable Transaction Documents, applicable Attachments, and the Client Relationship Agreement (CRA), IBM Customer Agreement (ICA), or equivalent in effect between us are the complete agreement regarding Services and replace any prior oral or written communications between us. Accordingly, neither party is relying upon any representation that is not specified in the complete agreement including, without limitation, any representations concerning 1) levels of service, hours, or charges to provide any Service; 2) the experiences of other clients; or 3) results or savings Client may achieve. Each party accepts the terms of this Statement of Work by signing this Statement of Work by hand or, where recognized by law, electronically.

IBM Support Insights

IBM will provide Support Insights through a cloud-based portal (Portal) to help Client plan preventive maintenance for Eligible Products. Client can access detailed information, preventive support insights, and reports about Client's inventory under active IBM warranty or maintenance. Analytics for the Portal use IBM proprietary data, publicly available data, approved third-party data, and Client data that can be optionally provided to IBM by using i) IBM Technical Support Appliance (available under license and separate terms), ii) third-party supplied data collectors, iii) IBM connectors for third-party monitoring solutions, iv) Red Hat Ansible (available under license and separate terms), or v) manual template input (csv or excel spreadsheet). The reporting and preventive maintenance capabilities in the Portal may be limited by the Client data provided. Client authorizes IBM to use provided Client data for IBM's internal purposes. The Portal can be accessed free of charge after registration at http://ibm.biz/support-insights . Some elements may have an additional charge as specified in the following section.

1. IBM Support Insights Delivery Metrics

IBM Support Insights Delivery Metrics component will provide key performance indicators and set of metrics to enhance control over Client's IT infrastructure management, which provide a look into Client's IT support experience.

Standard Delivery Metrics is included with the base IBM Support Insight. Client may upgrade to Premium Delivery Metrics or Custom Delivery Metrics under this Statement of Work for an additional charge, as specified on the Schedule.

a. **Premium Delivery Metrics view** grants Client access to a deeper understanding of support trends with additional key performance indicators (KPIs) and historical data. More details about the KPIs can be found on https://supportinsights.ibm.com/ under the Help Documentation section.

b. **Custom Delivery Metrics view** provides customized data visualizations and insights not covered by the Standard Delivery Metrics and Premium Delivery Metrics, including custom reports tailored with custom metrics and views that are important for Client and which enable data-driven decision making. The parties will agree on the metrics and views and the data required to provide those metrics and views.

2. Termination and Withdrawal

IBM may withdraw the Service upon 90 days' written notice to Client. A prorated credit will apply for any prepaid Service not provided.

Client may terminate the Service on written notice to IBM, at any time of the contract term.

This Statement of Work, its applicable Transaction Documents, applicable Attachments, and the Agreement in effect between us are the complete agreement regarding Services and replace any prior oral or written communications between us. Accordingly, neither party is relying upon any representation that is not specified in the complete agreement including, without limitation, any representations concerning 1) levels of service, hours, or charges to provide any Service; 2) the experiences of other clients; or 3) results or savings Client may achieve. Each party accepts the terms of this Statement of Work by signing this Statement of Work by hand or, where recognized by law, electronically.

Media Retention

1. Scope of Work

Media Retention allows Client to retain defective magnetic tape, CD, DVD, USB, storage flash memory cards, solid state drives, hard disk drives, optical media cartridges, and other media as mutually agreed to by the parties (collectively, Media) replaced in the course of IBM Services. If the reported problem requires the replacement of such Media, a replacement will be supplied by IBM and the removed defective Media will be provided to Client. The Products covered under Media Retention must also be covered under IBM warranty, IBM maintenance Service, or equivalent IBM Service.

2. Client Responsibilities

Client agrees to:

a. identify a Client representative to receive the retained defective Media from IBM at the time of replacement. If a Client representative is not available to receive Media at the time of replacement, IBM will retain the replaced Media as IBM property;
b. refrain from placing the defective drive into productive use;
c. dispose of all retained hard drives in compliance with applicable environmental laws and regulations;
d. not transfer faulty Media between non-Eligible and Eligible Machines; and
e. notify IBM of any Machine configuration changes.

This Statement of Work, its applicable Transaction Documents, applicable Attachments, and the Agreement in effect between us are the complete agreement regarding Services and replace any prior oral or written communications between us. Accordingly, neither party is relying upon any representation that is not specified in the complete agreement including, without limitation, any representations concerning 1) levels of service, hours, or charges to provide any Service; 2) the experiences of other clients; or 3) results or savings Client may achieve. Client accepts the terms of this Transaction Document by 1) ordering, paying for, or using the Service referenced herein, or 2) signing it (or another document that incorporates it by reference) by hand or electronically where recognized by law, if signature is required by either party.`

Global Total Microcode Support (GTMS) SOW

1. Scope of Work

IBM provides Global Total Microcode Support (GTMS or Services) for Microcode (the supported microcode, firmware, and Basic Input Output System (BIOS) levels (not including any beta versions) for which Client has a license for the Eligible Products and their internal disks and adapters) specified in the Schedule. GTMS may include Analysis Services and Update Services, as further described below and documented in the Schedule. The type and frequency of the Services, service levels, charges, contract period, covered products, and locations for onsite Services are defined in the related Schedule for each contract year. Additional products added after the start date are listed in a separate schedule.

As a mandatory prerequisite for the Services, each of the Eligible Products for which GTMS will be provided must be (i) fully operable upon the commencement of the Services, (ii) on a supported Microcode and software level, and (iii) covered by an IBM maintenance Service or equivalent IBM Service or under IBM warranty during the entire SOW term. Systems running IBM i, and Storage Area Network (SAN)/Storage products where IBM software maintenance is available, must also be covered by an IBM software maintenance agreement. In addition, supported System i, System p and Power Systems Microcode Support Eligible Products must be configured in a way that IBM Data Collection Tool can connect to them and retrieve Microcode information. The Services as described, when delivered on storage products, require the installation and configuration of the IBM Data Collection Tool for the entire SOW term.

Withdrawn products are not eligible for this Service. IBM may at any time modify the current list of supported Products for which GTMS is available. Upon request, IBM will provide the current list of supported Products for which Microcode Support is available.

1.1 Global Total Microcode Support – Analysis

IBM will provide Analysis Services for the number of instances set forth in the Schedule.

IBM will verify whether the recorded Microcode levels of the inventoried Eligible Products are up-to-date, considering any dependencies on the operating system and driver levels. Any dependencies between connected Eligible Products will also be verified for Products that have been included in the inventory for the Services. For dependencies related to products not covered by this Service, support will be limited to informing Client about the possibility of interoperability problems relating to the Microcode to be used. Verification of the dependencies within a SAN (ensemble of communication paths, products and programs that enable the interconnectivity between data storage devices and associated data servers) will be completed only if GTMS has been purchased for the connected SAN components.

For storage products that include software instead of Microcode, IBM will verify the recorded software levels of the inventoried eligible storage products are up to date, considering any dependencies on the operating system and driver levels. Any dependencies between connected Eligible Products will also be verified for Products included in the inventory for the Services. For dependencies related to products not covered by Services, Services will be limited to informing Client about the possibility of interoperability problems relating to the Microcode or software to be used. Verification of the dependencies within a SAN will be completed only if GTMS has been purchased for the connected SAN components.

IBM will provide Client with a support plan specifying detailed information about whether the Microcode levels for the respective Eligible Products are up-to-date, including recommendations for an upgrade, and the recommended upgrade levels, if necessary. In case the Microcode upgrade recommendations require upgrades of device drivers, the resulting recommendations of device driver updates will also be provided. Client remains responsible for decisions regarding the use of updates or their application.

1.2 Global Total Microcode Support – Update Services

IBM will provide Update Services for the number of instances set forth in the Schedule.

If specified for Update Services in the Schedule, in addition to the Services specified in the “Microcode Support – Analysis” section above, IBM will implement updates of the Microcode and software levels at the Specified Locations. Client will inform IBM which updates indicated in the support plan are to be implemented. Client remains responsible for implementing the updates for the device drivers and the operating system.

Client will specify whether updates will be performed at Client’s location or, if possible, performed remotely for specific storage products during warranty and or post warranty as listed at https://www-01.ibm.com/support/docview.wss?uid=ibm10737923 (RCL).

System firmware updates will be performed by IBM based on the Firmware Update Policy setting in ASMI (Advanced System Management Interface). If the server has a Hardware Management Console (HMC) attached, the firmware update / upgrade can only be performed from the HMC, otherwise the default source for installing firmware updates is the operating system (PTF / RPM). Several System i PTFs may be combined in groups or packages. The installation of these packages helps enable the reduction of system failures and/or the addition of functionalities. Additionally, the Group HIPER PTF’s (High Impact Pervasive PTFs that help to reduce or eliminate errors that may have a heavy impact on the system's functionality) for updating the different hardware components of any relevant IBM i partitions will also be installed.

Client remains responsible for implementing the installation of Cumulative System i PTF Packages (program fixes for a specific release of the i5/OS operating system and the related licensed programs).

By providing an update of the Microcode level on an Eligible Product, IBM does not provide any additional warranty concerning the Eligible Product, its Microcode, or its performance.

1.3 Services Coordination

IBM will designate a Technical Relationship Manager (TRM), IBM's contact person to coordinate with Client for the provision of the Services and coordinates the implementation of the Services within IBM, who will:

a. work with Client to establish an inventory of the Microcode levels installed on the Eligible Products. The initial inventory will be performed on-site at Client's Specified Locations as indicated in the Schedule, by Client or IBM as mutually agreed to;

b. install the IBM Data Collection Tool on Client's designated server as described in IBM Tools. The TRM will work with Client to document the:
   1) Operating system levels,
   2) Microcode and driver levels,
   3) Software levels for storage products, and
   4) HBAs (host bus adapters), provided that these Services have been agreed upon for the connected Eligible Products.

c. If Remote Code Load (RCL) is selected, the TRM will work with Client to:
   1) set a time and date for the software update,
   2) collect the information for the personnel who are to be involved in the update,
   3) get the S/N of the system to be updated, and
   4) schedule an RCL with the RCL Team responsible for the update.

2. Client's Responsibilities

Client agrees to:

a. name a technical contact to be available as Client's Point of Contact with respect to the coordination of the Services, to include coordinating the time schedule for pending actions with the IBM TRM and ensure Client's observance of the agreed schedule;

b. provide access to Client's Specified Locations as mutually agreed to by the parties;

c. provide the IBM TRM with all necessary information requested about the system configuration and provide an outline of its SAN topology upon request;

d. ensure that IBM will have access to the Eligible Products for querying the required system data, or, if deemed possible by the IBM TRM, ensure that Client provides the required system data identified by IBM. Client hereby approves the use of IBM Tools enabling IBM to query the Microcode levels or the required data;

e. remain solely responsible for security of the network, and responsible for any data and the content of any database Client makes available to IBM in connection with the Services, the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data, and backup and recovery of the database and any stored data;

f. notify the IBM TRM of changes to the Eligible Products in a reasonable timeframe, and of updates to the Microcode, drivers or operating system, that are not documented in the support plan. IBM will update the support plan accordingly. If the Update Service has been selected for Eligible Products at a Specified Location, Client agrees to provide IBM with the necessary access to enable IBM to perform updates simultaneously on several Eligible Products at one location, to reduce waiting times;

g. for Update Services, provide IBM with direct access to the related Eligible Products and make the preparations agreed to with the IBM TRM, such as shutting down the related Eligible Products and issuing the necessary authorizations;

h. comply with the accepted license terms for the Microcode;

i. comply with the accepted license terms for software where applicable (e.g., storage products);

j. pay communication charges related to GTMS that may be incurred at Client's Specified Locations, as applicable;

k. obtain recommendations and updates for Microcode of non-IBM products not covered by GTMS directly from the respective manufacturers, under the manufacturer's terms;

l. perform adequate backup and verification of all data stored on the Eligible Products prior to starting the implementation of any updates, and maintain a current complete backup of Client's system, in Client's environment, at all times. IBM is not responsible for loss of, or damage to, data as a result of IBM's performance of Services described within the scope of this SOW;

m. be responsible for scheduling updates to minimize interruptions to system performance;

n. provide IBM access to a server with the required minimum configuration as defined by IBM for the duration of this SOW. This server does not need to be dedicated to IBM Data Collection Tool;

o. be responsible to provide the user ID and password during the installation phase and maintain the user ID and password configuration on the Data Collection Tool for the duration of this SOW;

p. remove, per IBM's instructions, the IBM Data Collection Tool (Microcode Data Collector or equivalent) when this SOW is terminated for any reason;

q. identify the system on which the IBM Data Collection Tool will be installed;

r. permit IBM to use the IBM Tools as described in Section 3 to perform the Services; and

s. in case of RCL, ensure the following prerequisites are in place:
   (a) the system to be upgraded must be free of errors;
   (b) any failed hardware components must be replaced prior to the upgrade;
   (c) Call Home and one of the following need to be configured: Assist on-site (AOS) or Remote Support Center or Secure Remote Access (SRA) (Remote support can be enabled indefinitely or on a per session basis).

3. IBM Tools

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 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. Unless licensed in writing by IBM, Client has no right to access, retain, copy, reverse engineer or reverse compile, or use the IBM Tools and no Client license or intellectual property right is granted or implied by the use of the IBM Tools used in connection with performance of the Services. IBM Tools are subject to the terms associated with them. IBM Tools are not warranted. Upon completion of the Service, Client agrees to cease use of, uninstall and remove the IBM Tools from Client's Eligible Machines and facilities or permit IBM to do so.

IBM Data Collection Tool: a specific IBM Tool that resides on Client's system to capture and periodically transmit to IBM the inventory and configuration of Eligible Products and includes **Microcode Data Collector (MDC)**. IBM may change IBM Data Collection Tools at IBM's discretion by providing Client 30 days' notice of such change.

4. Termination and Withdrawal

IBM may withdraw GTMS upon three months' written notice. If IBM withdraws a Service, Client will receive a credit for prepaid Services not delivered. If Client terminates this prepaid GTMS Service during the term, no credit will be issued. Client may not terminate Analysis Services separately if Client has selected Analysis Services with Update Services.

5. Service Level Codes (SLC)

SLC	Description

Where described in the Order Form the abbreviations have the following meanings:

ST1	1 Analysis per Year (except GCG)
ST2	2 Analyses per Year (except GCG)
ST3	1 Analysis / on site data collection per Year (GCG only)
ST4	2 Analyses / on site data collection per Year (GCG only)
ST5	1 Analysis and on-site Update per Year (except GCG only)
ST6	2 Analyses and on-site Update per Year (except GSG only)
ST7	1 Analysis / on site data collection and update per Year (GCG only)
ST8	2 Analyses / on site data collection and update per Year (GCG only)
STC	1 Analysis and Remote Code Load per Year
STD	2 Analyses and Remote Code Load per Year

This 1) Statement of Work, 2) the Technical Services Attachment for TSS Offerings (Attachment), 3) applicable Transaction Documents, and 4) the agreement specified herein (Agreement) comprise the complete agreement regarding the Services and replace any prior oral or written communications between Client and IBM. Accordingly, neither party is relying upon any representation that is not specified in the complete agreement including, without limitation, any representations concerning 1) levels of service, hours, or charges to provide any Service; 2) the experiences of other clients; or 3) results or savings Client may achieve.

Each party accepts the terms of this SOW by signing this SOW (or another document that incorporates it by reference) by hand or, where recognized by law, electronically.

Managed Maintenance Solution for Cisco Products

1. Scope of Service

For the Cisco Products specified in the Schedule (**Covered Cisco Products**), IBM will provide Managed Maintenance Solution for Cisco hardware and software (collectively **Cisco Products**) consistent with Client's selected Service level specified in the Schedule (the **Service**). In addition, for Cisco machine code installed on Covered Cisco Machines, IBM will support each Major Release and version of the Cisco software for the contracted period or until the announced Cisco End of Software Maintenance date. For purposes of this Statement of Work (SOW), **Software** means the supported releases of those Cisco operating system (OS) software programs (for example, internetworking OS, catalyst OS, and NX-OS) which are installed on the eligible Machines and for which Client maintains a current valid paid license) and Cisco Application Software. **Application Software** means non-resident or standalone Software Products accessed on the Cisco cloud that include but are not limited to Cisco Systems® Network management Software, security Software, IP telephony Software, Internet appliance Software, Cisco® Intelligent Contact Management Software, IP Contact Center Software, and Cisco Customer Interaction Suite Software.

IBM is delivering IBM MMS for Cisco Products, a collaborative Service for Cisco equipment, which includes IBM MMS service deliverables and Cisco services components. IBM is providing support for Client's Covered Cisco Products as a Cisco Global Gold and Global Service Alliance Partner. IBM Services are contingent upon Client having current licenses in effect as applicable for the Covered Cisco Products. IBM is not a party to any terms in place between Cisco and Client, including the terms of any End User License Agreement (EULA). IBM Services must be performed in compliance with the Client's license agreement with Cisco.

IBM may engage Cisco for manufacturer's support to resolve Client's hardware/software problems. If Client wants to contact Cisco as the original product manufacturer, Client must contact IBM and IBM will arrange a three-way conversation with Client, Cisco, and IBM. Under all circumstances, IBM remains responsible for coordinating the call, resolving any issues that Client may have and otherwise providing support to Client. IBM requires up to 30 days to implement support on all Covered Cisco Products Client adds to the Schedule or relocates. However, IBM will make a commercially reasonable effort to provide support to Client sooner if Client has a specific Service request.

The Schedule will identify the Covered Cisco Products by Specified Location, Service support level, and period for which Client has contracted this Service. Eligible Cisco Products will not be automatically added to Client's covered inventory and this Service will not automatically renew. Client requests to add or continue Service for eligible Cisco Products will be accomplished by issuance of a new Schedule that will document the Covered Products for that schedule, new contract period, and the charges that apply for that Schedule.

The list of eligible Cisco Software will change periodically to reflect additions of new programs or deletions of programs or program releases at their end-of-life date as determined by Cisco and posted at their product web site. For support of Covered Cisco Software, IBM will determine if a patch exists for a reported problem and if so, IBM will assist Client in obtaining the applicable patch which would be downloaded by Client directly from the Cisco site, provided Client has a valid license. Client will have access via Client's Cisco.com account, for online technical and general information.

IBM will:

a. perform initial problem determination remotely via the IBM Remote Support Center (RSC) for Covered Cisco Products;
b. for on-site Service levels, dispatch a Service technician if, at IBM's sole determination, on-site support is required for a hardware problem;
c. for Advance Replacement Service levels, engage Cisco whenever IBM determines that a failed hardware component or chassis requires that Cisco ships a replacement to Client, for installation by Client;
d. assist in providing work-around solutions to reported software problems, or work with Cisco to implement a patch to newly reported problems;
e. unless specified otherwise, provide Client with access to available software updates on supported Software and, if Client has paid for a Feature Set Upgrade license with support, updates for such Feature Set Upgrade, when the updates are available and Client requests them from IBM. Software updates and any supporting documentation will be made available from the Cisco.com Software Center at https://software.cisco.com/download/home/268438303 authorize Client for access to the IBM RSC which is available 24 hours per day, seven days per week for all Service support levels. The IBM RSC will assist Client with Client's Covered Cisco Products use, configuration, and troubleshooting issues; and
f. arrange Client access to Cisco.com and electronic access to Cisco Connection Online (CCO). CCO provides Client with technical and general information on eligible Cisco Products, access to Cisco's online Software library, and solutions to known Software problems.

For Covered Cisco Software:

a. With SAS support, IBM will provide the following for Client's Covered Cisco Software:
    1. support for basic, short duration installation, usage and configuration questions;
    2. information regarding publications;
    3. support for code related problem questions;
    4. review of diagnostic information to assist in isolation of a problem cause;
    5. access for Client to obtain fixes for known problems and corrective service information that Client is entitled to receive under the terms of the applicable Covered Cisco Software license;

6. work-around solutions or patches to reported problems using commercially reasonable efforts. IBM will determine if a patch exists for a reported problem and if so, IBM will assist Client in obtaining the applicable patch which may be downloaded from Cisco.com or sent to Client on media such as CDROM;
7. Minor Releases and Maintenance Releases but not including Major Releases. These will be provided via Cisco.com or CDROM (one copy including supporting documentation) provided Client has a valid license and current support coverage; and
8. access to Cisco.com for on-line technical and general information.

Resolution of problems caused by Third-Party Products is the responsibility of the Third-Party Products vendors. For such problems, Client must contact the applicable Third-Party Products vendors directly and work with them to resolve the problems.

b. With SASU support, IBM will provide the following for Client's Covered Cisco Software:
   1. all of the support identified under SAS above; and
   2. Major Releases. These will be provided via Cisco.com or CDROM (one copy including supporting documentation) provided Client has a valid license and current support coverage.

This IBM Service does not cover:

a. planning, design, installation and managed services, including configuration and customization of hardware, software, network and security infrastructures;
b. furnishing of any hardware and/or memory upgrade required to run new or updated software, accessories and supply items, and replacing expendable parts (such as cables, power cords, and rack mounting kits);
c. service of features, parts, devices, or software not supplied by either Cisco or IBM;
d. service of hardware damaged by misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by Client;
e. service of hardware used other than as specified in applicable Cisco-supplied documentation;
f. service of hardware with removed or altered machine or parts identification labels;
g. failures caused by a product for which IBM is not responsible;
h. service of hardware alterations;
i. electrical or site work external to the hardware;
j. service of hardware that is installed outdoors or that is installed indoors but requires special equipment to perform such service (e.g., hoist, harness, ladder in excess of eight feet);
k. pre-assembly of FRUs shipped to Client under an Advance Replacement Service level;
l. Advance Replacement Service at any unmanned site where Client's representative is unavailable to receive the FRU; or
m. major software upgrades, projector screens, ceiling lights, lighting structures, backlighting, furniture (tables), structure assemblies, accessory kits, non-standard or Client-supplied components such as microphones, displays, normal wear and tear and the standard burn-in and light bulbs for video conferencing products.

In addition to the above, for Covered Cisco Software this Service does not cover:

a. on-site support;
b. performing installation or customization of Covered Cisco Software or updates/releases;
c. providing support (including updates/releases) for programs that are not within the same operating platform, licensing capacity (e.g. single user, multi-user), or software family as originally acquired;
d. support or replacement of Covered Cisco Software that have been altered, modified, mishandled, destroyed or damaged by unauthorized use, failure by Client to take any required actions, misuse or use other than as specified in the applicable Cisco supplied documentation, or an act or omission of a third-party;
e. hardware repairs or the provision of any hardware or Third-Party Products (including upgrades) required to support an update of a Covered Cisco Software. **Third-Party Products** mean third-party hardware and software products, and all upgrades thereto, that are required for: i) the operation of Covered Cisco Software in conformance with the applicable Covered Cisco Software documentation; and ii) IBM's support of the Covered Cisco Software under this Service;
f. support to resolve Covered Cisco Software problems resulting from Third-Party Products, causes beyond IBM's control, or Client's failure to perform Client responsibilities under this SOW; and
g. support of Third-Party Products.

1.1 Response Criteria

IBM will use commercially reasonable efforts to respond, by telephone or electronically, to Service requests from Client within 1 hour during normal business hours. IBM's initial response may result in resolution of Client's request or it will form the basis for determining what additional actions may be required to achieve technical resolution of Client's request. Outside normal business hours, IBM will use commercially reasonable efforts to respond within 1 hour to telephone Service requests which Client specifies to be Severity 1 or Severity 2 problems. All other Service requests (telephone and electronic) occurring outside normal business hours will be handled the next business day. IBM is not responsible for delays in electronic response delivery caused by systems and network problems.
Severity definitions are available at https://www.ibm.com/support/pages/node/739151

1.2 Service Support Levels

The applicable Service level for each Covered Cisco Product, will be identified in the Schedule. If Client requests an upgrade to the Service support level for a Covered Cisco Product during the contract period, Client agrees to provide IBM 90 days prior

written notice. Charges will be adjusted to reflect the change in Service support level. For clarity, downgrades to the Service support level for each Covered Cisco Product are not permitted during the contract period. IBM will use commercially reasonable efforts to provide Client with the Service support level Client selected. Some elements of the Service are subject to geographic and weight restrictions depending upon Client's location.

Advance Replacement Services mean the shipment of replacement FRU(s) in advance of receipt of failed/defective FRU(s). FRU (Field Replacement Unit) is any component or sub assembly of an item or unit of hardware that can reasonably be replaced at Client's location. FRU(s) may also be subject to size and weight limitations. FRUs will be shipped using Cisco preferred carriers, freight prepaid by Cisco. If Client would like to use the services of an alternative carrier then this will be at Client's expense. Cisco will provide Client with Advance Replacement(s) that are either new or equivalent to new. Advance Replacement and on-site Services are not available for certain consumables (for example, cables, power cords and mounting hardware). For Advance Replacements to arrive on the NBD, IBM's determination of hardware failure has to be made before 3:00 p.m. local time. If Client makes a request after 3:00 p.m. local time, IBM will ship the Advance Replacement the second business day.

Chassis and line card Advance Replacement Service must be at the same level of coverage.

For Covered Cisco Software, IBM will provide:

a. **Software Application Support (SAS)** - the voice and electronic support for all Covered Cisco Software including Maintenance Releases and Minor Releases.
b. **Software Application Support plus Upgrades (SASU)** - SAS support plus Major Releases for all Covered Cisco Software.
c. **Maintenance Release -** an incremental release of Software that provides one or more maintenance fixes and may provide additional Software features. Maintenance Releases are designated by Cisco as a change in the digit(s) to the right of the tenths digit of the version number {x.x.(x)}.
d. **Major Release** - an incremental release of Software that provides additional Software features and is designated by Cisco as a change in the ones digit of the version number {(x).x.x}.
e. **Minor Release** - an incremental release of Software that provides maintenance fixes and additional Software features. Minor releases are designated by Cisco as a change in the tenths digit of the version number {x.(x).x}.

Client must maintain Client's entire Application Software implementation for configurable Application Software currently in use under the same Service option for IBM to provide Services for any portion of Client's Application Software implementation.

2. Client's Responsibilities

Client agrees to:

a. contact IBM for all Service requests on Covered Products;
b. follow all Cisco and IBM provided guidelines (such as operators manuals, call placement procedures and product documentation) pertaining to use of Covered Cisco Products, operator responsibilities, maintenance and support procedures, and supplies prior to placing a Service request;
c. provide a severity level, per the definitions above, for all Service requests placed;
d. provide IBM with information that it requests which is related to the provision of this Service (including, without limitation, name of the user, location and address of site where the Covered Cisco Software is installed, program name, program version information, and number of server and Client licenses) and notify IBM of any changes;
e. ensure that any access codes that Cisco or IBM provides to Client are used only by Client's authorized personnel and only as authorized under this Service;
f. provide current shipment contact information (as necessary);
g. use the information obtained under this Service and the electronic diagnostic and service delivery facilities provided to Client only in support of Covered Cisco Products within Client's enterprise;
h. when requested, provide a list, including annual updates, of all Client's personnel authorized to use this Service;
i. for Advance Replacement Service levels, perform all on-site activities to remove and replace a failed component or chassis for which a replacement has been sent to Client by Cisco to resolve a reported hardware problem. In addition, Client agrees to repackage the failed component or chassis in the same container the advance exchange replacement arrived in, carefully following the enclosed Cisco return material authorization packaging instructions. Client will be responsible to pay the then current list price, for any failed part that is not returned to Cisco (or in transit to Cisco with proof of return shipment on file) within ten calendar days from the delivery of the replacement to Client's Specified Location;
j. provide IBM with one month's written notice for moves or additions of Covered Products. Client also agrees to notify IBM of any modification to the covered hardware configuration, including upgrades or changes to FRUs not in the original hardware configuration, within 30 days of such modification;
k. when requested, provide a list of all Client's personnel that Client have authorized to use IBM and Cisco resources (e.g. RSC, CCO, Cisco.com) under this Service; and
l. when it is determined a display screen weighing over 39 pounds (17,69 kg) needs to be replaced, provide a tool such as a pallet jack, hand cart or fork lift and operate the tool to move the replacement display from Client's loading dock or shipping area to the installation location. Once the display has been replaced, move the defective display from the installation location to the loading dock or shipping area.

For On-site Services, Client agrees to:

a. provide an appropriate work environment and reasonable access including working space with heat, light, ventilation, electric current and outlets, and local telephone extension in proximity to the hardware for the use of Service personnel;

b. back-up software images and configurations on a regular basis and provide those images and configurations to Service personnel in connection with remedial hardware maintenance;
c. ensure all hardware is installed below ten feet. For hardware installed above four feet, provide ladders that reach the height of the hardware;
d. provide Internet access as required for the purpose of providing the Service; and
e. provide safety and security protection for Service personnel when they must work at Client's unmanned sites.

For Covered Cisco Software, Client agrees to:
a. ensure Client is properly licensed to all Covered Cisco Software for which Client places Service requests;
b. upgrade to the most current eligible software level which contains corrective code to correct a reported Software problem or if needed to assist with problem determination;
c. acknowledge that for certain eligible Cisco Software configurations and/or licenses that are based on a per seat or per user license or other specific license or use terms, Client will be required to have the entire configuration including but not limited to all seats and/or users supported. This Service is conditional upon Client validating to IBM that such configurations and/or seats or users are under support;
d. verify any in-transit damage to Cisco Covered Software media supplied under this Service;
e. upgrade to the most current Covered Cisco Software level which contains corrective code to correct a reported software problem or if needed to assist with problem determination; and
f. upgrade to the latest Third-Party Software release if required to correct a reported Covered Cisco Software problem or if advised that such is needed to assist with problem determination.

3. Withdrawal and Termination

IBM may withdraw the Service upon 90 days' written notice. In such event, a prorated credit for unused prepaid Services will be provided. The section "Renewal and Termination" of the referenced Attachment does not apply to this Service. Client may not terminate this Service for out of productive use or convenience.

4. 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.

5. IBM Tools

IBM may use tools, owned or licensed by IBM, in the performance of the Service (IBM Tools). IBM continuously develops and utilizes new IBM Tools and capabilities for the purpose of providing remote and on-site problem determination and resolution support to IBM Clients. Some IBM Tools (e.g., an application (App)), are used by on site technicians to capture and store images of the Machine and transmit the images to a remote IBM Subject Matter Expert with a goal of faster and more cost effective repair and one-visit resolution of complex issues. The images may also be modified and/or used for training and to improve maintenance services. Unless licensed in writing by IBM, Client has no right to access, retain, copy, or use the IBM Tools and no Client license or intellectual property right is granted or implied by the use of the IBM Tools used in connection with performance of the Services. IBM Tools are subject to the terms associated with them. IBM Tools are not warranted. If applicable, upon completion of the Service Client agrees to cease use of, uninstall and remove the IBM Tools from Client's eligible Machines and facilities.

This Statement of Work, its applicable Transaction Documents, applicable Attachments, and the Agreement in effect between us comprise the complete agreement regarding the Services described and replace any prior oral or written communications between Client and IBM. Each party accepts the terms of this Statement of Work by signing this Statement of Work by hand or, where recognized by law, electronically.

Statement of Work

IBM Support for Microsoft Products

IBM Support for Microsoft Products is remote assistance with the operation of supported products and system environments (the Service).

1. Scope of Service

IBM will provide remote assistance via telephone from IBM's support center, or by using an electronic search and question capability, for requests pertaining to the following:

For all Eligible Microsoft Products in Client's covered support groups —

a. basic, short duration installation, usage, and configuration questions; and
b. questions regarding IBM Supported Product publications.

For Eligible Microsoft Products, IBM will assist with isolating the problem cause and provide recovery information, if available from Microsoft. If a new (unknown) defect is identified, IBM will report it to Microsoft and notify Client of the report. IBM support is limited to providing updates made generally available by Microsoft. Any updates provided by IBM will be via electronic download only. Resolution of defects is the responsibility of Microsoft.

IBM adheres to the Microsoft Lifecycle Policy for all Microsoft Products. IBM is not responsible for any extended support agreements Client may purchase directly from Microsoft, including those for product security patching outside of the published lifecycle. Eligible Products for this Service are identified at https://www-03.ibm.com/services/supline/products/MsSup.html**.** Refer to the Integrated Microsoft offering for Eligible Products.

2. IBM Responsibilities

The Priority Support Team (PST) is the group of skilled Integrated Support specialists responsible for tasks in the following Integrated Services Modules. IBM will assign a named member of the PST as Client's Microsoft Technical Solution Manager (MTSM). Members of the PST also assist the MTSM with the provision of all aspects of Integrated Support.

2.1 Priority Response

Response Time is the elapsed time between IBM technical support's receipt of Client's problem submission and IBM's acknowledgment of the submission. The PST uses reasonable efforts to respond within the Targeted Response Time Objectives, based on the Severity of the problem and the time that Client reports the problem. IBM's initial response may resolve the problem or form the basis for determining if additional actions are required. Response Times are objectives only. IBM is not responsible for delays caused by systems and network problems.

Basic Service Level Objectives

a. For Eligible Products, Service Level Objective for Severity 1 calls is within 2 hours during 24x7.
b. For Severity 2, 3 or 4 calls, IBM will use commercially reasonable efforts to respond within 2 hours during local business hours.

Severity Levels are defined in the IBM Support Guide: https://www.ibm.com/support/pages/node/739151

2.2 Priority Handling

IBM performs initial problem determination, problem source identification, and direct resolution, if possible. If additional resources are required for resolution, IBM will, based on the identified source and severity of the problem:

- For Severity 1 Eligible Program problems:
  - engage the appropriate support resources, and coordinate and manage the contributions of those resources;
  - monitor the progress of Client problem submissions; and
  - provide regular status updates.
- For all non-Severity 1 problems:
  - route the reported problem to the appropriate resources to assume ownership and provide support per the terms/conditions of their support contracts, and provide an escalation path as needed. Coverage is limited to those products which are still on Microsoft's active Lifecycle (link below). For those which have been withdrawn, IBM will use commercially reasonable efforts to assist Client in resolving the problem for known defects.

    Microsoft Active Lifecyle product listing: https://docs.microsoft.com/en-us/lifecycle/products/

2.3 Integrated Support

The MTSM and PST will, during normal business hours (from 8:00 a.m. to 5:00 p.m. in the local time zone where Client receives the Service, Monday through Friday, excluding holidays), perform Integrated Support activities to assist Client to manage the supported IT environment, and establish and maintain a framework for technical communications and activity reporting.

IBM will:

a. remotely conduct the initial Welcome Call and provide information related to Integrated support;

b. provide Client's Primary Technical Contact (PTC) with a detailed questionnaire to be completed and returned to the MTSM, to enable the MTSM to create and deliver the Technical Support Plan (TSP) to the PTC within 30 days of the Welcome Call. The TSP will:
   1) summarize the Integrated Support Service;
   2) document and maintain the inventory listing of Eligible Products;
   3) document the Client's operational and maintenance processes, current support structure, critical applications, critical outage scenarios, and environment; and
   4) as applicable, provide details and schedule initial setup of the Integrated Support tools.
c. update the TSP as needed, but at least annually;
d. if applicable, verify that remote support electronic connections to the environment are functioning, and that the IBM Tools are available for use as documented in the TSP; and
e. create a quarterly Integrated Support review package, including quarterly reports as an option. The reports cover the support cases over the previous three months.

3. Client Responsibilities

Client agrees to:

a. submit all requests to IBM Support by calling the Support number for a specific country listed at https://www.ibm.com/planetwide/ or electronically at http://www.ibm.com/support/ ;
b. identify and maintain a local Designated Point of Contact, to whom IBM may direct general technical information and questions;
c. ensure Client is properly licensed to all software Eligible Products for which Client requests the Service;
d. have a valid subscription agreement in place with the Vendor for the Eligible Products;
e. retrieve and review a current Supported Products List on a regular basis to verify whether there have been any additions or deletions within Client's covered Support Groups;
f. ensure that any access codes whenever provided to Client by IBM are used only by Client's authorized personnel;
g. provide IBM with all relevant and available diagnostic information (including product or system information) pertaining to software problems for which Client requests assistance;
h. provide IBM with appropriate remote access to Client's system to assist Client in isolating the problem cause. Client will remain responsible for adequately protecting Client's system and all data contained therein whenever IBM remotely accesses it with Client's permission;
i. be responsible for the installation of microcode, firmware, and fixes which IBM recommends to Client;
j. use the information obtained under this Service only for the support of the information processing requirements within Client's Enterprise; and
k. provide IBM with written notice of changes to Client's machine inventory and or processing capacity, within one month after the change occurs. Such changes may cause a revision to Client's charges for the Service.

4. Optional Services

Client may optionally select the following services:

4.1 Quarterly Reports

Client will own the copyright in Project Materials that IBM develops for Client under this Statement of Work (SOW). Project Materials exclude works of authorship delivered to Client, but not created, under the SOW, and any modifications or enhancements of such works made under the SOW (Existing Works). 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. IBM retains an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works of Project Materials.

IBM will deliver, in addition to and within the Technical Support Plan (TSP) activities, a Service Activity Report summarizing service activity related to reported problems, including proactive recommendations.

4.2 SLO Upgrade – Advanced

Upgraded Service Level Objective of 30 minutes for all Severities 1 or 2, and 1 hour for Severities 3 or 4, 24x7.

5. 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.

This Statement of Work, its applicable Transaction Documents, applicable Attachments, and the Agreement in effect between us are the complete agreement regarding Services and replace any prior oral or written communications between us. Accordingly, neither party is relying upon any representation that is not specified in the complete agreement including, without limitation, any representations concerning 1) levels of service, hours, or charges to provide any Service; 2) the experiences of other clients; or 3) results or savings Client may achieve. Client accepts the terms of this Transaction Document by 1) ordering, paying for, or using the Service referenced herein, or 2) signing it (or another document that incorporates it by reference) by hand or electronically where recognized by law, if signature is required by either party.

Attachment 3: Software Portfolio for System Z, Passport Advantage, & Saas, Software

Software Portfolio

International Passport Advantage Agreement & Attachments for Monthly Licenses, Cloud Offerings, & Appliances

US State, Local, and Education (SLED) Attachment for Subscription Licenses

International Program License Agreement

International Agreement for the Acquisition of Software Maintenance

Current Inventory

IBM Software Portfolio – Hybrid Cloud Software

The complete IBM Software Portfolio can be found at www.ibm.com/software or at www.ibm.com/industries/sled-contracts/ibm-product-pricing.

IBM's hybrid cloud software offerings are uniquely designed to help you modernize, predict, automate and secure your government by unlocking the intelligence of AI and the agility of hybrid cloud. IBM software can be deployed on premise, SaaS, or in the Cloud.

IBM software solutions are available in the following areas:

Analytics
Blockchain
Business operations
Cloud
Cybersecurity
Data storage
IT Infrastructure

Analytics software solutions include a wide array of products in the following categories:

- Advanced analytics
- Analytics Business solutions
- Analytics for Industry
- Cloud data services
- Data management platform
- Data integration and governance
- Data fabric
- Enterprise content management
- Insight cloud services
- Internet of Things solutions
- Open-source analytics

Cognitive software solutions include products in the following categories:

- Watson Analytics
- Watson Assistant
- Watson Developer cloud
- Watson Engagement Advisor
- Watson Studio

Security software solutions include products in the following areas:

- Advanced fraud protection
- Application Security
- Cloud Security
- Data security and protection
- Identity and access management
- Mainframe security
- Mobile security
- Network protection
- Security intelligence and analytics

Business Solutions software product categories:

- Asset management
- Customer analytics
- Digital experience
- eCommerce and merchandising
- Engineering
- Financial performance management
- Marketing management
- Procurement
- Risk management
- Sales performance management
- Talent management

Mobile & Social

- Collaborative applications
- Mobile application development and MBaaS
- Mobile engagement
- Mobile security & management
- Social networks and collaboration



IT Infrastructure software categories:

- Application platform
- Connectivity and integration
- Dev/Sec/Ops
- Digital experience
- Intelligent business process management
- IoT application platform
- IT Service Management
- Storage solutions

International Passport Advantage Agreement

Under this Agreement, Client may order Eligible Products (EPs) from IBM. Details regarding EPs are provided in Attachments, and Transaction Documents (TDs) such as Terms of Use, Service Descriptions, quotes, and Proofs of Entitlement (PoEs). This Agreement, Attachments, and applicable TDs are the complete agreement regarding transactions by which Client acquires EPs. Client Originating Company (also identified as the Originating Site in the Passport Advantage Enrollment Form) and the IBM Originating Company that accepts the Client Originating Company's orders agree to coordinate the administration of this Agreement within their respective Enterprises, which includes the set of legal entities that, by more than 50%, owns, are owned by, or are under common ownership with the Originating Company. The Client Originating Company is responsible for compliance with the terms for all Client sites assigned a Passport Advantage Site Number (Site(s)) under this Agreement. In the event of conflict, an Attachment prevails over this Agreement and a TD prevails over both the Agreement and any Attachment.

1. General

1.1 Acceptance of Terms

The Client Originating Company and thereafter each of its participating Enterprise companies accept this Agreement by submitting an IBM International Passport Advantage Enrollment Form to IBM or Client's chosen reseller(s). This Agreement is effective on the date IBM accepts the initial order under this Agreement (the Effective Date) and remains in effect until the Client Originating Company or the IBM Originating Company terminates it under this Agreement.

An EP is subject to this Agreement when IBM accepts Client's order by i) sending an invoice or a PoE including the level of authorized use, ii) making the Program or Cloud Service available, iii) shipping the Appliance, or iv) providing the support, service, or solution.

1.2 Changes to Agreement Terms

Because this Agreement may apply to many future orders, IBM reserves the right to modify it by providing Client at least three months' written notice. Changes are not retroactive; they apply, as of the effective date, only to new orders and renewals. Client accepts changes by placing new orders after the change effective date or allowing transactions to renew after receipt of the change notice. Except as otherwise provided in this Agreement, all changes must be in writing, signed by both parties.

1.3 Payment and Taxes

Client agrees to pay all applicable charges specified by IBM, charges for use in excess of authorizations, and any late payment fees. Charges are exclusive of any customs or other duty, tax, and similar levies imposed by any authority resulting from Client's acquisitions under the Agreement and will be invoiced in addition to such charges. Amounts are due upon receipt of the invoice and payable within 30 days of the invoice date to an account specified by IBM. Prepaid services must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid.

If, as a result of Client moving, accessing, or using an EP across a border, any authority imposes a customs duty, tax, levy or fee (including withholding taxes for the import or export of any such EP), then Client agrees that it is responsible for, and will pay, any such customs duty, tax, levy or fee. This excludes those taxes based on IBM's net income.

Client agrees to: i) pay withholding tax directly to the appropriate government entity where required by law; ii) furnish a tax certificate evidencing such payment to IBM; iii) pay IBM only the net proceeds after tax; and iv) fully cooperate with IBM in seeking a waiver or reduction of such taxes and promptly complete and file all relevant documents.

1.4 IBM Business Partners and Resellers

IBM Business Partners and resellers are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings.

1.5 Liability and Indemnity

IBM's entire liability for all claims related to this Agreement will not exceed any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the product or service that is the subject of the claim, regardless of the basis of

the claim. IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings. These limitations apply collectively to IBM, its affiliates, contractors, subprocessors, and suppliers.

The following amounts, if a party is legally liable for them, are not subject to the above cap: i) third party payments referred to in the paragraph below; and ii) damages that cannot be limited under applicable law.

If a third party asserts a claim against Client that an IBM EP acquired under this Agreement infringes a patent or copyright, IBM will defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM, provided that Client promptly (i) notifies IBM in writing of the claim, (ii) supplies information requested by IBM, and (iii) allows IBM to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.

IBM has no responsibility for claims based, in whole or part, on Non-IBM EPs, items not provided by IBM, or any violation of law or third party rights caused by Content, materials, designs, specifications, or 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. Each Non-IBM Program is governed by the terms of the third party end user license agreement that accompanies it. IBM is not a party to the third party end user license agreement and assumes no obligations under it.

1.6 General Principles

Parties will not disclose confidential information without a separate, signed confidentiality agreement. If confidential information is exchanged, the confidentiality agreement is incorporated into, and subject to, this Agreement.

IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any responsibility for Client's business or operations. Each party determines the assignment of its personnel and contractors, their direction, control, and compensation.

Content consists of all data, software, and information that Client or its authorized users provide, authorize access to, or inputs to an EP. Use of such EP will not affect Client's existing ownership or license rights in such Content. IBM and its contractors and subprocessors may access and use the Content solely for the purpose of providing and managing the EP, unless otherwise described in a TD.

Client is responsible for obtaining all necessary rights and permissions to enable, and grants such rights and permissions to, IBM and its contractors and subprocessors to use, provide, store, and process Content in any EP. This includes Client providing required information, making necessary disclosures and obtaining consent, if required, before providing individuals' information, including personal or other regulated information in such Content. If any Content could be subject to governmental regulation or may require security measures beyond those specified by IBM for an offering, Client will not input, provide, or allow such Content unless IBM has first agreed in writing to implement additional required security measures. IBM's Data Processing Addendum at https://www.ibm.com/terms applies and supplements the Agreement, if and to the extent the European General Data Protection Regulation (EU/2016/679) applies to Content.

Client is responsible for arranging for and paying applicable charges to their selected suppliers of telecommunications, including internet connectivity associated with accessing Cloud Services, Appliance Services, IBM Software Subscription and Support, and Select Support, unless IBM specifies otherwise in writing.

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.

IBM may use personnel and resources in locations worldwide, including third party contractors and subprocessors to support the delivery of EPs. IBM may transfer Content, including personally identifiable information, across country borders. A list of countries where Content may be processed for a Cloud Service is available at http://www.ibm.com/cloud/datacenters or as described in a TD. IBM is responsible for the obligations under the Agreement even if IBM uses third party contractors or subprocessors unless otherwise set forth in a TD. IBM will require subprocessors with access to Content to maintain technical

and organizational security measures that will enable IBM to meet its obligations for a Cloud Service. A current list of subprocessors and their roles will be provided upon request.

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other. EPs are for use within Client's Enterprise only, and may not be assigned, resold, rented, leased, or transferred to third parties. Any attempt to do so is void. Lease-back financing of Appliances is permitted. Assignment of IBM rights to receive payments and by IBM in conjunction with the sale of the portion of IBM's business that includes the product or service is not restricted.

To the extent permissible under applicable law, the parties consent to use electronic means and facsimile transmissions for communications as a signed writing. Any reproduction of this Agreement made by reliable means is considered an original. This Agreement supersedes any course of dealing, discussions or representations between the parties.

No right or cause of action for any third party is created by this Agreement or any transaction under it. Neither party will bring a legal action arising out of or related to this Agreement more than two years after the cause of action arose. Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control. Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations. Where approval, acceptance, consent, access, cooperation or similar action by either party is required, such action will not be unreasonably delayed or withheld.

1.7 Governing Laws and Geographic Scope

Each party is responsible for complying with: i) laws and regulations applicable to its business and Content, and ii) import, export and economic sanction laws and regulations, including the defense trade control regime of any jurisdiction, including the International Traffic in Arms Regulations and those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. Client is responsible for its use of EPs.

Both parties agree to the application of the laws of the country where the transaction is performed (or for services, the laws of the country of Client's business address) to this Agreement, without regard to conflict of law principles. The rights and obligations of each party are valid only in the country where the transaction is performed or, if IBM agrees, the country where the product is placed in productive use, except all licenses are valid as specifically granted. If Client or any user exports or imports Content or makes use of any portion of an EP outside the country of Client's business address, IBM will not serve as the exporter or importer. If any provision of this Agreement 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.

1.8 Agreement Termination

The Client Originating Company may terminate this Agreement without cause on one month's notice to the IBM Originating Company, and the IBM Originating Company may terminate this Agreement on three months' notice to the Client Originating Company. Once terminated, no further EPs may be acquired by any participating Client Site under the Agreement.

If Client acquired or renewed IBM Software Subscription and Support, Selected Support, or Cloud Services, or if Client acquired or renewed a Program's license prior to the notice of termination, IBM may either continue to provide such services or allow Client to use the Program for the remainder of the current term(s), or give Client a prorated refund.

The Client Originating Company will be considered to have terminated this Agreement if neither it nor any of its participating Enterprise companies have placed orders for EPs for 24 consecutive months nor have Software Subscription and Support or Selected Support in effect.

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

Client agrees to promptly discontinue use of and destroy all of Client's copies of a Program upon termination of a license grant.

Any terms that by their nature extend beyond termination remain in effect until fulfilled, and apply to respective successors and assignees.

1.9 Eligible Products

IBM determines EPs, and assigns each EP a point value, which may be zero. IBM can add or withdraw EPs (including in CEO Product Categories), change an EP's SVPs, point values, or add or withdraw a license metric for an EP at any time. EPs may not be used to provide commercial hosting or other commercial information technology services to third parties.

For an EP, IBM may withdraw a Fixed Term License, Monthly License (ML), IBM Software Subscription and Support, or Selected Support, or a Cloud Service or an Appliance Service in its entirety, on 12 months' written notice to all then current Clients by published announcement, letter, or e-mail. Client understands that as of the effective date of such withdrawal, Client may not increase its level of use beyond the authorizations already acquired without IBM's written consent, renew or purchase that offering; and if Client renewed the offering prior to the notice of withdrawal, IBM may either (a) continue to provide that offering until the end of the then current term or (b) provide a prorated refund.

1.10 Renewal

The term for a Fixed Term License, Token License, IBM Software Subscription and Support, Selected Support or Appliance Services automatically renews at then current charges, unless Client provides written notice of termination prior to expiration of the term.

IBM may pro-rate charges for IBM Software Subscription and Support, Selected Support, Fixed Term Licenses of six months or more, and Appliance Services to align with Client's Passport Advantage Agreement Anniversary.

To reinstate any expired Software Subscription and Support coverage, Selected Support, a Fixed Term License or Appliance Services, Client may not renew and must acquire Software Subscription and Support Reinstatement, Selected Support Reinstatement, Appliance Services Reinstatement or a new initial Fixed Term License.

For an ML, Client selects a renewal option at the time of order. At each renewal of an ML Commitment Term, IBM may change the charges applicable to the renewed Commitment Term and Client agrees to pay then-current charges as specified in a TD or in a renewal quote made available to Client no less than 60 days prior to the expiration of the then current term. Client may change their selected renewal option for a Commitment Term by giving IBM notice in writing no less than 30 days before the end of that Commitment Term.

For a Cloud Service, Client selects a renewal option at the time of order.

1.11 Relationship Suggested Volume Price (RSVP) Level and Suggested Volume Pricing (SVP)

An RSVP level is determined by aggregating points for all EPs ordered during Client's Term (described below). 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. An SVP level is also calculated for each order, and is based on the point value for that order. If the SVP level for a particular order is higher than Client's current RSVP level, the SVP level will apply to that order.

The initial 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 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 Term (the Anniversary), the next 12-month Term begins. For each Term after the initial Term, Client's RSVP Level is reset on the Anniversary, based on EPs acquired by all participating Client Sites during the prior Term. The RSVP Level for a new Term will not be lowered by more than one level below Client's RSVP level at the end of the prior 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

1.12 Compliance Verification

Client agrees to create, retain, and provide to IBM and its auditors accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that Client's use of all EPs is in compliance with this Agreement including the licensing and pricing qualification terms

referenced in this Agreement (Passport Advantage Terms). Client is responsible for 1) ensuring that it does not exceed its authorized use, and 2) remaining in compliance with Passport Advantage Terms.

Upon reasonable notice, IBM may verify Client's compliance with Passport Advantage Terms at all Sites and for all environments in which Client uses (for any purpose) EPs subject to Passport Advantage Terms. Such 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 may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

Client agrees that, upon written notice from IBM and the independent auditor, any confidential information provided to the independent auditor or to IBM through the independent auditor, as reasonably required for compliance verification, shall be provided, and Client consents to the exchange of such information, pursuant to the terms of the IBM Agreement for the Exchange of Confidential Information (AECI) or such other general confidentiality agreement in place between Client and IBM, unless Client and the independent auditor agree, in writing, to the use of an alternate confidentiality agreement within 60 days of a request for verification information.

IBM will notify Client in writing if any such verification indicates that Client has used any EPs in excess of its authorized use or is otherwise not in compliance with Passport Advantage Terms. Client agrees to promptly pay directly to IBM the charges that IBM specifies in an invoice for 1) any such excess use, 2) IBM Software Subscription and Support and Selected Support for such excess use for the lesser of the duration of such excess use or two years, and 3) any additional charges and other liabilities determined as a result of such verification.

1.13 Programs in a Virtualization Environment (Sub-Capacity Licensing Terms)

EPs that meet the operating system, processor technology, and virtualization environment requirements for Sub-Capacity usage may be licensed under Sub-Capacity Licensing terms (an Eligible Sub-Capacity Product); see https://www.ibm.com/software/passportadvantage/subcaplicensing.html. Product deployments that cannot meet Sub-Capacity Licensing requirements must be licensed using Full Capacity terms.

PVU-based licenses for Eligible Sub-Capacity Products must be acquired for the total number of Processor Value Units (PVUs) associated with the virtualization capacity available to the Eligible Sub-Capacity Product as measured at https://www.ibm.com/software/howtobuy/passportadvantage/valueunitcalculator/vucalc.wss.

Prior to an increase in an Eligible Sub-Capacity Product's virtualization capacity, Client must first acquire sufficient licenses, including IBM Software Subscription and Support, if applicable, to cover that increase.

If at any time IBM becomes aware of circumstances indicating that Client is not operating all or a portion of Client's environment in accordance with applicable Sub-Capacity Licensing requirements, IBM may declare Client's Enterprise, or any applicable portion of Client's Enterprise, ineligible for Sub-Capacity Licensing and will provide Client with notice of any such determination. Client shall have 30 days to provide IBM information sufficient for IBM to determine that Client is in full compliance with the applicable Sub-Capacity Licensing requirements, in which case IBM shall withdraw its determination of ineligibility. Otherwise, Client agrees to acquire sufficient additional licenses and IBM Software Subscription and Support entitlements necessary for full capacity usage within the identified Client environment at then current prices.

1.14 Client's Reporting Responsibilities

For Sub-Capacity usage of EPs, Client agrees to install and configure the most current version of IBM's license metric tool (ILMT) within 90 days of Client's first Sub-Capacity-based Eligible Sub-Capacity Product deployment, to promptly install any updates to ILMT that are made available, and to collect deployment data for each such EP. Exceptions to this requirement are i) when ILMT does not yet provide support for the Eligible Virtualization Environment or Eligible Sub-Capacity Product, ii) if Client's Enterprise has fewer than 1,000 employees and contractors, Client is not a Service Provider (an entity that provides information technology services for end user customers, either directly or through a reseller), and Client has not contracted with a Service Provider to manage Client's environment in which EPs are deployed, and the total physical capacity of Client's Enterprise servers measured on a full capacity basis, but licensed under Sub-Capacity Licensing terms, is less than 1,000 PVUs, or iii) when Client's servers are licensed to full capacity.

For all instances where ILMT is not used, and for all non PVU-based licenses, Client is required to manually manage and track Client's licenses as described in the Compliance Verification section above.

For all PVU-based EP licenses, reports must contain the information in the example Audit Report available at https://www.ibm.com/software/lotus/passportadvantage/subcaplicensing.html. Reports (generated by ILMT or manual if Client meets manual reporting exemptions) must be prepared at least once per quarter and retained for a period of not less than 2 years. Failure to generate Reports or provide Reports to IBM will cause charging under full capacity for the total number of physical processor cores activated and available for use on the server.

Client will promptly install new versions, releases, modifications, or code corrections ("fixes") of the ILMT that IBM makes available. Client will subscribe to the IBM Support notifications via https://www.ibm.com/support/mynotifications in order to be notified when such fixes become available.

Client will not alter, modify, omit, delete, or misrepresent by any means, directly or indirectly, i) the ILMT audit records, ii) the ILMT Program, or iii) Audit Reports that Client submits to IBM or to an independent auditor. The foregoing does not apply to changes, modifications or updates to ILMT expressly provided by IBM, including through notifications.

Client will assign a person in Client's organization with authority to manage and promptly resolve questions on Audit Reports or inconsistencies between report contents, license entitlement, or ILMT configuration; and promptly place an order with IBM or Client's IBM reseller if reports reflect EP use over Client's authorized level. IBM Software Subscription and Support and Selected Support coverage will be charged as of the date Client exceeded Client's authorized level.

2. Warranties

Unless IBM specifies otherwise, the following warranties apply only in the country of acquisition.

The warranty for an IBM Program is stated in its license agreement.

IBM warrants it provides IBM Software Subscription and Support, Selected Support, Cloud Services, and Appliance Services using commercially reasonable care and skill as described in this Agreement, Attachment, and TD. These warranties end when such support or service ends.

IBM warrants that an IBM Machine Component of an Appliance used in its specified operating environment conforms to its official published specifications. The warranty period for an IBM Machine Component of an Appliance is a fixed period commencing on its date of installation (also called "Warranty Start Date") specified in a TD. If an IBM Machine Component of an Appliance does not function as warranted during the warranty period and IBM is unable to either i) make it do so, or ii) replace it with one that is at least functionally equivalent, Client may return it to the party from whom Client acquired it for a refund.

IBM does not warrant uninterrupted or error-free operation of an EP or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access to an EP. These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose. IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, failure to comply with instructions provided by IBM, or if otherwise stated in an Attachment or TD. Unless otherwise specified in an Attachment or TD, IBM offers Non-IBM EPs without warranties of any kind. Third parties provide services and licensed products directly to Client under their own agreements. Third parties may provide their own warranties to Client. IBM will identify IBM EPs it does not warrant.

3. Programs and IBM Software Subscription and Support

IBM Programs acquired under this Agreement are subject to IBM's International Program License Agreement (IPLA), including License Information (LI) documents.

A Program may include the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, 3) audio-visual content (such as images, text, recordings, or pictures), 4) related licensed materials, and 5) license use documents or keys, and documentation.

With the exception of certain Programs that IBM designates as platform or operating system specific, Client may use and install Programs in any commercially available national language for any platform or operating system available from IBM up to the level of Client's authorizations.

To acquire additional authorizations to use Programs under this Agreement, Client must have already acquired the Program code.

3.1 Money-back Guarantee

The IPLA's "money-back guarantee" only applies the first time Client licenses the IBM Program under this Agreement or any other valid agreement. If an IBM Program license is for an initial fixed term subject to renewal or for an initial Commitment Term, Client may obtain a refund only if Client returns the Program and its PoE within the first 30 days of such initial term. The IPLA's "money-back guarantee" does not apply to Appliances or Cloud Services.

3.2 Conflict between this Agreement and the IPLA

If there is a conflict between the terms of this Agreement, including its Attachments and TDs, and those of the IPLA, including its LI, the terms of this Agreement prevail. The IPLA and its LIs are available on the Internet at https://www.ibm.com/software/sla.

3.3 IBM Trade-ups and Competitive Trade-ups

Licenses for certain Programs that replace qualifying IBM Programs or qualifying Non-IBM Programs may be acquired for a reduced charge. Client agrees to terminate Client's use of the replaced Programs when Client installs the replacement Programs.

3.4 Monthly Licenses

Monthly License Programs (ML Programs) are IBM Programs provided to Client for a monthly license charge. Monthly Licenses have a term that begins on the date that Client's order is accepted by IBM and continues for a period Client commits to pay IBM (a Commitment Term) as specified in the TD.Client may terminate a current Commitment Term before its end date by giving at least 30 days' written notice to IBM and will receive a prorated refund for any whole months of remaining prepaid term.

3.5 Fixed Term Licenses

Fixed Term Licenses have a term that begins on the date that Client's order is accepted by IBM; on the calendar day following the expiration of a prior Fixed Term; or on the Anniversary date. A Fixed Term License is for the definite time period specified by IBM in a TD. Client may terminate a current Fixed Term License before its end date by giving at least 30 days' written notice to IBM and will receive a prorated refund for any whole months of remaining prepaid term.

3.6 Token Licenses

EPs which are Eligible Token Products or ETPs are assigned a Token Value. As long as the total Tokens required for all ETPs used concurrently does not exceed the number of Tokens authorized in Client's PoE(s), Client may use Token(s) for a single ETP or for a combination of ETPs.

Prior to exceeding current Token authorizations or using an Eligible Token Product not authorized, Client must acquire sufficient additional Tokens and authorizations.

ETPs may contain a disabling device that will prevent them from being used after the end of the Fixed Term. Client agrees not to tamper with this disabling device and take precautions to avoid any loss of data.

3.7 CEO (Complete Enterprise Option) Product Categories

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 (primary) 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. For each additional (secondary) CEO Product Category, Client must meet the applicable minimum initial order quantity requirement but is not required to 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.

Any installs of any component of a CEO Product Category can only be made and used by or for users for whom licenses have been obtained. All client-side 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.

3.8 IBM Software Subscription and Support

IBM provides IBM Software Subscription and Support with each IBM Program licensed under the IPLA.

IBM Software Subscription and Support begins on the date of IBM Program acquisition and ends on the last day of the corresponding month in the following year, unless the date of acquisition is the first day of the month, in which case coverage ends on the last day of the month, 12 months from acquisition.

While IBM Software Subscription and Support is in effect, IBM makes available defect corrections, restrictions, bypasses, and any new versions, releases, or updates IBM makes generally available. Once IBM Software Subscription and Support has been allowed to lapse, these benefits will no longer be available to Client if they had been made available while IBM Software Subscription and Support was in effect and Client chose not to exercise that right.

While IBM Software Subscription and Support is in effect, IBM provides Client assistance for Client's i) routine, short duration installation and usage (how-to) questions; and ii) code-related questions (together "Support"). Consult the IBM Software Support Handbook for details at https://www.ibm.com/software/support/handbook.html. Support for a particular version or release of an IBM Program is available only until IBM withdraws Support for that IBM Program's version or release. When Support is withdrawn, 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 https://www.ibm.com/software/support/lifecycle.

For selected Program versions or releases, as listed in the IBM Software Support Handbook, after Support has been withdrawn for such versions or releases and while Client has current Software Subscription and Support coverage in effect for such Programs, IBM will provide support for Client's i) routine, short duration installation and usage (how-to) questions; and ii) code-related questions. However, in such cases, IBM will only provide existing code patches and fixes and will not develop or provide new patches or fixes for those versions or releases.

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

If Client requests to renew expiring IBM Software Subscription and Support at a lesser quantity of IBM Program uses and installations than the expiring quantity, Client must provide a report that verifies current IBM Program usage and installation, and may be required to provide other compliance verification information.

Client shall not use IBM Software Subscription and Support benefits for IBM Programs for which Client has not fully paid for IBM Software Subscription and Support. If Client does, Client must acquire IBM Software Subscription and Support Reinstatement sufficient to cover all such unauthorized use at then current IBM prices.

3.9 Selected Support

Selected Support may be available for (i) Non-IBM Programs, or for (ii) Programs licensed under the IBM License Agreement for Non-Warranted Programs (together "Selected Programs").

The IBM Software Subscription and Support section above applies to Selected Programs under Selected Support except that 1) IBM may provide Client with assistance in designing and developing applications based on Client's subscription level; 2) the IBM "Software Support Lifecycle" policy does not apply; and 3) no new versions, releases or updates are provided by IBM.

IBM does not provide licenses under this Agreement for Selected Programs.

4. Appliances

An Appliance is an EP which is any combination of Program Components, Machine Components (MCs) and any applicable Machine Code Components offered together as a single offering and designed for a particular function. Unless otherwise provided, terms that apply to a Program apply to the Program Component of an Appliance. Client shall not use an Appliance component independently of the Appliance of which it is a part

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.

For each Appliance, IBM bears the risk of loss or damage up to the time it is delivered to the IBM-designated carrier for shipment to Client or Client's designated location. Thereafter, Client assumes the risk. Each Appliance will be covered by insurance, arranged and paid for by IBM for Client, covering the period until it is delivered to Client or Client's designated location. For any loss or damage, Client must i) report the loss or damage in writing to IBM within 10 business days of delivery, and ii) follow the claim procedure.

When Client acquires an Appliance directly from IBM, IBM transfers title to a MC 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. For an upgrade acquired for an Appliance, IBM reserves transfer of title of the MC until IBM receives payment of all the amounts due and receives all removed parts, which then become IBM's property.

If IBM is responsible for installation, Client will allow installation within 30 calendar days of shipment or additional charges may apply. Client will promptly install or allow IBM to install mandatory engineering changes. Client installs a Client-set-up Appliance according to instructions provided with it.

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 as stated in its specifications. Client acceptance of this Agreement 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 Machine Code Component is copyrighted and licensed (not sold).

4.1 IBM Appliance Services

IBM provides Appliance Services for Appliances consisting of Machine maintenance and IBM Software Subscription and Support as a single offering as further described in the Appliance Support Handbook at https://www.ibm.com/software/support/handbook.html.

One year of Appliance Services, starting on the Warranty Start Date specified in a TD, is included with the purchase of an Appliance. Thereafter, automatic renewal terms apply. All renewals will be fulfilled with Appliance Services offered at the same level of service, if available, that Client was entitled to during that first year. Parts removed or exchanged for upgrade, warranty service, or maintenance are IBM property and must be returned to IBM within 30 calendar days. A replacement takes on the warranty or maintenance status of the replaced part. When 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.

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.

5. Cloud Services

Cloud Services are EPs provided by IBM and made available via a network. Cloud Services are not Programs but may require Client to download enabling software to use a Cloud Service as specified in a TD.

Client may access and use a Cloud Service only to the extent of authorizations acquired by Client. Client is responsible for use of Cloud Services by any party who accesses the Cloud Service with Client's account credentials. A Cloud Service may not be used in any jurisdiction for unlawful, obscene, offensive, or fraudulent Content or activity, such as advocating or causing harm, interfering with, or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive, or deceptive messages, viruses or harmful code, or violating third party rights. If there is a complaint or notice of violation, use may be suspended until resolved, and terminated if not resolved promptly.

Additional terms, including data protection terms, for Cloud Services are provided in the General Terms for Cloud Offerings Terms of Use. Each Cloud Service is described in a TD. Terms of Use and Service Descriptions can be viewed at https://www-03.ibm.com/software/sla/sladb.nsf/sla/saas/. Cloud Services are designed to be available 24/7, subject to maintenance. Client will be notified of scheduled maintenance. Technical support and service level commitments, if applicable, are specified in a TD.

IBM will provide the facilities, personnel, equipment, software, other resources necessary to provide the Cloud Services, and generally available user guides and documentation to support Client's use of the Cloud Service. Client will provide hardware, software, and connectivity to access and use the Cloud Service, including any required Client-specific URL addresses and associated certificates. A TD may have additional Client responsibilities.

A Cloud Service subscription period begins on the date that IBM notifies Client that Client has access and ends on the date specified in the TD. During a Cloud Service subscription period, Client may increase Client's subscribed level, but may only decrease the subscribed level at the end of a subscription period when renewing.

Country Required Terms (CRTs)

AMERICAS

Payment and Taxes

Add after the first sentence of the first paragraph:

Peru:

If Client does not pay such charges, Client will automatically incur in delay and the amount due will produce interests since the day in which the debt should have been cancelled, until the day in which it is fully paid, both days included, with the highest rate of interest authorized by the Banco Central de Reserva del Perú and published by the Superintendencia de Banca, Seguros y AFP used in this kind of transactions, considering for this purpose both the compensating interests as well as the late fees. If these interest rates were changed, the highest authorized for each term of the delay will be charged. The interests will be required jointly with the capital and any partial payment should be regulated by the imputation laws contained in the Peruvian Civil Code, specially its article 1257.

Add at the end of the first paragraph:

United States and Canada:

Where taxes are based upon the location(s) receiving the benefit of a 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 TD.

Liability and Indemnity

Insert the following disclaimer at the end of this section:

Peru:

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

Governing Laws and Geographic Scope

Replace the phrase, "the country where the transaction is performed (or for services, the laws of the country of Client's business address)" with:

Argentina:

the Republic of Argentina.

Brazil:

the Federative Republic of Brazil

Canada:

the Province of Ontario

Chile:

Chile

Colombia:

the Republic of Colombia

Ecuador:

the Republic of Ecuador

Peru:

Peru

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

the State of New York, United States

Uruguay:

Uruguay

Venezuela:

Venezuela

Add the following at the end of the second paragraph:

Argentina:

Any proceeding regarding the rights, duties, and obligations arising from this Agreement will be brought in the Ordinary Commercial Court of the City of "Ciudad Autónoma de Buenos Aires".

Brazil:

All disputes arising out of or related to this Agreement, including summary proceedings, will be brought before and subject to the exclusive jurisdiction of the court of São Paulo, SP, Brazil.

Chile:

Any conflict, interpretation or breach related to this Agreement that can not be solved by the Parties should be remitted to the jurisdiction of the Ordinary Courts of the city and district of Santiago.

Colombia:

All rights, duties and obligations are subject to the judges of the Republic of Colombia.

Ecuador:

Any dispute arising out or relating to this Agreement will be submitted to the civil judges of Quito and to the verbal summary proceeding.

Peru:

Any discrepancy that may arise between the parties in the execution, interpretation or compliance of this Agreement that may not be directly resolved shall be submitted to the Jurisdiction and Competence of the Judges and Tribunals of the 'Cercado de Lima' Judicial District.

Uruguay:

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

Venezuela:

The parties agree to submit any conflict related to this Agreement, existing between them to the Courts of the Metropolitan Area of the City of Caracas.

General Principles

Add after the fourth paragraph the following new paragraph:

Argentina, Chile, Colombia, Ecuador, Peru, Uruguay, Venezuela:

If Client provides, or authorizes others to provide, personal data in any Content, Client represents that it is either the data controller or that, prior to providing any such personal data from, or extending the benefit of the EPs to, any other data controller, Client has been instructed by or obtained the consent of the relevant data controllers. Client appoints IBM as a data processor to process such personal data. Client will not use an EP in conjunction with personal data to the extent that doing so would violate applicable data protection laws.

Delete the second sentence of the ninth paragraph:

Argentina, Chile, Colombia, Ecuador, Peru, Uruguay, Venezuela:

"Any reproduction of this Agreement made by reliable means is considered an original."

Delete the second sentence of the last paragraph ("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.") and replace it with the following sentence:

Brazil:

Neither party will bring a legal action arising out of or related to this Agreement beyond the time limitations established in Articles 205 and 206 of the Brazilian Civil Code, Law n. 10.406 of January 10, 2002.

Canada:

In Province of Quebec, add the following paragraph:

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

ASIA PACIFIC

Payment and Taxes

In the last paragraph, remove the word "and" before "(iv)", and at the end of the sentence, add:

India:

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

Liability and Indemnity

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

Australia:

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

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

Philippines:

(including nominal and exemplary damages), moral,

Add as a new paragraph at the end of the first paragraph:

Australia:

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

Governing Laws and Geographic Scope

In the first sentence of the second paragraph, replace the phrase, "the country where the transaction is performed (or for services, the laws of the country of Client's business address)" with:

Cambodia, Laos:

the State of New York, United States

Australia:

the State or Territory in which the transaction is performed

Hong Kong:

Hong Kong S.A.R. of the PRC

Korea:

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

Macau:

Macau S.A.R. of the PRC

Taiwan:

Taiwan

In the second sentence of the second paragraph, replace the phrase "the country where the transaction is performed or, if IBM agrees, the country where the product is placed in productive use" with:

Hong Kong:

Hong Kong S.A. R. of the PRC

Macau:

Macau S.A.R. of the PRC

Taiwan:

Taiwan

Add as a new paragraph:

Cambodia, Laos, Philippines, and Vietnam:

Disputes will be finally settled by arbitration in Singapore under the Arbitration Rules of the Singapore International Arbitration Center ("SIAC Rules").

India:

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

Indonesia:

Disputes will be finally settled by arbitration in Jakarta, Indonesia, under the rules of the Board of the Indonesian National Board of Arbitration (Badan Arbitrase Nasional Indonesia or "BANI").

Malaysia:

Disputes will be finally settled by arbitration in Kuala Lumpur, under the Arbitration Rules of the Kuala Lumpur Regional Centre for Arbitration ("KLRCA Rules").

People's Republic of China:

Either party has the right to submit the dispute to the China International Economic and Trade Arbitration Commission in Beijing, the PRC, for arbitration.

Agreement Termination

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

Indonesia:

Both parties waive in this regard, the provisions of article 1266 of the Indonesian Civil Code to the extent it requires a court decree for the termination of an agreement creating mutual obligations.

General Principles

In the fourth paragraph, insert into the first sentence after "store";

India:

, transfer,

In the second sentence of the last paragraph, replace "two" with the following:

India:

three

Add as a new paragraph:

Indonesia:

This Agreement is made in the English and Indonesian languages. To the extent permitted by the prevailing law, the English language translation of this Agreement will prevail in the case of any inconsistencies or differences of interpretation with the Indonesian language translation.

EMEA

Add the following new paragraphs after the opening paragraph:

Italy:

Pursuant to the art. 1341 and 1342 of Italian Civil Code, Client expressly accepts the following articles of this Agreement: General – Acceptance of Terms; Changes to Agreement Terms; Payment and Taxes; IBM Business Partners and Resellers; Liability and Indemnity; General Principles; Governing Laws and Geographic Scope; Agreement Termination; Eligible Products; Renewal; Relationship Suggested Volume Price (RSVP) Level and Suggested Volume Pricing (SVP); Compliance Verification; Programs in a Virtualization Environment (Sub-Capacity Licensing Terms); and Client's Reporting Responsibilities; Warranties; Programs and IBM Software Subscription and Support – Money-back Guarantees; Conflict between this Agreement and the IPLA; IBM Trade-ups and Competitive Trade-ups; Monthly Licenses; Fixed Term Licenses; Token Licenses; CEO (Complete Enterprise Option) Product Categories; IBM Software Subscription and Support; and Selected Support; Appliances; and Cloud Services.

Czech Republic:

Client expressly accepts the terms of this agreement which include the following important commercial terms: (i) limitation and disclaimer of liability for defects (Warranties), (ii) IBM's right to verify Client's usage data and other information affecting the calculation of charges (Compliance Verification), (iii) limitation of Client's entitlement to damages (Liability and Indemnity), (iv) binding nature of export and import regulations (Governing Laws and Geographic Scope), (v) shorter limitation periods (General), (vii) exclusion of applicability of provisions on adhesion contracts (General), (vii) acceptance of the risk of a change of circumstances (General), and (viii) exclusion of rules permitting the execution of a contract in cases where the parties fail to reach full consensus (General).

Romania:

The Client expressly accepts the following standard clauses that may be deemed 'unusual clauses' as per the provisions of article 1203 Romanian Civil Code: clauses 1.3, 1.5, 1.7 and 1.8. The Client hereby acknowledges that it was sufficiently informed of all the provisions of this Agreement, including the clauses mentioned above, it properly analyzed and understood such provisions and had the opportunity to negotiate the terms of each clause.

Payment and Taxes

Add the following to the end of the first sentence of the first paragraph:

France:

that are equal to the most recent European Central Bank rate plus 10 points, in addition to debt collection costs of forty (40) euros or, if these costs exceed forty euros, complementary indemnification subject to justification of the amount claimed).

Italy:

that are due based on IBM's notice to Client.

Ukraine:

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

Replace the third sentence of the first paragraph with the following:

France:

Amounts are due and payable within 10 days of the invoice date to an account specified by IBM.

Add the following to the end of the last sentence of the first paragraph:

Lithuania:

, except as provided by law.

At the end of the first paragraph, add the following:

Italy:

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

Liability and Indemnity

France, Germany, Italy, Malta, Portugal, and Spain:

In the first sentence of the first paragraph, insert after "exceed" and before "the amounts":

the greater of €500,000 (five hundred thousand euro) or

Ireland and UK:

In the first sentence of the first paragraph, replace the phrase "up to the amounts paid" with:

up to 125% of the amounts paid

Spain:

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

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

Slovakia:

Insert after the first sentence of the first paragraph:

Referring to § 379 of the Commercial Code, Act No. 513/1991 Coll. as amended, and concerning all conditions related to the conclusion of the Agreement, both parties state that the total foreseeable damage, which may accrue, shall not exceed the sum set forth in paragraph above, and it is the maximum for which IBM is liable.

Russia:

Insert before the last sentence of the first paragraph:

IBM will not be liable for the forgone benefit.

Ireland and UK:

In the second sentence of the first paragraph, delete:

economic

Portugal:

Replace the last sentence of the first paragraph with:

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

Replace the last sentence of the first paragraph with:

Belgium, Netherlands, and Luxembourg:

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

France:

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

Spain:

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

Germany:

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

and (ii) loss or damage caused by a breach of guarantee assumed by IBM in connection with any transaction under this Agreement; and (iii) caused intentionally or by gross negligence.

General Principles

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

Spain:

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

Add after the fourth paragraph the following new paragraphs:

EU Member States, Iceland, Liechtenstein, Norway, Switzerland, and Turkey:

If Client provides, or authorizes others to provide, personal data in any Content, Client represents that it is either the data controller or that, prior to providing any such personal data from, or extending the benefit of the EPs to, any other data controller, Client has been instructed by or obtained the consent of the relevant data controllers. Client appoints IBM as a data processor to process such personal data. Client will not use an EP in conjunction with personal data to the extent that doing so would violate applicable data protection laws. IBM shall reasonably cooperate with Client in its fulfillment of any legal requirement, including providing Client with access to personal data.

Client agrees that IBM may transfer Client's personal data across a country border, including outside the European Economic Area (EEA). If a Cloud Service is included in IBM's Privacy Shield certification listed at http://www.ibm.com/privacy/details/us/en/privacy_shield.html and Client chooses to have the Cloud Service hosted in a data center located in the United States, Client may rely on such certification for the transfer of personal data outside the EEA. Alternatively, the parties or their relevant affiliates may enter into separate standard unmodified EU Model Clause agreements in their corresponding roles pursuant to EC Decision 2010/87/EU (as amended or replaced, from time to time) with optional clauses removed. If IBM makes a change to the way it processes or secures personal data as part of the Cloud Services and such change causes Client to be noncompliant with data protection laws, Client may terminate the affected Cloud Services by providing written notice to IBM within 30 days of IBM's notification of the change to Client.

Add to the end of the last paragraph:

Czech Republic:

Pursuant to Section 1801 of Act No. 89/2012 Coll. (the "Civil Code"), Section 1799 and Section 1800 of the Civil Code as amended, do not apply to transactions under this Agreement. The parties exclude application of Section 1740 (3) and Section 1751 (2) of the Civil Code, which provide that the Agreement is concluded even in the absence of full compatibility of the parties' expression of intent. Client accepts the risk of a change of circumstances under Section 1765 of the Civil Code.

In the last paragraph, delete the following sentence:

Bulgaria, Croatia, Russia, Serbia, and Slovenia:

Neither party will bring a legal action arising out of or related to this Agreement more than two years after the cause of action arose.

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

Lithuania:

, except as provided by law.

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

Latvia, Poland, and Ukraine:

three

Slovakia:

four

In the last paragraph, add to the end of the following sentence: "Neither party is responsible for failure to fulfil its non-monetary obligations due to causes beyond its control":

Russia:

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

Governing Laws and Geographic Scope

In the first sentence of the second paragraph, replace the phrase, "the country where the transaction is performed (or for services, the laws of the country of Client's business address)" with:

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

Austria

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

France

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

England

Estonia, Latvia, and Lithuania:

Finland

Liechtenstein:

Switzerland

Russia:

Russia

South Africa, Namibia, Lesotho and Swaziland:

the Republic of South Africa

Spain:

Spain

Switzerland:

Switzerland

United Kingdom:

England

Add to the end of the second paragraph:

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

All disputes arising out of this Agreement shall be finally settled by the International Arbitral Centre of the Austrian Federal Economic Chamber (Arbitration Body), under the Rules of Arbitration of that Arbitral Centre (Vienna Rules), in Vienna, Austria, with English as the official language, by three impartial arbitrators appointed in accordance with the Vienna Rules. Each party will nominate one arbitrator, who will jointly appoint an independent chairman within 30 days or else the chairman will be appointed by the Arbitration Body under the Vienna Rules. The arbitrators will have no authority to award injunctive relief or damages excluded by or exceeding limits in this Agreement. Nothing in this Agreement will prevent either party from resorting to judicial proceedings for (1) interim relief to prevent material prejudice or a breach of confidentiality provisions or intellectual property rights, or (2) determining the validity or ownership of any copyright, patent or trademark owned or asserted by a party or its Enterprise company, or (3) debt collection in amounts below USD 500.000,00.

Estonia, Latvia, and Lithuania:

All disputes arising out of this Agreement shall be finally settled by the Arbitration Institute of the Finland Chamber of Commerce (FAI) (Arbitration Body), under the Arbitration Rules of the Finland Chamber of

Commerce (Rules), in Helsinki, Finland, with English as the official language, by three impartial arbitrators appointed in accordance with those Rules. Each party will nominate one arbitrator, who will jointly appoint an independent chairman within 30 days or else the chairman will be appointed by the Arbitration Body under the Rules. The arbitrators will have no authority to award injunctive relief or damages excluded by or exceeding limits in this Agreement. Nothing in this Agreement will prevent either party from resorting to judicial proceedings for (1) interim relief to prevent material prejudice or a breach of confidentiality provisions or intellectual property rights, or (2) determining the validity or ownership of any copyright, patent or trademark owned or asserted by a party or its Enterprise company, or (3) debt collection in amounts below USD 500.000,00.

Afghanistan, Angola, Bahrain, Botswana, Burundi, Cape Verde, Djibouti, Egypt, Eritrea, Ethiopia, Gambia, Ghana, Iraq, Jordan, Kenya, Kuwait, Lebanon, Liberia, Libya, Madagascar, Malawi, Mauritius, Mozambique, Nigeria, Oman, Pakistan, Palestinian Territory, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Seychelles, Sierra Leone, Somalia, South Sudan, Tanzania, Uganda, United Arab Emirates, Western Sahara, Yemen, Zambia, and Zimbabwe:

All disputes arising out of this Agreement shall be finally settled by the London Court of International Arbitration (LCIA) (Arbitration Body), under the LCIA Arbitration Rules (the Rules), in London, UK, with English as the official language, by three impartial arbitrators appointed in accordance with the Rules. Each party will nominate one arbitrator, who will jointly appoint an independent chairman within 30 days or else the chairman will be appointed by the Arbitration Body under the Rules. The arbitrators will have no authority to award injunctive relief or damages excluded by or exceeding limits in this Agreement. Nothing in this Agreement will prevent either party from resorting to judicial proceedings for (1) interim relief to prevent material prejudice or a breach of confidentiality provisions or intellectual property rights, or (2) determining the validity or ownership of any copyright, patent or trademark owned or asserted by a party or its Enterprise company, or (3) debt collection in amounts below USD 500.000,00.

Algeria, Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Congo Republic, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Guinea, Guinea-Bissau, Ivory Coast, Mali, Mauritania, Morocco, Niger, Senegal, Togo, and Tunisia:

All disputes arising out of this Agreement shall be finally settled by the ICC International Court of Arbitration, in Paris (Arbitration Body), under its arbitration rules (the Rules), in Paris, France, with French as the official language, by three impartial arbitrators appointed in accordance with the Rules. Each party will nominate one arbitrator, who will jointly appoint an independent chairman within 30 days or else the chairman will be appointed by the Arbitration Body under the Rules. The arbitrators will have no authority to award injunctive relief or damages excluded by or exceeding limits in this Agreement. Nothing in this Agreement will prevent either party from resorting to judicial proceedings for (1) interim relief to prevent material prejudice or a breach of confidentiality provisions or intellectual property rights, or (2) determining the validity or ownership of any copyright, patent or trademark owned or asserted by a party or its Enterprise company, or (3) debt collection in amounts below USD 250.000,00.

South Africa, Namibia, Lesotho, and Swaziland:

All disputes arising out of this Agreement shall be finally settled by the Arbitration Foundation of Southern Africa (AFSA) (Arbitration Body), under the Rules of the Arbitration of the AFSA (the Rules), in Johannesburg, South Africa, with English as the official language, by three impartial arbitrators appointed in accordance with the Rules. Each party will nominate one arbitrator, who will jointly appoint an independent chairman within 30 days or else the chairman will be appointed by the Arbitration Body under the Rules. The arbitrators will have no authority to award injunctive relief or damages excluded by or exceeding limits in this Agreement. Nothing in this Agreement will prevent either party from resorting to judicial proceedings for (1) interim relief to prevent material prejudice or a breach of confidentiality provisions or intellectual property rights, or (2) determining the validity or ownership of any copyright, patent or trademark owned or asserted by a party or its Enterprise company, or (3) debt collection in amounts below USD 250.000,00.

Add to the end of the second paragraph:

Andorra, Austria, Belgium, Cyprus, France, Germany, Greece, Israel, Italy, Luxembourg, Netherlands, Poland, Portugal, South Africa, Namibia, Lesotho, Swaziland, Spain, Switzerland, Turkey and United Kingdom:

All disputes will be brought before and subject to the exclusive jurisdiction of the following courts of competent jurisdiction:

Andorra:

the Commercial Court of Paris.

Austria:

the court of Vienna, Austria (Inner-City).

Belgium:

the courts of Brussels.

Cyprus:

the competent court of Nicosia.

France:

Commercial Court of Paris.

Germany:

the courts of Stuttgart.

Greece:

the competent court of Athens.

Israel:

the courts of Tel Aviv-Jaffa.

Italy:

the courts of Milan.

Luxembourg:

the courts of Luxembourg.

Netherlands:

the courts of Amsterdam.

Poland:

the courts of Warsaw.

Portugal:

the courts of Lisbon.

Spain:

the courts of Madrid.

Switzerland:

the courts of Zurich.

Turkey:

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

United Kingdom:

the English courts.

Agreement Termination

Insert the following after the last paragraph:

Netherlands:

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

Warranties

Add to all countries in Western Europe, after the fourth paragraph:

The warranty for IBM Machine Components of an Appliance acquired in Western Europe will be valid and applicable in all Western European countries, provided the IBM Machine Components of an Appliance have been announced and made available in such countries. For purposes of this paragraph, "Western Europe" means Andorra, Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland,

France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom, Vatican State, and any country that subsequently joins the European Union, from date of accession.

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

Poland:

These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied or statutory warranties ('rękojmia') or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose.

In the fifth paragraph, add to the end of the second sentence the following:

Italy:

to the extent permitted by law.

In the fifth paragraph, at the end of the fourth sentence after "without warranties of any kind", insert the following:

Czech Republic, Estonia and Lithuania:

, or liabilities for defects. The parties hereby exclude any liability of IBM for defects beyond the agreed warranties.

Appliances

In the fourth paragraph, first sentence, add the following after "United States":

Portugal, Spain, Switzerland, and Turkey:

, Portugal, Spain, Switzerland and Turkey,

US State, Local, and Education (SLED) Government

Attachment for Subscription License

This Attachment for Subscription License ("Attachment") govern the license of Programs IBM makes available on a Subscription License basis that Client acquires from IBM or an IBM Business Partner. This Attachment supplements the terms of the IBM International Passport Advantage Agreement or equivalent agreement, as applicable, between Client and IBM ("IPAA"). Capitalized terms not defined in this Attachment are defined in the IPAA.

1. Subscription License (previously referred to as Committed Term License)

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

1.1 Subscription License Upgrade (previously referred to as Committed Term License Upgrade)

For certain Programs Client has previously licensed and has on active S&S (Qualifying Programs), Client may upgrade to a Subscription License Program (Subscription License Upgrade), as detailed in a TD. When such an 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.

If Client does not renew the Subscription Term, Client may continue to use the Qualifying Program at the Program version level in use at the end of the Subscription Term and if Client elects to resume available S&S for the Qualifying Program, Client must acquire it, at then current prices, for all uses and installations of the Qualifying Program at all Client Sites.

2. Subscription License Renewal

Client's renewal option will be set, at time of order, to "terminate". Client's license rights to the Subscription License Program and access to S&S will terminate and Client is required to uninstall and destroy all terminated copies of the affected Program, unless Client provides IBM, prior to the expiration of the then current Subscription Term, a fully funded Delivery Order for the new Subscription Term. IBM will then renew the expiring Subscription License Program at then current pricing or as specified in an applicable Transaction Document, for a subsequent 12-month Subscription Term.

3. Subscription License Withdrawal

IBM may withdraw this licensing model for a Program at any time. For Clients whose current contract term extends past the withdrawal date, IBM may continue to provide this licensing model until the end of the then current term or work with the Client to establish an alternative solution.

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

Each party accepts the terms of this Attachment by signing it (or another document that incorporates it by reference) by hand or, where recognized by law, electronically. Once signed, i) any reproduction of this Attachment made by reliable means (for example, electronic image, photocopy, or facsimile) is considered an original and ii) all Subscription License or Subscription License Upgrade for Programs are subject to it.

Agreed to by
Client Entity Name:

_____

Client Authorized Signature:

_____

Name (printed):

_____

Position:

_____

Date:

_____

Agreement Number / Site Number:

_____

IBM Client Number:

_____

Client address:

_____

_____

_____

Agreed to by
IBM Entity Name:

_____

IBM Authorized Signature:

_____

Name (printed):

_____

Position:

_____

Date:

_____

International Passport Advantage Agreement
International Passport Advantage Express Agreement

Attachment for Monthly Licensing

The terms of this Attachment for Monthly Licensing ("Attachment") are in addition to those of Client's IBM International Passport Advantage Agreement or IBM International Passport Advantage Express Agreement, as applicable, and govern certain IBM Programs that IBM or one of its authorized resellers makes available to Client on a monthly license basis. Client accepts the terms of this Attachment without modification by signing below. Capitalized terms not defined in this Attachment are defined in the Agreement.

1. Definitions

Agreement – Client's IBM International Passport Advantage Agreement or IBM International Passport Advantage Express Agreement, as applicable.

Commitment Term – the period for which Client commits to pay IBM and the time during which the ML Program is made available to Client specified in the applicable Transaction Document.

Client– may be identified in the Agreement or in related transaction document as "Customer".

ML Program – an IBM Program made available to Client for a monthly license ("ML") charge for a specified Commitment Term.

Monthly Licensing - the terms under which IBM makes ML Programs available to Client.

2. Renewal

2.1 Automatic Renewal of a Commitment Term

If Client's PoE specifies the renewal of the ML Program as "automatic", IBM will automatically renew the expiring ML Program Commitment Term at the then current price for a subsequent Commitment Term.

Client may decline the automatic renewal of expiring ML Program Commitment Term by providing a written request to IBM or Client's reseller one month prior to the expiration date of the current Commitment Term.

2.2 Continuous Billing Following a Commitment Term

If Client's PoE specifies the renewal of the ML Program as "continuous billing", IBM will continue to bill Client for the ML Program at the price in effect for the billing period stated in the invoice and at the same billing frequency.

Client may discontinue the ML Program, thereby stopping continuous billing, by providing one month's written notice to IBM or Client's reseller. Upon cancellation of Client's use of the ML Program, IBM will bill Client for any outstanding charges through the month in which the cancellation was effective. Any unused pre-paid amount will not be refunded.

2.3 Non-renewal

If Client's PoE specifies the renewal type of the ML Program as "terminate", IBM will not renew the ML Program at the end of the initial Commitment Term and will terminate the ML Program license.

In order to continue use of the ML Program beyond the initial Commitment Term, Client must place an order with IBM or Client's reseller to purchase a new Commitment Term.

3. Money-back Guarantee

The IPLA's "money-back guarantee" applies to an ML Program only if it is the first time the Client has licensed the Program, whether subject to a one-time charge, a Fixed Term, or to this Attachment. Client may obtain a refund for an ML Program only if Client returns it within the first 30 days of the ML Program's initial Commitment Term. IBM does not give credits or refunds for charges already due or paid.

4. Termination and Withdrawal

4.1 Termination of Monthly Licensing

IBM may withdraw Monthly Licensing in its entirety on 12 months' written notice to all then current Clients by published announcement, letter, or e-mail.

Notwithstanding anything to the contrary in this Attachment, if IBM terminates Client's access to the ML Program due to Client's breach of any of the applicable terms of this Attachment, IBM is not obligated to issue a refund or credit for any unused portion of the Commitment Term.

4.2 Termination of License Grant

Client's right to use the ML Program terminates on the last day of the period for which Client is committed to pay for use of the ML Program. Client agrees to promptly discontinue use of and destroy all of Client's copies of the ML Program upon termination of the license grant.

4.3 Withdrawal of a ML Program

If IBM withdraws Monthly Licensing for a particular ML Program, Client understands that

a. Client may not renew the Commitment Term for that ML Program; and

b. if Client renewed the Commitment Term for that ML Program prior to the notice of withdrawal, Client may either (a) continue to use the ML Program under the Monthly Licensing terms until the end of the then current Commitment Term or (b) obtain a prorated refund.

This Attachment for Monthly Licensing, the Agreement, and any of its Transaction Document(s), is the complete agreement between the parties regarding transactions by which Client obtains Monthly Licensing and replaces all prior oral or written communications, representations, undertakings, warranties, promises, covenants, and commitments between Client and IBM regarding Monthly Licensing. In entering into this Attachment, including any applicable Transaction Document, neither party is relying on any representation not specified in this Attachment, the Agreement, or a Transaction Document. Additional or different terms in any written communication from Client (such as a purchase order) are void.

Each party accepts the terms of this Attachment by signing this Attachment (or another document that incorporates it by reference) by hand or, where recognized by law, electronically. Once signed, i) any reproduction of this Attachment made by reliable means (for example, electronic image, photocopy, or facsimile) is considered an original and ii) all Monthly Licensing obtained under this Attachment are subject to it.

Agreed to:
<*Client Entity Name*>

By_____
Client Authorized signature

Name (type or print):

Position (type or print):

Date:

Agreement number / Site number:

IBM Client number:

Client address: _____

_____

_____

Agreed to:
<*IBM Entity Name*>

By_____
Authorized signature

Name (type or print):

Position (type or print):

Date:

General Terms for Cloud Offerings

This General Terms for Cloud Offerings TOU provides additional terms applicable for Cloud Services Client may order under either the International Passport Advantage Agreement or the International Passport Advantage Express Agreement, as applicable ("Base Agreement") and are in addition to other applicable Transaction Documents (TDs) and Attachments, collectively the complete agreement ("Agreement") regarding transactions for a Cloud Service.

IBM may offer third party Cloud Services, or an IBM Cloud Service may enable access to third party Cloud Services (Non-IBM Services), that may require acceptance of third party terms identified in the TD. Linking to or use of non-IBM Services constitutes Client's agreement with such terms. IBM is not a party to such third party agreements and is not responsible for such non-IBM Services.

1. Content and Data Protection

a. IBM Data Security and Privacy Principles (DSP), at http://www.ibm.com/cloud/data-security, apply for standard IBM Cloud Services that are generally available. Specific security features and functions of an IBM Cloud Service will be described in the applicable Attachment or TD. Client is responsible for selecting, ordering, enabling, and using available data protection features appropriate to support Client's use of the Cloud Services. Client is responsible for assessing the suitability of the Cloud Services for the Content and Client's intended use. Client acknowledges that the Cloud Services used meet Client's requirements and processing instructions required to comply with applicable laws.

b. IBM, its affiliates, and contractors of either, will access and use the Content solely for the purpose of providing and managing the IBM Cloud Service. IBM will treat Content as confidential by only disclosing to IBM employees, contractors to the extent necessary to provide the IBM Cloud Services.

c. IBM's Data Processing Addendum at http://www.ibm.com/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) (GDPR); or ii) other data protection laws identified at http://ibm.com/dpa/dpl apply.

d. Upon request by either party, IBM, Client or affiliates of either, will enter into additional agreements as required by law in the prescribed form for the protection of personal or regulated personal data included in Content. The parties agree (and will ensure that of their respective affiliates) that such additional agreements will be subject to the terms of the Agreement.

e. 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 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 IBM Cloud Services backup files until expiration of such files as governed by IBM's backup retention practices.

2. Changes and Withdrawal of Cloud Services

a. At any time and at IBM's discretion, IBM may change i) the IBM Cloud Services, including the corresponding published descriptions; and ii) the DSP and other published data security and privacy documentation for the IBM Cloud Services. The intent of any change to the above 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. The intent is not to degrade the security or data protection features or functionality of the IBM Cloud Services. Changes to the published descriptions, DSP, or published other documents as specified above, will be effective when published or on the specified effective date.

b. Any changes that do not meet conditions specified in item a 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.

c. IBM may withdraw an IBM Cloud Service on 12 months' notice. IBM will continue to provide withdrawn IBM Cloud Services for the remainder of Client's unexpired term or work with Client to migrate to another generally available IBM offering. Access to Non-IBM Services may be withdrawn at any time.

3. Payment and Taxes

a. 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.

b. If IBM has not otherwise committed to pricing during the term of a Cloud Service, then IBM may change charges on thirty days' notice.

4. Compliance with Laws

a. Each party is responsible for complying with: i) laws and regulations applicable to its business and Content; and ii) import, export and economic sanction laws and regulations, including defense trade control regime of any jurisdiction, including the International Traffic in Arms Regulations and those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users.

b. If Client or any user exports or imports Content or uses any portion of the Cloud Services outside the country of Client's business address, IBM will not serve as the exporter or importer, except as required by data protection laws.

5. Term and Termination

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 of non-renewal 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 an IBM Cloud Service if IBM reasonably determines there is a material breach of Client's obligations, security breach, violation of law, or breach of the use terms, including prohibited uses, set forth in Base Agreement and section 7(f) below. 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 IBM Cloud Services. If Client fails to take such actions within a reasonable time, IBM may terminate the Cloud Services. Failure to pay is a material breach.

c. Client may terminate the IBM Cloud Services on 30 days' notice: i) at the written recommendation of a government or regulatory agency following a change in either applicable law or the IBM Cloud Services; ii) if a change to the IBM Cloud Services causes Client to be noncompliant with applicable laws; or iii) if IBM notifies Client of a change to the IBM Cloud Services that has a material adverse effect on Client's use of the IBM 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 Service, IBM shall refund a portion of any prepaid amounts for the applicable Cloud Service for the period after the date of termination. If the Cloud Services are terminated for any other reason, Client will pay to IBM, on the date of termination, the total amounts due per the Cloud Service terms. Upon termination, IBM may assist Client in transitioning Content to an alternative technology for an additional charge and under separately agreed terms.

6. Hybrid and Dual Entitlement Offerings

a. Hybrid and Dual Entitlement offerings are Cloud Services which provide Client with access to Programs for use in the environment of Client's choice as well as software as a service functions provided in an IBM cloud environment. Programs, Support, and Program updates are provided in accordance with the Agreement and the section titled "Programs and IBM Software Subscription and Support" of the IBM International Passport Advantage Agreement (Z125-5831-10) (or equivalent agreement in place between the parties), with the following modifications:

   (1) Client's Program license ends when the Cloud Service subscription ends. Client agrees to promptly remove all such Programs from all Client selected computing environments and destroy all copies;

   (2) any specified money back guarantee does not apply for identified Programs;

   (3) for Hybrid Entitlement offerings, separate entitlements are required for the simultaneous use of the Cloud Service and use of the Programs in a Client computing environment; and

   (4) for Dual Entitlement offerings, entitlements permit simultaneous use of the Cloud Services and use of the identified Programs in a Client computing environment.

7. General

a. IBM is acting as an information technology provider only. IBM's direction, suggested usage, or guidance or use of the Cloud Services do not constitute medical, clinical, legal, accounting, or other licensed professional advice. Client and its authorized users are responsible for the use of the Cloud Services within any professional practice and should obtain their own expert advice. Client is responsible for its use of Cloud Services.

b. 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 Services and Client may use Enabling Software only in connection with use of the Cloud Service 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**.

c. Cloud Service or features of Cloud Services are considered "preview" when IBM makes such services or features available at no charge, with limited or pre-release functionality, or for a limited time to try available functionality. Examples of preview Cloud Services include beta, trial, no-charge, or preview designated Cloud Services. Any preview Cloud Service is excluded from available service level agreements and may not be supported. IBM may change or discontinue a preview Cloud Service at any time and without notice. IBM is not obligated to release a preview Cloud Service or make an equivalent service generally available. Preview services are made available as-is, without warranties of any kind.

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 Client. Examples of business contact information include name, business telephone, address, email, and user ID. Account usage information is required to enable, provide, manage, support, administer, and improve Cloud Services. Examples of account usage information include digital information gathered using tracking technologies, such as cookies and web beacons during use of the IBM Cloud Services. 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.

e. IBM may use personnel and resources in locations worldwide, including contractors to support the delivery of the IBM Cloud Services. Client's use of the Cloud Services may result in the transfer of Content, including personal data, across country borders. A list of countries where Content may be transferred and processed for an IBM Cloud Service is included in the applicable TD. IBM is responsible for the obligations under the Agreement even if IBM uses a contractor and will have appropriate agreements in place to enable IBM to meet its obligations for the IBM Cloud Services.

f. Client may not use Cloud Services if failure or interruption of the Cloud Services could lead to death, serious bodily injury, or property or environmental damage. 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. IBM may offer additional customization, configuration or other services to support Cloud Services, as detailed in a TD.

8. Previous Base Agreement Versions

a. For Clients acquiring Cloud Services under a Base Agreement version prior to version 10 dated Nov 2017, IBM SaaS offerings are IBM Cloud Services and the following additional terms apply.

8.1 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 IBM Cloud 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 IBM Cloud Services. Use of the IBM Cloud Services will not affect Client's ownership or license rights in Content.

b. Client is responsible for obtaining all necessary rights and permissions to permit processing of Content in the IBM Cloud Services. Client will make disclosures and obtain consent required by law before Client provides, authorizes access, or inputs individuals' information, including personal or other regulated data for processing in the IBM Cloud Services. If any Content could be subject to governmental regulation or may require security measures beyond those specified by IBM for the IBM Cloud Services, Client will not provide, allow access to, or input the Content for processing in the IBM Cloud Services unless specifically permitted in the terms of the relevant TD or unless IBM has otherwise first agreed in writing to implement additional security and other measures.

8.2 Warranty

a. IBM warrants that it provides IBM Cloud Services or other IBM services using commercially reasonable care and skill and as described in the applicable Attachment or SD. These warranties end when the IBM Cloud Services or other IBM services end.

8.3 Scheduled Maintenance

a. IBM Cloud Services are designed to be available 24/7, subject to maintenance. IBM will provide advance notice of scheduled maintenance.

Attachment for IBM Appliances and Appliance Services

The terms of this Attachment for IBM Appliances and Appliance Services ("Attachment") are in addition to those of Client's IBM Agreement, as applicable, and govern the purchase, warranty, maintenance and services for IBM Appliances obtained from IBM or an authorized reseller. Client accepts the terms of this Attachment without modification by issuing a purchase order or other similar written authorization against the Quote. Capitalized terms not defined in this Attachment are defined in the Agreement, the Supplement for Purchase of IBM Appliances and Appliance Services (Supplement) and associated documents.

1. Appliances

An Appliance is an Eligible Product (EP) which is any 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 an Appliance component independently of the Appliance of which it is a part.

Each Appliance is manufactured from parts that may be new or used. In some cases, an Appliance or its replacement parts may have been previously installed. Regardless, IBM's warranty terms apply.

For each Appliance, IBM bears the 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. 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. 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.

If IBM is responsible for installation, Client will allow installation within 30 calendar days of shipment or additional charges may apply. Client will promptly install or allow IBM to install mandatory engineering changes. Client installs a Client-set-up Appliance according to instructions provided with it.

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 as stated in its specifications. Client acceptance of this Agreement 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 Machine Code Component is copyrighted and licensed (not sold).

2. Appliance Services

IBM provides Appliance Services for Appliances consisting of Machine maintenance and IBM Software Subscription and Support as a single offering as further described in the IBM Appliance Support Guide at https://www.ibm.com/software/appliance/support.

One year of Appliance Services, starting on the Warranty Start Date specified in a Transaction Document, is included with the purchase of an Appliance. Appliance Services automatically renews at then current charges, unless Client provides written notice of termination prior to expiration of the prior coverage.

All renewals will be fulfilled with Appliance Services offered at the same level of service, if available, that Client was entitled to during the first year. Parts removed or exchanged for upgrade, warranty service, or maintenance become IBM property and must be returned to IBM within 30 calendar days. A replacement takes on the warranty or maintenance status of the replaced part. If a 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.

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.

If Appliance Services coverage expires, Client may reinstate the Appliance Services. 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, in order to receive Appliance Service for that Appliance.

3. Additional Services

IBM may offer additional services to support an Appliance as detailed in the Appliance Support Guide at https://www.ibm.com/support/pages/ibm-appliance-support-guide and associated Transaction Document.

International Program License Agreement

Part 1 – General Terms

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

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

1. Program License

a. A Program is an executable IBM-branded computer program and its related material and includes whole and partial copies. Program details are described in a TD available at http://www.ibm.com/software/sla (for Passport Advantage Programs) or http://www.ibm.com/support/knowledgecenter (for other IBM Programs), in the Program's system command directory, or as otherwise specified by IBM. IBM software policies (such as backup, temporary use and IBM approved cloud environment) available at http://www.ibm.com/softwarepolicies apply to Licensee's use of Programs.

b. Copies of Programs are copyrighted and licensed.

c. Licensee is granted a nonexclusive license to:

(1) use each copy of a Program, subject to the terms of the Agreement and up to the number of license entitlements Licensee acquires ("Authorized Use");

(2) make and install copies to support such Authorized Use; and

(3) make a backup copy.

d. Programs may be used by Licensee, its employees and contractors. Licensee may not rent or lease a Program or provide commercial IT, hosting or timesharing services to any third party. Additional rights may be available for additional fees or under different terms.

e. The license granted for a Program is subject to Licensee:

(1) reproducing copyright notices and other markings on any copy;

(2) ensuring anyone who uses the Program: i) does so only on Licensee's behalf within Licensee's Authorized Use; and ii) complies with this Agreement;

(3) not reverse assembling, reverse compiling, translating, or reverse engineering the Program, except as expressly permitted by law without the possibility of contractual waiver; and

(4) not using any of the elements of the Program or related licensed materials separately from the Program.

f. If the TD for a Program ("Principal Program") states that a "Supporting Program" is included with the Principal Program, Licensee may use the Supporting Program subject to any license limitations of the Principal Program and only to support the Principal Program.

g. This license applies to each copy of the Program that Licensee makes.

h. An update, fix, or patch to a Program is subject to the terms governing the Program unless new terms are provided in an updated TD. Licensee accepts such new terms upon installation of the update, fix, or patch. If a Program is replaced by an update, Licensee agrees to promptly discontinue use of the replaced Program.

i. If Licensee is dissatisfied with a Program for any reason, Licensee may terminate the license by returning the Program and proof of entitlement to IBM or the authorized IBM Business Partner within 30 days of the

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

2. Warranties

a. IBM warrants that a Program, when used in its specified operating environment conforms to its specifications. The warranty period for a Program is 12 months from acquisition, or the initial license term if less than 12 months, unless another warranty period is specified in the TD.

b. During the warranty period Licensee will have access to IBM databases containing information on known Program defects, defect corrections, restrictions, and bypasses as described in the IBM Support Guide at http://www.ibm.com/support/pages/node/733923.

c. If the Program does not function as warranted during its warranty period and the problem cannot be resolved with information available in the IBM databases, Licensee may return the Program and proof of entitlement to IBM or the IBM Business Partner for a refund of the amount Licensee paid and Licensee's license terminates.

d. **IBM does not warrant uninterrupted or error-free operation of an IBM Program or that IBM will correct all defects or prevent third party disruptions. These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose. IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, or failure to comply with written instructions provided by IBM. Non-IBM Programs are provided as-is, without warranties of any kind. Third parties may provide their own warranties to Licensee.**

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

3. Charges, Taxes, Payment, and Verification

a. Licensee's right to use a Program is contingent on Licensee paying applicable charges as specified in the agreement under which Licensee acquired the license entitlements. Licensee is responsible to acquire additional license entitlements in advance of any increase of its use.

b. Licensee agrees to pay all applicable charges for acquired entitlements and any charges for use in excess of authorizations. Charges are exclusive of any customs or other duty, tax, and similar levies imposed by any authority resulting from Licensee's acquisition of entitlements and will be invoiced in addition to such charges. Amounts are due upon receipt of the invoice from IBM and payable within 30 days of the invoice date to an account specified by IBM and late payment fees may apply. Licensee is responsible to properly acquire additional license entitlements in advance to increase its use. IBM does not give credits or refunds for charges already due or paid, except as specified elsewhere in this IPLA, the applicable TD, or terms of the agreement under which Licensee acquired license entitlements.

c. Based on acquired entitlements, Licensee agrees to: i) pay any withholding tax directly to the appropriate government entity where required by law; ii) furnish a tax certificate evidencing such payment to IBM; iii) pay IBM only the net proceeds after tax; and iv) fully cooperate with IBM in seeking a waiver or reduction of such taxes and promptly complete and file all relevant documents.

d. If Licensee imports, exports, transfers, accesses, or uses a Program across a border, Licensee agrees to be responsible for and pay authorities any custom, duty, tax, or similar levy assessed by the authorities. This excludes those taxes based on IBM's net income.

3.1 Licensing Verification

a. Licensee will, for all Programs at all sites and for all environments, create, retain, and each year provide to IBM upon request with 30 days' advance notice: i) a report, in a format requested by IBM using records, system tools output, and other system information; and ii) supporting documentation (collectively, "Deployment Data").

b. Upon reasonable notice, IBM and its independent auditors may verify Licensee's compliance with this Agreement, at all sites and for all environments, in which Licensee uses (for any purposes) Programs. Verification will be conducted in a manner that minimizes disruption to Licensee's business and may be conducted on Licensee's premises, during normal business hours. IBM will have a written confidentiality agreement with the independent auditor. In addition to providing Deployment Data described above, Licensee agrees to provide to IBM and its auditors additional accurate information and Deployment Data upon request.

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

4. Liability and Intellectual Property Protection

a. IBM's entire liability for all claims related to this Agreement will not exceed the amount of any actual direct damages incurred by Licensee up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the entitlements to the Program that is the subject of the claim, regardless of the basis of the claim. **IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or for lost profits, business, value, revenue, goodwill, or anticipated savings. These limitations apply collectively to IBM, its affiliates, contractors, and suppliers.**

b. The following amounts are not subject to the above cap: i) third party payments related to infringement claims described in clause 4 c below; and ii) damages that cannot be limited under applicable law.

c. If a third party asserts a claim against Licensee that an IBM Program infringes a patent or copyright, IBM will defend Licensee against that claim and pay amounts finally awarded by a court against Licensee or included in a settlement approved by IBM. To obtain IBM's defense against and payment of infringement claims, Licensee must promptly: i) notify IBM in writing of the claim; ii) supply information requested by IBM; and iii) allow IBM to control, and reasonably cooperate in, the defense and settlement, including mitigation efforts. IBM's defense and payment obligations for infringement claims extend to claims of infringement based on open source code that IBM selects and embeds in an IBM Program.

d. IBM has no responsibility for claims based on non-IBM products, items not provided by IBM, or any violation of law or third party rights caused by Content, or any Licensee materials, designs, specifications, or use of a non-current version or release of an IBM Program when an infringement claim could have been avoided by using a current version or release. Content consists of all data, software, and information that Licensee or its authorized users provide, authorize access to, or inputs to a Program.

5. Termination

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

6. Governing Laws and Geographic Scope

a. Both parties agree to the application of the laws of the country where the transaction for license entitlements is performed, without regard to conflict of law principles. The rights and obligations of each party are valid only in the country where the transaction to acquire license entitlements is performed or, if IBM agrees, the country where the Program is placed in productive use, except all licenses are valid as specifically granted.

b. Each party is also responsible for complying with: i) laws and regulations applicable to its business and Content; and ii) import, export and economic sanction laws and regulations, including the defense trade control regime of the United States of America and any applicable jurisdictions, that prohibit or restrict the import, export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users.

c. If any provision of this Agreement for a Program, is invalid or unenforceable, the remaining provisions remain in full force and effect. Nothing in this Agreement affects statutory rights of consumers that cannot be waived or limited by contract. The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under this Agreement.

7. General

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

b. For Programs IBM provides to Licensee in tangible form, IBM fulfills its shipping and delivery obligations upon the delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by Licensee and IBM.

c. Licensee may not use the Program if failure of the Program could lead to death, serious bodily injury, or property or environmental damage.

d. IBM, its affiliates, and contractors of either require use of business contact information and certain account usage information. This information is not Content. Business contact information is used to communicate and manage business dealings with the Licensee. Examples of business contact information include name, business telephone, address, email, user ID, and tax registration information. Account usage information is required to enable, provide, manage, support, administer, and improve Programs. Examples of account usage information include reported errors and digital information gathered using tracking technologies, such as cookies and web beacons, during use of the Programs. The IBM Privacy Statement at http://www.ibm.com/privacy provides additional details with respect to IBM's collection, use, and handling of business contact and account usage information. When Licensee provides information to IBM and notice to, or consent by, the individuals is required for such processing, Licensee will notify individuals and obtain consent.

e. IBM Business Partners who use or make available Programs are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings.

f. IBM may offer Non-IBM Programs, or an IBM Program may enable access to Non-IBM Programs, that may require acceptance of third party terms identified in a TD or presented to the Licensee. Linking to or use of Non-IBM Programs constitutes Licensee's agreement with such terms. IBM is not a party to any third party agreement and is not responsible for such Non-IBM Programs.

g. License grants to Programs are provided by International Business Machines Corporation, a New York corporation ("IBM Corporation"). The IBM company from which the Licensee acquires entitlements ("IBM") is acting as a distributor and delivering Programs and is responsible for enforcing the terms of this Agreement. If entitlements are acquired from an IBM Business Partner, the IBM company for the country of acquisition is responsible for enforcing the terms of this Agreement. No right or cause of action is created in favor of Licensee against IBM Corporation. Licensee waives all claims and causes of action against IBM Corporation and agrees to look solely to IBM for any rights and remedies in connection with Programs.

h. Licensee may not sublicense, assign, or transfer the license for any Program (except to the extent assignment or transfer may not be legally restricted or as is expressly permitted in a TD or as otherwise agreed by IBM). IBM may assign its rights and obligations under this Agreement in conjunction with the sale of the portion of IBM's business that includes a Program. IBM may share this Agreement and related documents in conjunction with any assignment.

i. All notices under the Agreement must be in writing and sent to the business address specified in the agreement Licensee acquired the license entitlements unless a party designates in writing a different address. The parties consent to the use of electronic means and facsimile transmissions for communications as a signed writing. Any reproduction of the Agreement made by reliable means is considered an original. Agreement supersedes any course of dealing, discussions or representations, between the parties.

j. No right or cause of action for any third party is created by the Agreement. Neither party will bring a legal action arising out of or related to the Agreement more than two years after the cause of action arose. Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control. Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations.

k. IBM may use personnel and resources in locations worldwide, including third party contractors to support the delivery of Programs and Program support. Licensee's use of Programs may result in the transfer of Content, including personally identifiable information, across country borders to provide Program support as described in the IBM Software Support Guide.

Part 2 – Country Required Terms

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

1. AMERICAS

Section 3. Charges, Taxes, Payment, and Verification

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

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

In paragraph b:

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

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

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

Add at the end of paragraph c the following sentence:

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

Add at the end of paragraph c the following sentence:

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

Section 4. Liability and Intellectual Property Protection

Insert the following disclaimer at the end of paragraph a:

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

Section 6. Governing Laws and Geographic Scope

In paragraph a, replace the first sentence only with:

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

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

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

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

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

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

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

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

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

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

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

In Argentina: Argentina

In Chile: Chile

In Colombia: Colombia

In Ecuador: Ecuador

In Mexico: Mexico

In Peru: Peru

In Uruguay: Uruguay

In Venezuela: Venezuela

Add the following sentences at the end of paragraph b:

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

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

Section 7. General

In paragraph g:

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

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

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

In paragraph j:

In Brazil: *delete the entire 2nd sentence of "Neither party will bring a legal action arising out of or related to the Agreement more than two years after the cause of action arose".*

Add as a new paragraph l to this section:

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

2. ASIA PACIFIC

Section 2. Warranties

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

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

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

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

Section 3. Charges, Taxes, Payment, and Verification

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

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

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

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

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

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

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

Section 4. Liability and Intellectual Property Protection

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

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

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

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

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

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

Section 5. Termination

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

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

Section 6. Governing Laws and Geographic Scope

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

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

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

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

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

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

In Taiwan: Taiwan

In India: India

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

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

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

In Taiwan: Taiwan

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

In Japan: those of Japan laws and

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

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

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

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

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

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

Section 7. General

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

In India: three years

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

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

3. EUROPE, MIDDLE EAST, AND AFRICA

Section 2. Warranties

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

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

Section 3. Charges, Taxes, Payment, and Verification

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

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

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

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

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

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

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

In Lithuania: , or except as provided by law

At the end of paragraph b, add the following:

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

Section 4. Liability and Intellectual Property Protection

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

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

In Ireland and United Kingdom: 125% of

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

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

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

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

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

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

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

In Ireland and United Kingdom: economic

In paragraph a, replace the second sentence with:

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

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

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

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

Add the following at the end of paragraph a:

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

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

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

Section 6. Governing Laws and Geographic Scope

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

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

In Estonia, Latvia, and Lithuania: Finland

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

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

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

In Liechtenstein: Switzerland

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

In United Kingdom: England

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

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

Add the following at the end of paragraph a:

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

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

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

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

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

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

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

In Andorra: the Commercial Court of Paris.

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

In Cyprus: the competent court of Nicosia.

In France: Commercial Court of Paris.

In Germany: the courts of Stuttgart.

In Greece: the competent court of Athens.

In Israel: the courts of Tel Aviv Jaffa.

In Italy: the courts of Milan.

In Portugal: the courts of Lisbon.

In Spain: the courts of Madrid.

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

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

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

Section 7. General

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

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

In paragraph j, add to the end the paragraph:

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

In paragraph j:

In Bulgaria, Croatia, Russia, Serbia, and Slovenia: *delete the 2nd sentence that says: "Neither party will bring a legal action arising out of or related to the Agreement more than two years after the cause of action arose".*

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

In Lithuania: , except as provided by law

In paragraph j, replace the second sentence with:

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

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

In Latvia and Ukraine: three

In Slovakia: four

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

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

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

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

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

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

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

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

International Agreement for Acquisition of Software Maintenance

Part 1 – General Terms

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

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

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

1. Incorporated Terms

Eligible Programs to which this Agreement applies are licensed under the 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) **Automatic Renewal**: If, by the last day of the current S&S Period, IBM has received no written communication from Customer concerning Customer's renewal of S&S for a Program, IBM will automatically renew that expiring S&S Period under the Agreement terms and charges in effect on that date, subject to applicable law. Subsequent S&S Periods begin on the day following the end of the preceding S&S Period.

(5) **S&S Period Adjustment**: When Customer acquires S&S initially or resumes it, or prior to the end of the then current S&S Period, Customer may request that the S&S Period duration is adjusted to end at a month of Customer's choice. If Customer does not choose a date, IBM will inform Customer of the end date. The "S&S ("Software Maintenance") Charge" (see item (1) in subsection b. Software Maintenance acquired directly from IBM of section 3. Charges and Payment below) will be pro-rated accordingly.

(6) **S&S**: During the S&S Period, for the unmodified portion of a Program, and to the extent problems can be recreated in the specified operating environment, IBM will provide the following:

(a) defect correction information, a restriction, or a bypass;

(b) Program Updates: periodic releases of collections of code corrections, fixes, functional enhancements and new versions and releases to the Program and documentation; and

(c) Technical Assistance: a reasonable amount of remote assistance via telephone or electronically to address suspected Program defects. Technical assistance is available from the IBM support center in the Customer's geography. Additional details regarding Technical Assistance, including IBM contact information (see Appendix C: Contact Information), are provided in the IBM Software Support 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, the IBM Business Partner sets the charges and the terms governing charges. Customer will pay Customer's IBM Business Partner directly.

b. Software Maintenance acquired directly from IBM

   (1) Charges for Software Maintenance during each Software Maintenance Period, called the Software Maintenance Charge, are invoiced in advance.

   (2) The Software Maintenance Charge may vary, depending on, for example, the machine (type/model), the Eligible Program or group of Eligible Programs, or level of use of the Eligible Program.

   (3) IBM may increase the Software Maintenance Charge without notice. An increase will not apply to Customer if IBM receives Customer's order for Software Maintenance before the announcement date of the increase and within three months of receipt by IBM of Customer's order IBM makes Software Maintenance available to Customer. Customer receives the benefit of a decrease in the Software Maintenance Charge for amounts which become due on or after the effective date of the decrease.

   (4) Amounts are due and payable upon receipt of invoice. Customer agrees to pay accordingly, including any late payment fee.

   (5) If any authority imposes a duty, tax, levy or fee, excluding those based on IBM's net income, upon Software Maintenance IBM supplies under this Agreement, then Customer agrees to pay that amount as specified in the invoice, unless Customer supplies exemption documentation.

4. Software Maintenance Transferability

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

5. Customer's Responsibilities

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

a. Customer will acquire Software Maintenance for the same level of use as that at which the Eligible Program is authorized. Partial coverage for a particular Eligible Program is not offered;

b. Customer is responsible for the results obtained from the use of the Software Maintenance;

c. Customer will, at IBM's request, allow IBM to remotely access Customer's system to assist Customer in isolating the software problem cause;

d. Customer remains responsible for adequately protecting Customer's system and all data contained in it whenever IBM remotely accesses it with Customer's permission to assist Customer in isolating the software problem cause;

e. Customer will provide sufficient, free, and safe access to Customer's facilities for IBM to fulfill its obligations; and

f. except as permitted by section 4. Software Maintenance Transferability above, Customer will not assign, or otherwise transfer, this Agreement or Customer's rights under this Agreement, or delegate Customer's obligations, without IBM's prior written consent. Any attempt to do so is void. The assignment of this Agreement, in whole or in part, within the Enterprise of which either of us is a part or to a successor organization by merger or acquisition does not require the consent of the other. IBM is also permitted to assign its rights to payments under this Agreement without obtaining your consent. It is not considered an assignment for IBM to divest a portion of its business in a manner that similarly affects all of its customers.

6. Warranty for Software Maintenance

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

This Agreement is the complete agreement regarding Customer's acquisition of Software Maintenance, and replaces any prior oral or written communications between Customer and IBM concerning Software Maintenance. In entering into this Agreement, neither party is relying on any representation that is not specified in this Agreement including without limitation any representations concerning: 1) performance or function of any product or system, other than as expressly warranted in section 6 above; 2) the experiences or recommendations of other parties; or 3) results or savings Customer may achieve. Additional or different terms in any written communication from Customer (such as a purchase order) are void.

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

Part 2 – Country-unique Terms

AMERICAS

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

3. Charges and Payment

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

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

(a) As long as the country operates in a free currency exchange market, Customer and IBM agree that IBM will accept payment in the applicable country national currency calculated at the country official exchange rate published by the bank specified in a transaction document on the date payment is made.

(b) If the government of a country establishes any restriction or limitation on its free currency exchange markets, Customer agrees to make payments to IBM in US dollars to a bank account in New York, NY, USA, designated by IBM in the transaction document, provided that such payment is not illegal under country law. If such method of payment is forbidden by country law, Customer agrees to pay the amount indicated in the transaction

document in country national currency, calculated at the official exchange rate which is in use for the remittance of dividends and net earnings to foreign investors outside the country.

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

All additional terms apply to the referenced country.

BRAZIL

2. Software Maintenance

In subsection ***a. For Eligible Programs running on an IBM System z platform,***

items 2 through and including 5 are deleted in their entirety.

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

the period for which Customer has paid for S&S

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

effective on the first day of the following month

3. Charges and Payment

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

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

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

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

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

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

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

(b) if payment is made 61 or more days from invoice date, a ten percent late payment penalty applied to the resultant delinquent amount.

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

Amounts due are expressed in local currency.

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

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

(a) any change is made to the rate, form or base of calculation, form of payment, classification or taxes levied on the Software Maintenance or on their costs,

(b) a new applicable tax is created,

(c) any change is made to any other legal aspect related to the taxes applicable on the base date,

(d) any change is made to the origin or to the delivery location for the Software Maintenance,

(e) any change is made to the location where Services are to be provided, or

(f) any change is made to the manner in which Services are marketed.

7. Changes to Agreement Terms

The following replaces this section in its entirety:

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

8. Termination and Withdrawal

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

9. Additional Terms

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

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

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

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

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

accepts Customer's order by signing it.

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

2. Software Maintenance

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

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

UNITED STATES OF AMERICA

2. Software Maintenance

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

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

ASIA PACIFIC

AUSTRALIA

3. Charges and Payment

The following paragraph is added after item b:

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

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

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

6. Warranty for Software Maintenance

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

The warranties specified in this section are in addition to any rights Customer may have under the Competition and Consumer Act 2010 or other legislation and are only limited to the extent permitted by the applicable legislation.

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

2. Software Maintenance

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

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

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

HONG KONG SAR, MACAU SAR, AND TAIWAN

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

(1) In Hong Kong SAR: "Hong Kong SAR"

(2) In Macau SAR: "Macau SAR" except in the Governing Law clause (section 14.1)

(3) In Taiwan: "Taiwan."

INDONESIA

8. Termination and Withdrawal

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

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

JAPAN

8. Termination and Withdrawal

The following paragraph is added to this section:

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

NEW ZEALAND

6. Warranty for Software Maintenance

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

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

EUROPE, MIDDLE EAST, AFRICA (EMEA)

EUROPEAN UNION MEMBERS

6. Warranty for Software Maintenance

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

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

AUSTRIA

6. Warranty for Software Maintenance

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

FRANCE

3. Charges and Payment

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

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

GERMANY

3. Charges and Payment

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

6. Warranty for Software Maintenance

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

IBM warrants that Software Maintenance will be provided using reasonable care and skill and according to its description in the IBM Software Support 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. IBM will remedy any defects covered by warranty, of which written notice has been given by Customer. If a defect is not remedied within a reasonable period of time, Customer may with respect to that defect, at Customer's choice, either request a reduction of price, or, if the value or the serviceability of the work is substantially impaired, instant termination ("Kündigung") of this Agreement. In case of minor defects or deviations, Customer shall not be entitled to terminate the Agreement.

The warranties will be voided by misuse, accident, modification, unsuitable physical or operating environment, operation in other than the specified operating environment, or failure caused by a product for which IBM is not responsible.

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

9. Additional Terms

The following paragraph is added as the last paragraph of subsection a:

When assisting Customer in isolating the cause of a software problem, should IBM access Customer's personally-identifiable data upon Customer's request, "IBM Supplementary Terms and Conditions for Processing of Customer Data by Order according to § 11 BDSG" applies.

IRELAND and UNITED KINGDOM

6. Warranty for Software Maintenance (Ireland only)

The following paragraph is added:

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

Entire Agreement

The following sentence is added to the second from last paragraph of Part 1:

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

PPA Software Inventory as of 4/29/22

PPA Customer Numbers 7162424, 2323706

Renewal Part #	Purchased Product Description	Quantity
E0NZ5LL	IBM Spectrum Scale Data Mgmt Ed per terabyte	100
E027NLL	License Metric Tool Establishment	1
E0K30LL	Cognos Analytics Administrator Authorized User	8
E0HVPLL	Cognos Analytics User Processor Value Unit	3,320
E0K2DLL	Cognos Analytics Explorer Authorized User	2
E09QILL	Modeler Client Profession Auth User	1
E09R4LL	SPSS Modeler Server Professional Processor Value Unit (PVU)	100
E066NLL	IBM Content Manager OnDemand Authorized User Value Unit	1,194
E01MJLL	Application Developer for WebSphere Software Authorized User	60
E0PPCLL	IBM Cloud Pak for Integration per Virtual Processor Core IBM Z	26
E0QB7LL	IBM Cloud Pak for Applications Virtual Processor Core for IBM Z	33
E0LHILL	Workload Scheduler for Applications Processor Value Unit (PVU)	500
E0LHJLL	Workload Scheduler for Applications Processor Value Unit (PVU)	1,000
E02AFLL	Workload Scheduler Processor Value Unit (PVU)	23,500
E0BRLLL	Integration Designer Authorized User	5
E0LLXLL	Security Verify Access Virtual Edition Processor Value Unit (PVU)	200
E0LM4LL	Security Verify Access Virtual Edition User Value Unit	14,500
E0LLCLL	Sec Verify Access Virtual Edition Advanced Access Control Module AOS (PVU)	200
E0LL7LL	Security Verify Access Virtual Edition Federation Module AOS (PVU)	200
E055DLL	IBM Host Integration Solution for Multiplatforms Authorized Authorized User	1,000
E0QAWLL	IBM Video Analytics Managed Client Device	377
E0KQ0LL	i2 Enterprise Insight Analysis Concurrent User	36

zMLC Software Inventory

Systems In Report:	System Name	Machine No.	System Serial
1. IBM z15 Model T02	System3	8562-J02	0297367
2. IBM z15 Model T02	System4	8562-K02	0297377

PID	Software Title			WLC MSUs
5615DB2	Db2 11 for z/OS			62
5650ZOS	z/OS V2 Base			100
5650ZOS	z/OS V2 DFSMS dsshsm			100
5650ZOS	z/OS V2 DFSMS rmm			100
5650ZOS	z/OS V2 DFSORT			100
5650ZOS	z/OS V2 GDDM-PGF			100
5650ZOS	z/OS V2 GDDM-REXX			100
5650ZOS	z/OS V2 HCM			100
5650ZOS	z/OS V2 RMF			100
5650ZOS	z/OS V2 SDSF			100
5650ZOS	z/OS V2 Security Server			100
5650ZOS	z/OS V2 XL C/C++			100
5655EC6	Ent COBOL z/OS			62
5655M32	Compatibility Fonts			
5655M32	Enhanced ACIF			
5655M32	PSF V4 for z/OS			
5655S71	COBOL V4			
5655Y04	CICS TS for z/OS V5			100
5655156	INTERNET CONN SERVER MVS/ESA			
5688190	PPFA/370			
5688191	OGL/370			
5695014	IBM Library for REXX/370			
5697NV6	IBM Z NetView Ent Mgmt Agent			100
5697NV6	IBM Z NetView V6			100
5796ARE	3800 90 DEGREE PRINT PROGRAM			
5796AWE	PAGE FORMATTING SERVICES 3800			

Attachment 4: Professional Services

Overview of consulting & services offerings
GSA Contract #GS-35F-110DA Services – IT professional services
GSA Remote Technical Support Services
Cybersecurity Labor Rates
GSA Contract #GS-35F-110DA – Services Ancillary SIN Services (Labor Categories)

IBM Consulting & Services

IBM offers a wide range of consulting & services in areas such as the following:

IBM Consulting
Strategy Consulting
Experience Consulting
Operations Consulting
Technology Consulting

Business Consulting Services
Artificial Intelligence
Automation
Big data & data platform
Business process outsourcing
Edge consulting
Finance consulting & outsourcing services
Operations consulting
Procurement consulting & managed services
Risk management consulting services
Supply chain consulting services

IBM Garage

Security services
Application security
Cloud security
Data security
Identity & access management
Managed security
Security governance

Technology Support Services
Open Source
Third party & multivendor
IBM warranties and maintenance

Design & Business Strategy
Customer experience consulting
E-commerce consulting
Marketing consulting
Salesforce consulting

Hybrid multicloud services

Talent Management services
HR Transformation
Talen acquisition
Talent development

Application services
Application Modernization

GSA Cyber SIN Overview – found at the following site:
https://www.ibm.com/industries/federal/contracts/gsa-cyber-sin

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GSA SCHEDULE LABOR RATES FOR SIN 54151S, IT SERVICES TECHNICAL AND CONSULTING, SIN 54151ECOM (ELECTRONIC COMMERCE SERVICES AND SIN 541519PIV AUTHENTICATION SERVICES 2
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LABOR DESCRIPTIONS 4
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Consultant *4*
Architect *5*
Business Analyst *6*
Technical Systems and Solutions Specialist *6*
Database Administrator *6*
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Software Lab Services Specialist *7*
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GSA SCHEDULE LABOR RATES FOR SIN 54151S, IT SERVICES TECHNICAL AND CONSULTING, SIN 54151ECOM (ELECTRONIC COMMERCE SERVICES AND SIN 541519PIV AUTHENTICATION SERVICES

Labor Categories/Rates SIN 54151S, 54151ECOM, 541519PIV				Current Jan 1, 2020- Dec 31. 2020	Year 1 (Jan 1, 2021 - Dec 31, 2021)	Year 2 (Jan 1, 2022 - Dec 31, 2022)	Year 3 (Jan 1, 2023 - Dec 31, 2023)	Year 4 (Jan 1, 2024 - Dec 31, 2024)	Year 5 (Jan 1, 2025 - Dec 31, 2025)
Service Proposed (eg Job Title/Task)*	Minimum Education	Minimum Years of Experience (cannot be a range)	BOTH Contractor or Customer Facility	GSA Price	GSA Price	GSA Price	GSA Price	GSA Price	GSA Price
Architect I	Bachelors	1	Both	$153.02	$156.08	$159.20	$162.39	$165.63	$168.95
Architect II	Bachelors	3	Both	$184.14	$187.82	$191.58	$195.41	$199.32	$203.31
Architect III	Bachelors	5	Both	$215.25	$219.56	$223.95	$228.43	$232.99	$237.65
Architect IV	Bachelors	7	Both	$260.14	$265.34	$270.65	$276.06	$281.58	$287.22
Architect V	Bachelors	12	Both	$323.96	$330.44	$337.05	$343.79	$350.66	$357.68
Business Analyst I	Bachelors	1	Both	$122.42	$124.87	$127.37	$129.91	$132.51	$135.16
Business Analyst II	Bachelors	3	Both	$168.83	$172.21	$175.65	$179.16	$182.75	$186.40
Business Analyst III	Bachelors	5	Both	$215.25	$219.56	$223.95	$228.43	$232.99	$237.65
Business Analyst IV	Bachelors	7	Both	$260.14	$265.34	$270.65	$276.06	$281.58	$287.22
Business Analyst V	Bachelors	12	Both	$323.96	$330.44	$337.05	$343.79	$350.66	$357.68
Consultant I	Bachelors	1	Both	$210.04	$212.18	$216.42	$220.75	$225.17	$229.67
Consultant II	Bachelors	3	Both	$236.90	$241.64	$246.47	$251.40	$256.43	$261.56
Consultant III	Bachelors	5	Both	$259.35	$264.54	$269.83	$275.22	$280.73	$286.34
Consultant IV	Bachelors	7	Both	$294.26	$300.15	$306.15	$312.27	$318.52	$324.89
Consultant V	Bachelors	12	Both	$335.93	$342.65	$349.50	$356.49	$363.62	$370.89
Database Administrator I	Bachelors	1	Both	$122.42	$124.87	$127.37	$129.91	$132.51	$135.16
Database Administrator II	Bachelors	3	Both	$137.72	$140.47	$143.28	$146.15	$149.07	$152.05
Database Administrator III	Bachelors	5	Both	$153.02	$156.08	$159.20	$162.39	$165.63	$168.95
Database Administrator IV	Bachelors	7	Both	$219.53	$223.92	$228.40	$232.97	$237.63	$242.38
Database Administrator V	Bachelors	12	Both	$285.28	$284.59	$290.28	$296.09	$302.01	$308.05
Project Coordinator I	Bachelors	1	Both	$96.92	$98.86	$100.84	$102.85	$104.91	$107.01
Project Coordinator II	Bachelors	3	Both	$106.37	$108.50	$110.67	$112.88	$115.14	$117.44
Project Coordinator III	Bachelors	5	Both	$117.31	$119.66	$122.05	$124.49	$126.98	$129.52
Project Coordinator IV	Bachelors	7	Both	$137.72	$140.47	$143.28	$146.15	$149.07	$152.05
Project Manager I	Bachelors	1	Both	$118.51	$120.88	$123.30	$125.76	$128.28	$130.84
Project Manager II	Bachelors	3	Both	$120.88	$123.30	$125.76	$128.28	$130.84	$133.46
Project Manager III	Bachelors	5	Both	$178.90	$182.48	$186.13	$189.85	$193.65	$197.52
Project Manager IV	Bachelors	7	Both	$229.53	$234.12	$238.80	$243.58	$248.45	$253.42
Project Manager V	Bachelors	12	Both	$323.95	$330.43	$337.04	$343.78	$350.65	$357.67
Software Lab Services I / Subject Matter Expert	Bachelors	1	Both	$244.66	$249.55	$254.54	$259.64	$264.83	$270.12
Software Lab Services II / Subject Matter Expert	Bachelors	3	Both	$262.06	$267.30	$272.65	$278.10	$283.66	$289.34
Software Lab Services III / Subject Matter Expert	Bachelors	5	Both	$279.47	$285.06	$290.76	$296.58	$302.51	$308.56
Software Lab Services IV / Subject Matter Expert	Bachelors	7	Both	$305.59	$311.70	$317.94	$324.29	$330.78	$337.40
Software Lab Services V / Subject Matter Expert	Bachelors	12	Both	$342.34	$349.19	$356.17	$363.29	$370.56	$377.97
Systems Administrator - Client, Enterprise and Data Center Technologies I	Bachelors	1	Both	$123.42	$125.89	$128.41	$130.97	$133.59	$136.27
Systems Administrator - Client, Enterprise and Data Center Technologies II	Bachelors	3	Both	$137.20	$139.94	$142.74	$145.60	$148.51	$151.48
Systems Administrator - Client, Enterprise and Data Center Technologies III	Bachelors	5	Both	$150.98	$154.00	$157.08	$160.22	$163.43	$166.69
Systems Administrator - Client, Enterprise and Data Center Technologies IV	Bachelors	7	Both	$172.40	$175.85	$179.36	$182.95	$186.61	$190.34
Systems Administrator - Client, Enterprise and Data Center Technologies V	Bachelors	12	Both	$206.86	$211.00	$215.22	$219.52	$223.91	$228.39
Technical Systems and Solutions Specialist I	Bachelors	1	Both	$122.42	$124.87	$127.37	$129.91	$132.51	$135.16
Technical Systems and Solutions Specialist II	Bachelors	3	Both	$168.83	$172.21	$175.65	$179.16	$182.75	$186.40
Technical Systems and Solutions Specialist III	Bachelors	5	Both	$215.25	$219.56	$223.95	$228.43	$232.99	$237.65
Technical Systems and Solutions Specialist IV	Bachelors	7	Both	$237.90	$242.66	$247.51	$252.46	$257.51	$262.66
Technical Systems and Solutions Specialist V	Bachelors	12	Both	$265.95	$271.27	$276.69	$282.23	$287.87	$293.63
IT Analyst - Solutions I	Bachelors	1	Both	$112.22	$114.46	$116.75	$119.09	$121.47	$123.90
IT Analyst - Solutions II	Bachelors	3	Both	$124.97	$127.47	$130.02	$132.62	$135.27	$137.98
IT Analyst - Solutions III	Bachelors	5	Both	$137.72	$140.47	$143.28	$146.15	$149.07	$152.05
IT Analyst - Solutions IV	Bachelors	7	Both	$153.02	$156.08	$159.20	$162.39	$165.63	$168.95
IT Analyst - Solutions V	Bachelors	12	Both	$184.91	$188.61	$192.38	$196.23	$200.15	$204.16

MACHINE MOVEMENT, MODIFICATION SERVICES

Machine Movement/Modification services less than $250,000	$223.44 per hour
Machine Movement/Modification services greater than $250,000	$199.90 per hour

*additional labor hours for services may apply such as Project Management time (see rates above).

LABOR DESCRIPTIONS

PROJECT MANAGER

- Provides direction to the teams
- Prepare and manage the overall project work plan
- Plans, organizes, monitors, and oversees IT projects, business strategies, and technology development.
- Manages cross functional teams
- Understands needs of business users as well as development and service support areas.
- Defines program and project goals, plans and reports.
- Responsible for all aspects of the development and implementation of assigned projects.

PROJECT COORDINATOR

- -Advises project team on processes
- - Develops project schedule and supports deliverables
- - Analyzes impact change requests have on the schedule
- - Analyzes progress reported against work schedules
- - Organizes and facilitates sessions regarding the project management of the project

CONSULTANT

- Leads or participate in consulting projects that deliver customer-focused results aligned with strategic and operational goals of the Client.

- Obtains and shares internal and external learning and knowledge, problem solving, strategy, methodologies, tool and processes.
- Facilitates identification, review and analysis of strategic issues and advises regarding development and implementation of strategy for the client's environment.
- May assist in developing, leading and conducting education classes
- Provides guidance in analyzing, investigating, and resolving issues.
- Analyzes trends and issues and provides recommendations.
- Responsible for development, implementation, and maintenance of guidelines, policies, procedures, and processes.
- Provides vision and guidance for area of responsibility
- Provides consultation and vision on process tools, methods, product lines, technology, implementation, support, process design, client initiatives, and business activities.
- May be required to oversee technical implementation and execution of strategic plans.
- Research and provide information on technical trends, evaluate and implement exiting applications and/or customized solutions.
- Has expertise and operates across one or more industries and variety of services such as information technology, e-business, cloud, security, and latest business transformation solutions.
- Adhere to project development and documentation standards
- Provides assistance and responsible for aspects of the development and implementation process, including tasks associated with program office support.

ARCHITECT

- Responsible for overall system design or the component design of a large system or solution.
- Responsibility includes detailed documentation of technical requirements and design documents.
- Works with the development team for the development of applications or systems
- Facilitates and guides requirements gathering, analysis, development of hypotheses/conclusions
- Performs analysis of business models, logical specifications and/or user requirements to design client solutions.
- Has expert knowledge of application design and usability principles, issues, and techniques.
- Architects focused on solution architecture organizes the development effort of a system solution. Responsible for the overall vision that underlies the projected solution and

transform the vision through the execution of the solution. Shapes, designs and plan specific service line in product areas.

- May include roles such as Application Architect, Portfolio Architect, Network Architect, Systems
- Architect, Mainframe Architect, Enterprise/Infrastructure Architect, Solutions Architect.

BUSINESS ANALYST

- Acts as liaison between business areas and IT
- Participates in research to evaluate business requirements and recommends solutions or assist in problem resolution.
- Works with client to plan and initiate the project
- Performs research, collection and collation of data from studies.
- Performs assessments and projections as part of analysis process.

TECHNICAL SYSTEMS AND SOLUTIONS SPECIALIST

Works on client's key operations and business solutions. Analyzes, designs, and develops client's information systems and program specifications; involved in creation of specification/requirements, and maintenance/ design/build /test phases of systems and applications. May also be asked to provide technical support and analysis of infrastructure projects and production environment; develop upgrade/improvement recommendation; monitor, plan, and measure impact of new products and services.

Codes, test and debugs applications and programs. May participate in the application design of systems, including use of analytical techniques. Develops program specifications and detail design documents. Assists in testing, training, and preparation of operations. Works on systems business intelligence or decision support systems supporting client's's key operations.

Roles may include: System Analyst, Programmer, Developer, Designer, Tester:

DATABASE ADMINISTRATOR

Based on skill level, the administrator can be staffed to do one, or a combination of the following: 1) installs, upgrades, resolves (patches, updates) to applications, 2) Implements the database design, that may include setup (creating tables, columns, data types, constraints), improving availability and response times, 3) Creates databases logical design which involves data architecture design, data modeling, and schema definition, 4) performs industry research for data and DB technologies and related software, tools, standards and training.

SYSTEM ADMINISTRATOR

- Provides technical support and analysis of infrastructure project and production environment; develops upgrade/improvement recommendation; monitors, plans, measures, and tests new products and services
- Works on client technologies including operating support systems
- Works on enterprise technologies, software configurations management and distribution, storage area networks
- Work on data center technologies such as network (LAN,WAN, router) management, server management, mainframe operating system.

SOFTWARE LAB SERVICES SPECIALIST / SUBJECT MATTER EXPERT

Collaborates closely with product development and product support, 2) Leading edge skill on the current versions of software products and on products in development/test, 3) Skills may include performance tuning, infrastructure logical designs, scaling, installation, integration, training, testing, migration.

IT ANALYST SOLUTIONS

- Create, analyze, coordinate, and document complex IT projects, products processes and provide recommendations based on analysis for optimal solutions.
- Create/update reports, and propose action and/or implementation plans and present to leadership to assist in decision-making and drive the work to conclusion.
- Provide IT process and/or product subject matter expertise, conduct research, gather requirements, and conduct analysis and/or coordination activities related to IT processes, projects and/or services.
- Display a technical aptitude and the ability to coordinate, design, and manage IT processes and work.

SKILL LEVELS

SKILL LEVEL I

Under direct supervision, general knowledge in field, works on assignments that are generally semi routine in nature, may assist with moderately complex projects.

Minimum 1 year experience, Bachelor Degree

SKILL LEVEL II

Experienced with frequent use and application of technical standards, principals and theories. Works under general supervision, providing solutions to technical problems of moderate scope and complexity.

Minimum 3 years experience, Bachelor Degree

SKILL LEVEL III

Career level with a complete understanding and wide application of technical principles, theories and concepts. Working under only general direction, provides technical solutions to a wide range of difficult problems. Independently determines and develops approach to solutions.

Minimum 5 years experience, Bachelor Degree

SKILL LEVEL IV

Considered an emerging authority, who applies extensive technical experience. Develops technical solutions to complex problems. Exercises considerable latitude in determining objectives and approaches to assignments.

Minimum 7 years experience, Bachelor Degree

SKILL LEVEL V

Recognized expert within IBM, who designs, researches and develops highly advanced applications and provides highly innovative solutions. Develops technical solutions to complex problems. Leads and pursues courses of action necessary to obtain desired results.

Minimum 12 years experience, Bachelor Degree

Substitution Table

Degree	Experience Equivalence	Other Equivalence
Bachelors	Associate degree +2 years relevant experience or 6 year relevant experience	Professional certifications such as (Project Management, Lean Sigma, or ITIL)
Masters (Advanced degree)	Bachelors +2 years relevant experience, or Associate + 4 years relevant experience	Masters Certificate or Professional license
Doctorate (Advanced degree)	Masters + 2 years relevant experience, or Bachelors + 4 years relevant experience	
* Successful completion of higher education which has not yet resulted in a degree may be counted as 1 year of experience for each year of college completed. * Skill Level minimum years of experience is defined as total years of experience		

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APPENDIX D. SERVICE OFFERINGS

D.1 IBM SUPPORT SERVICES

D.1.1 SUPPORT LINE

Monthly GSA Prices for Support Line

The offering below is billed per Location (the Base Price includes all machines under the Platform located at the customer location).

Platform	Base Price
SAN/NAS	$609.93
Disk/tape	$609.93

GSA Prices for Support Line Products

Annual price billed in monthly increments - the offering below is billed per Product (machine type/serial).

Platform	Base Price
Enterprise Disk	$1,463.27
ESS Mgmt Server	$1,086.33
ESS Admin Server	$309.70
ESS Data Server	$673.00
ESS Application Server	$309.70
Enterprise Tape	$682.86
Mid-Range Entry Tape System	
Small	$144.91
Medium	$390.21
Mid-Range Disk System	$877.96
NAS Products	$682.86
SAN Infrastructure Products	$303.07
Entry Level Disk System	$682.86
Power System Blade Center	$568.26

GSA Prices for Support Line for LINUX

Annual Price billed in monthly increments.

Per Server	GSA Price
Systems i and p	$568.26

Notes:

Standard Coverage is Prime Shift (8 x 5)
Full Shift Coverage (24 x 7) carries a 35% price uplift

D.2 IBM Software Support Services - account advocate – System i/p

IBM Software Support Services - account advocate

iSeries and pSeries			BASE CHARGES			
	Server	Processor Group	Base Monthly Price 8x5 (with IFF)	Monthly Price 24x7 Uplift	Per Server Monthly Price 8x5 (with IFF)	Monthly Price 24x7 Uplift
	Account Advocate pSeries	C5	355.16	20%	45.46	20%
	Account Advocate pSeries	D5	355.16	20%	45.46	20%
	Account Advocate pSeries	E5	355.16	20%	51.14	20%
	Account Advocate pSeries	F5	451.77	20%	95.66	20%
	Account Advocate pSeries	G5	451.77	20%	95.66	20%
	Account Advocate pSeries	H5	467.87	20%	190.05	20%
	Account Advocate pSeries	P05	355.16	20%	45.46	20%
	Account Advocate pSeries	P10	355.16	20%	45.46	20%
	Account Advocate pSeries	P20	355.16	20%	51.14	20%
	Account Advocate pSeries	P30	355.16	20%	51.14	20%
	Account Advocate pSeries	P40	451.77	20%	95.66	20%
	Account Advocate pSeries	P5	467.87	20%	196.05	20%
	Account Advocate pSeries	P50	467.87	20%	196.05	20%
	Account Advocate pSeries	P60	467.87	20%	196.05	20%

	Account Advocate pSeries	SM	355.16	20%	51.14	20%
	Account Advocate pSeries	MED	451.77	20%	95.66	20%
	Account Advocate pSeries	LG	467.87	20%	196.05	20%

Notes:

(1) Base Charge is charged once per contract for the largest system in customer's inventory

(2) Base offerings are prerequisite for Per Server offerings

(3) Per Server Charge applies to all Machines covered under account advocate

System x Linux		Machine From	Qty To	Linux Monthly Price 8 x 5 (with IFF)	Linux Monthly Price 24 x 7 Uplift
	Account Advocate System x Linux	1	1	331.49	20%
	Account Advocate System x Linux	2	2	338.54	20%
	Account Advocate System x Linux	3	3	347.59	20%
	Account Advocate System x Linux	4	4	355.16	20%
	Account Advocate System x Linux	5	5	367.48	20%
	Account Advocate System x Linux	6	6	378.84	20%
	Account Advocate System x Linux	7	7	391.15	20%
	Account Advocate System x Linux	8	8	402.52	20%
	Account Advocate System x Linux	9	9	410.10	20%
	Account Advocate System x Linux	10	10	449.87	20%
	Account Advocate System x Linux	11	20	489.65	20%
	Account Advocate System x Linux	21	30	537.01	20%
	Account Advocate System x Linux	31	40	591.94	20%
	Account Advocate System x Linux	41	50	646.87	20%
	Account Advocate System x Linux	51	60	702.75	20%
	Account Advocate System x Linux	61	70	773.78	20%
	Account Advocate System x Linux	71	80	856.18	20%
	Account Advocate System x Linux	81	90	963.20	20%
	Account Advocate System x Linux	91	100	1073.07	20%
	Account Advocate System x Linux	101	150	1176.30	20%
	Account Advocate System x Linux	151	200	1273.85	20%
	Account Advocate System x Linux	201	250	1428.23	20%
	Account Advocate System x Linux	251	300	1542.83	20%

	Account Advocate System x Linux	301	350	1673.53	20%
	Account Advocate System x Linux	351	400	1815.60	20%
	Account Advocate System x Linux	401	450	1972.82	20%
	Account Advocate System x Linux	451	500	2147.08	20%
	Account Advocate System x Linux	501	600	2486.15	20%
	Account Advocate System x Linux	601	700	2817.63	20%
	Account Advocate System x Linux	701	800	3196.47	20%
	Account Advocate System x Linux	801	900	3630.25	20%
	Account Advocate System x Linux	901	1000	4123.69	20%
	Account Advocate System x Linux	1001	1250	4759.19	20%
	Account Advocate System x Linux	1251	1500	5429.74	20%
	Account Advocate System x Linux	1501	1750	6172.27	20%
	Account Advocate System x Linux	1751	2000	7103.27	20%
	Account Advocate System x Linux	2001	2500	8090.16	20%

System x Windows		Machine From	Qty To	Windows Monthly Price 8 x 5 (with IFF)	Windows Monthly 24 x 7 Uplift
	Account Advocate System x Windows	1	1	355.16	20%
	Account Advocate System x Windows	2	2	362.74	20%
	Account Advocate System x Windows	3	3	371.26	20%
	Account Advocate System x Windows	4	4	378.84	20%
	Account Advocate System x Windows	5	5	386.42	20%
	Account Advocate System x Windows	6	6	402.52	20%
	Account Advocate System x Windows	7	7	410.10	20%
	Account Advocate System x Windows	8	8	418.62	20%
	Account Advocate System x Windows	9	9	429.98	20%
	Account Advocate System x Windows	10	10	473.55	20%
	Account Advocate System x Windows	11	20	513.33	20%
	Account Advocate System x Windows	21	30	560.69	20%
	Account Advocate System x Windows	31	40	623.19	20%
	Account Advocate System x Windows	41	50	670.55	20%
	Account Advocate System x Windows	51	60	741.58	20%
	Account Advocate System x Windows	61	70	821.14	20%
	Account Advocate System x Windows	71	80	907.32	20%
	Account Advocate System x Windows	81	90	1014.35	20%
	Account Advocate System x Windows	91	100	1135.58	20%
	Account Advocate System x Windows	101	150	1243.55	20%
	Account Advocate System x Windows	151	200	1361.93	20%
	Account Advocate System x Windows	201	250	1507.79	20%
	Account Advocate System x Windows	251	300	1637.54	20%

	Account Advocate System x Windows	301	350	1764.45	20%
	Account Advocate System x Windows	351	400	1914.10	20%
	Account Advocate System x Windows	401	450	2083.63	20%
	Account Advocate System x Windows	451	500	2265.47	20%
	Account Advocate System x Windows	501	600	2624.42	20%
	Account Advocate System x Windows	601	700	2979.59	20%
	Account Advocate System x Windows	701	800	3369.79	20%
	Account Advocate System x Windows	801	900	3828.29	20%
	Account Advocate System x Windows	901	1000	4364.25	20%
	Account Advocate System x Windows	1001	1250	5027.22	20%
	Account Advocate System x Windows	1251	1500	5722.40	20%
	Account Advocate System x Windows	1501	1750	6518.91	20%
	Account Advocate System x Windows	1751	2000	7466.20	20%
	Account Advocate System x Windows	2001	2500	8523.93	20%

D.3 Operational Support Services

D.3.1 z Series

Effective November 15, 2018 – z Systems Premier Software Care Offerings

z Systems Premier Software Care - SOFTWAREXCEL ENTERPRISE EDITION FOR z SYSTEMS (Full Shift)

SOFTWAREXCEL ENTERPRISE EDITION FOR z SYSTEMS (FS)

MSU	GSA w/IFF Price
000 - 0.99 MSU	$ 992.56
001 MSU	$ 1,095.80
002 MSU	$ 1,331.63
003 MSU	$ 1,567.46
004 MSU	$ 1,924.51
005 MSU	$ 2,165.08
006 - 008 MSU	$ 2,577.07
009 - 015 MSU	$ 3,109.34
016 - 021 MSU	$ 3,727.80
022 - 028 MSU	$ 4,138.84
029 - 037 MSU	$ 4,468.43
038 - 078 MSU	$ 4,714.68
079 - 099 MSU	$ 5,536.77
100 - 178 MSU	$ 7,651.65
179 - 285 MSU	$ 8,145.09
286 - 450 MSU	$ 9,060.94
451 - 949 MSU	$ 9,652.88
950 - 1449 MSU	$ 9,901.96
1450 - 1949 MSU	$ 10,157.68
1950 - 2449 MSU	$ 10,420.03
2450 - 2949 MSU	$ 10,689.95
2950 - 3449 MSU	$ 10,967.46
3450 - 3949 MSU	$ 11,249.69
3950 - 4449 MSU	$ 11,542.35
4450 - 4949 MSU	$ 11,842.58
4950 - 5449 MSU	$ 12,152.28
5450 - 5949 MSU	$ 12,470.51
5950 and up MSU	$ 12,796.31

z Systems Premier Software Care - SOFTWAREXCEL ENTERPRISE EDITION FOR z SYSTEMS (Prime Shift)

	MSU	GSA w/IFF Price
SOFTWAREXCEL ENTERPRISE EDITION PRIME SHIFT FOR z SYSTEMS	000 - 0.99 MSU	$ 391.15
	001 MSU	$ 494.39
	002 MSU	$ 730.22
	003 MSU	$ 966.05
	004 MSU	$ 1,323.10
	005 MSU	$ 1,563.67
	006 - 008 MSU	$ 1,975.66
	009 - 015 MSU	$ 2,507.93
	016 - 021 MSU	$ 3,126.39
	022 - 028 MSU	$ 3,537.43
	029 - 037 MSU	$ 3,867.02
	038 - 078 MSU	$ 4,113.27
	079 - 099 MSU	$ 4,935.36
	100 - 178 MSU	$ 7,050.24
	179 - 285 MSU	$ 7,543.68
	286 - 450 MSU	$ 8,459.53
	451 - 949 MSU	$ 9,051.47
	950 - 1449 MSU	$ 9,300.55
	1450 - 1949 MSU	$ 9,556.27
	1950 - 2449 MSU	$ 9,818.62
	2450 - 2949 MSU	$ 10,088.54
	2950 - 3449 MSU	$ 10,366.05
	3450 - 3949 MSU	$ 10,648.28
	3950 - 4449 MSU	$ 10,940.94
	4450 - 4949 MSU	$ 11,241.17
	4950 - 5449 MSU	$ 11,550.87
	5450 - 5949 MSU	$ 11,869.10
	5950 and up MSU	$ 12,194.90

z Systems Premier Software Care - ALERT AND RESOLVE FOR z SYSTEMS

Monthly Rate: $543.64

D.3.2 pSeries

Alert for pSeries

Monthly Rate: $47.36 per report destination

D.3.3 iSeries

Alert for iSeries

Monthly Rate: $47.36 per report destination

D.4 Machine Movement and Modification Services – See Appendix C for prices.

D.5 On Demand Services

On Demand Services have been designed to help customers meet their demanding Information Technology needs. These services can be used for a variety of IT requirements such as a collaboration service, a production environment or a data replication environment. The customer is provided with a Base System, delivered to their location or hosted at an IBM location, which is flexible and configured based on their unique needs. The base system is invoiced on a monthly basis. Startup services, also based on the customer's unique needs can be provided. These charges will be invoiced on a one time charge basis. As requirements increase, additional services and assets (e.g., Storage and additional MIPs) can be added by using the formulas below or other pricing methodologies (i.e., based upon number of users, usage-based, etc.). These additional services and assets (Storage and additional MIPS) will be invoiced on a monthly basis. GSA prices will apply to all the elements needed to price the requested level of service.

Base Services – Formula

Hardware needed

Plus

Total Software needed (either One Time Charge or Monthly times the number of months needed)

Plus

Services needed

Plus

Total hardware and software maintenance needed

Total Price for Base System (at GSA prices)

Total Price for Base System/Number of Months Required* = Monthly Base Services Price

Additional Terabytes of Storage – Formula

Hardware needed to increase Base System

Plus

Total Software needed to increase Base System (either One Time Charge or Monthly times the number of months needed)

Plus

Services needed to increase Base System

Plus

Total hardware and software maintenance delta to increase Base System

Total Price to increase Base System (at GSA prices)

Total Price to increase Base System/Number of Terabytes increased/Number of Months* = Price Per Terabyte Per Month

Additional MIPS – Formula

Hardware needed to increase Base System

Plus

Total Software needed to increase Base System (either One Time Charge or Monthly times the number of months needed).

Plus

Services needed to increase Base System

Plus

Total hardware and software maintenance delta to increase Base System

Total Price to increase Base System (at GSA prices)

Total Price to increase Base System/Number of MIPS increased/Number of Months* = Price per MIP per Month.

Note that this methodology will accommodate leveling the monthly price of these services (Base Services, Additional Storage, and Additional MIPs) over the customers defined period of performance and level of service.

Start-up, Installation, Test and Training – Formula (Customer requested services beyond the support normally included in IBM's standard offerings).

Startup Services needed

Plus

Installation Services needed

Plus

Testing Services needed

Plus

Training Services needed

Total One Time Charge for Start-up, Installation, Test and Training

*Maximum Base number of months not to exceed 84.

Software can only be ordered with hardware.

Terms and Conditions

Based on the requirements of the Government activity, this offering may include, in addition to Hardware, under Special Item Number (SIN 132-8), the following components from other SINs within the Schedule: IBM maintenance (SIN 132-12), IBM software (SIN 132-33), installation and de-installation of the hardware (SIN 132-51), and training (SIN 132-50). The standard offering terms and conditions of each applicable SIN will apply.

Each order must contain a Statement of Work outlining the customer's requirements, which must be mutually agreed to, by the Government and IBM prior to acceptance.

1. Ownership

IBM retains all rights, title, and ownership to the products.

The Government retains all rights to data stored on the system.

The Government performs all day-to-day business operations and user requirements.

The Government retains responsibility for loading software applications and data, for data integrity and for data administration tasks related to databases, file systems, and applications.

2. Termination

The Government will be responsible for termination charges if partial or total cancellation of this service occurs prior to the end of the initially defined full contract term. Such charges will relate to the level of initial capital investment required to support the Government's defined level of requirements.

The Government must provide a 3-month written notice prior to cancellation.

The Government shall be responsible for the return of the equipment to IBM at the location specified by IBM

3. Performance of Services

Processor Resource Change Requests / System Upgrades & Downgrades - IBM will respond to Government change requests, notifying the Government of an impact to the monthly rate. The Government must notify IBM prior to any additions/alterations/substitutions performed by a third party.

4. Invoicing

This offer is billed monthly in arrears at a fixed priced amount determined by the above formula. Additional charges will apply if the configuration is changed during the term.

5. Contract Term Completion

Upon completion of the full contract period, the Government will be responsible for the de-installation, removal and shipping of the Base System from the customer location.

APPENDIX C.1 SIN 54151HACS CYBERSECURITY LABOR RATES AND DESCRIPTIONS

LABOR RATES

SIN 54151HACS CyberSecurity Rate Template

MDC243

Labor Category	Minimum Education	Minimum Years of Experience	Contractor or Customer Facility	Jan 1, 2020 - Dec 31, 2020 GSA Price	Year 1 (Jan 1, 2021 - Dec 31, 2021) GSA Price	Year 2 (Jan 1, 2022 - Dec 31, 2022) GSA Price	Year 3 (Jan 1, 2023 - Dec 31, 2023) GSA Price	Year 4 (Jan 1, 2024 - Dec 31, 2024) GSA Price	Year 5 (Jan 1, 2025 - Dec 31, 2025) GSA Price
Security Analyst - Junior	Bachelors	1	Both	$90.33	$92.13	$93.98	$95.86	$97.77	$99.73
Security Analyst - Intermediate	Bachelors	5	Both	$126.68	$129.22	$131.80	$134.44	$137.12	$139.87
Security Analyst - Senior	Bachelors	7	Both	$165.56	$168.87	$172.25	$175.69	$179.20	$182.79
Computer Network Defense (CND) Analyst - Junior	Bachelors	1	Both	$101.79	$103.82	$105.90	$108.02	$110.18	$112.38
Computer Network Defense (CND) Analyst - Intermediate	Bachelors	5	Both	$138.14	$140.90	$143.72	$146.59	$149.53	$152.52
Computer Network Defense (CND) Analyst - Senior	Bachelors	7	Both	$177.01	$180.55	$184.17	$187.85	$191.61	$195.44
Security Architect - Junior	Bachelors	1	Both	$142.71	$145.56	$148.47	$151.44	$154.47	$157.56
Security Architect - Intermediate	Bachelors	5	Both	$179.06	$182.64	$186.29	$190.02	$193.82	$197.69
Security Architect - Senior	Bachelors	7	Both	$217.93	$222.29	$226.74	$231.27	$235.90	$240.62
Information Assurance Analyst - Junior	Bachelors	1	Both	$121.63	$124.06	$126.54	$129.07	$131.65	$134.29
Information Asurance Analyst - Intermediate	Bachelors	5	Both	$157.98	$161.14	$164.36	$167.65	$171.00	$174.42
Information Assurance Analyst - Senior	Bachelors	7	Both	$191.46	$195.29	$199.19	$203.18	$207.24	$211.39
Penetration Tester - Intermediate	Bachelors	3	Both	$150.01	$153.01	$156.07	$159.19	$162.38	$165.62
Penetration Tester - Senior	Bachelors	6	Both	$168.09	$171.45	$174.88	$178.38	$181.95	$185.58
Cybersecurity Engineer - Junior	Bachelors	1	Both	$94.69	$96.58	$98.51	$100.48	$102.49	$104.54
Cybersecurity Engineer - Intermediate	Bachelors	5	Both	$131.04	$133.66	$136.33	$139.06	$141.84	$144.68
Cybersecurity Engineer - Senior	Bachelors	7	Both	$169.92	$173.31	$176.78	$180.32	$183.92	$187.60
Cybersecurity Technical Writer - Junior	Bachelors	1	Both	$85.97	$87.69	$89.44	$91.23	$93.06	$94.92
Cybersecurity Technical Writer -Intermediate	Bachelors	5	Both	$122.32	$124.77	$127.26	$129.81	$132.41	$135.05
CyberSecurity Assessment and Authorization (A&A) Analyst - Junior	Bachelors	1	Both	$111.56	$113.79	$116.07	$118.39	$120.76	$123.17
CyberSecurity Assessment and Authorization (A&A) Analyst - Intermediate	Bachelors	5	Both	$147.91	$150.87	$153.89	$156.97	$160.11	$163.31
CyberSecurity Assessment and Authorization (A&A) Analyst - Senior	Bachelors	7	Both	$186.79	$190.53	$194.34	$198.22	$202.19	$206.23
Information Security Analyst (Data Protection) - Junior	Bachelors	1	Both	$148.59	$151.56	$154.59	$157.68	$160.84	$164.05
Information Security Analyst (Data Protection) - Intermediate	Bachelors	5	Both	$184.94	$188.64	$192.41	$196.26	$200.19	$204.19
Information Security Analyst (Data Protection) - Senior	Bachelors	7	Both	$223.82	$228.29	$232.86	$237.52	$242.27	$247.11
Vulnerability Management Analyst - Junior	Bachelors	1	Both	$143.55	$146.42	$149.34	$152.33	$155.38	$158.49
Vulnerability Management Analyst - Intermediate	Bachelors	5	Both	$179.90	$183.50	$187.17	$190.91	$194.73	$198.62
Vulnerability Management Analyst - Senior	Bachelors	7	Both	$218.77	$223.15	$227.61	$232.16	$236.81	$241.54
Cloud Computing Security Specialist (CCSS)-Subject Matter Expert (SME) - Staff	Bachelors	3	Both	$174.48	$177.47	$181.02	$184.64	$188.33	$192.10
Cloud Computing Security Specialist (CCSS)-Subject Matter Expert (SME) - Interme	Bachelors	5	Both	$217.27	$221.61	$226.05	$230.57	$235.18	$239.88
Cloud Computing Security Specialist (CCSS)-Subject Matter Expert (SME) - Senior	Bachelors	7	Both	$278.39	$283.96	$289.64	$295.43	$301.34	$307.37
Operational Technology Security Engineer - Junior	Bachelors	1	Both	$134.90	$137.60	$140.35	$143.16	$146.02	$148.94
Operational Technology Security Engineer - Intermediate	Bachelors	5	Both	$171.25	$174.68	$178.17	$181.74	$185.37	$189.08
Operational Technology Security Engineer - Senior	Bachelors		Both	$210.13	$214.33	$218.62	$222.99	$227.45	$232.00

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DESCRIPTIONS

SECURITY ANALYST

Responsible for the analysis and development of the integration, testing, operations, and maintenance of systems security. Performs all procedures necessary to ensure the safety of the organization's systems, information, and transactions across the Internet/intranet. Uses defensive measures and information collected from a variety of sources to identify, analyze, and report events that occur or might occur within the network in order to protect information, information systems, and networks from threats. Identifies and mitigates vulnerabilities using alternate or compensating controls if necessary. Applies Internet firewall technologies to maintain security. Ensures that the user community understands and adheres to necessary procedures to maintain security. Updates and deletes users, monitors and performs follow-up on compliance violations, and develops security policies, practices, and guidelines. Supports Security Operations Center (SOC).Assists with the installation, daily operation, and maintenance of IA systems to include technical support, troubleshooting, and system testing.

- Relevant certification from a nationally recognized organization (e.g. CISSP, CEH, CISM, CISA).

COMPUTER NETWORK DEFENSE (CND) ANALYST

Uses data collected from a variety of cyber defense tools (e.g., IDS alerts, firewalls, network traffic logs) to analyze events that occur within their environments for the purposes of mitigating threats. Performs actions to protect, monitor, detect, analyze, and respond to unauthorized activity within assigned information systems and computer networks. Employs Cybersecuritycapabilities and deliberate actions to respond to a CND alert or emerging situational awareness/threat. Serves as an expert on CND requirements and compliance to such requirements by using IA tools and techniques to perform compliance analysis and correlation, tracking and remediation coordination, and escalating CND non-compliance. Provides technical analysis and sustainment support for the enterprise for IA tools and applications, and assists with the application of Defense-In-Depth signatures and perimeter defense controls to diminish network threats.

- Relevant certification from a nationally recognized organization (e.g. CISSP, CEH, CISM, CISA).

SECURITY ARCHITECT

Responsible for guiding the design and implementation of secure solutions and services across business and IT support areas. Driving the successful configuration and implementation of security solutions to reduce risk to an acceptable level. Ensures that the stakeholder security requirements necessary to protect the organization’s mission and business processes are adequately addressed in all aspects of enterprise architecture including reference models,

segment and solution architectures, and the resulting systems supporting those missions and business processes. Serves as an IA Subject Matter Expert (SME) with regards to IA Architecture policies and procedures. Provides IA Management support to Program Management Offices (PMO) for emerging information systems through the acquisition lifecycle and where applicable into sustainment. Provides technical support and guidance to facilitate the identification and integration of IA controls at the onset of the acquisition lifecycle for emerging IT capabilities. Serves as a principal liaison for Enterprise-level boundary defense initiatives to ensure consistent and sufficient identification and implementation of applicable IA controls in concert with the agency IA and IT architecture and National Institute of Standards and Technology (NIST) security guidelines. Provides oversight for the design and implementation of Enterprise-level IA solutions providing standards for access control capabilities across the Enterprise.

Qualifications:

- Knowledge and experience in managing information technology services and strategies
- Relevant certification from a nationally recognized organization (e.g. CISSP, CEH, CISM, CISA).

INFORMATION ASSURANCE ANALYST – SENIOR

Conducts comprehensive assessments of the management, operational, and technical security controls and control enhancements employed within or inherited by an information technology (IT) system to determine the overall effectiveness of the controls (as defined in NIST SP 800-53 and/or SP 800-37). Demonstrated ability to independently perform complex security analysis of applications and systems for compliance with security requirements. Performs cybersecurity vulnerability evaluations. Uses a variety of security techniques, technologies, and tools to evaluate security posture in highly complex computer systems and networks. Analyzes and defines security requirements for systems, applications and infrastructure. Recommends solutions to meet security requirements. Gathers and organizes technical information about an organization's mission goals and needs, and makes recommendations to improve existing security posture. Demonstrated experience and ability to provide enterprise-wide technical analysis and direction for problem definition, analysis and remediation for complex systems and enclaves. Ability to provide workable recommendations and advice to client executive management on system security posture and process improvements, optimization and maintenance. Develops and maintains cybersecurity plans, strategy, and policy to support and align with organizational cybersecurity initiatives and regulatory compliance. Reviews, consolidates, develops and/or implements cybersecurity policy in accordance with agency/client and NIST security requirements and assess IT policies, standards, guidelines or procedures to ensure a balance of security and operational requirements.

Qualifications:

- Strong analytical and problem solving skills for resolving security issues
- Relevant certification from a nationally recognized organization (e.g. CISSP, CEH, CGEIT, CRISC, CISM, CISA).

INFORMATION ASSURANCE ANALYST- INTERMEDIATE

Under general supervision, conducts comprehensive assessments of the management, operational, and technical security controls and control enhancements employed within or inherited by an information technology (IT) system to determine the overall effectiveness of the controls (as defined in NIST SP 800-53 and/or SP 800-37). Demonstrated ability to independently perform complex security analysis of applications and systems for compliance with security requirements. Performs cybersecurity vulnerability evaluations. Uses a variety of security techniques, technologies, and tools to evaluate security posture in highly complex computer systems and networks. Analyzes and defines security requirements for systems, applications and infrastructure. Recommends solutions to meet security requirements. Gathers and organizes technical information about an organization's mission goals and needs, and makes recommendations to improve existing security posture. Demonstrated experience and ability to provide enterprise-wide technical analysis and direction for problem definition, analysis and remediation for complex systems and enclaves. Ability to provide workable recommendations and advice to client executive management on system security posture and process improvements, optimization and maintenance. Develops and maintains cybersecurity plans, strategy, and policy to support and align with organizational cybersecurity initiatives and regulatory compliance. Reviews, consolidates, develops and/or implements cybersecurity policy in accordance with agency/client and NIST security requirements and assess IT policies, standards, guidelines or procedures to ensure a balance of security and operational requirements.
Qualifications:

- Strong analytical and problem solving skills for resolving security issues
- Relevant certification from a nationally recognized organization is preferred (e.g. CISSP, CEH, CISM, CISA).

PENETRATION TESTER – SENIOR

Demonstrated ability to independently perform penetration testing of applications, systems and enclaves belonging to or managed by clients. Identifies security flaws in computing platforms and applications and devise strategies and techniques to mitigate identified cybersecurity risks. Perform application and network penetration testing and wireless security assessments. Apply offensive cybersecurity testing techniques, coordinate testing projects with internal and external system owners. Reports the nature of identified cyber security risks and recommends risk mitigation measures to improve the cyber security posture of the enterprise.

- Qualifications

- Proven proficiency in performing extensive vulnerability assessment and penetration testing.
- Experience with testing tools, including NESSUS, METASPLOIT, CANVAS, NMAP, Burp Suite, and Kismet
- Experience with network vulnerability assessments and penetration testing methods
- Experience with writing testing assessment reports

- Relevant certification from a nationally recognized organization (e.g. CISSP, CEH, LPT, CEPT, CISM, CISA).
- Knowledge of open security testing standards and projects, including OWASP

PENETRATION TESTER - INTERMEDIATE

Under general supervision, perform penetration testing of applications, systems and enclaves belonging to or managed by clients. Identify security flaws in computing platforms and applications and devise strategies and techniques to mitigate identified cybersecurity risks. Perform application and network penetration testing and wireless security assessments. Apply offensive cybersecurity testing techniques, coordinate testing projects with internal and external system owners. Reports the nature of identified cyber security risks and recommends risk mitigation measures to improve the cyber security posture of the enterprise.

- Qualifications
  - Proven proficiency in performing vulnerability assessment and penetration testing.
  - Experience with testing tools, including NESSUS, METASPLOIT, CANVAS, NMAP, Burp Suite, and Kismet
  - Experience with network vulnerability assessments and penetration testing methods
  - Experience with writing testing assessment reports
  - Relevant certification from a nationally recognized organization (e.g. CISSP, CEH, LPT, CEPT, CISM, CISA).
  - Knowledge of open security testing standards and projects, including OWASP

CYBERSECURITY ENGINEER

Uses defensive measures and information collected from a variety of sources to identify, analyze, and report events that occur or might occur within the network in order to protect information, information systems, and networks from threats. Identifies and mitigates vulnerabilities using alternate or compensating controls if necessary. Supports, monitors, tests, and troubleshoots IA software issues in conjunction with other IA staff to ensure timely response actions to security incidents. Recognizes potential security violations, takes appropriate action to report the incident as required by regulation, and mitigates any adverse impact. Implements applicable patches including vulnerabilities from the National Vulnerability Database, US CERT alerts, IA vulnerability alerts (IAVA), IA vulnerability bulletins (IAVB), and technical advisories (TA) for assigned operating system(s), Under technical supervision, performs information assurance activities in data center environments. Supports Security Operations Center (SOC). Assists with the installation, daily operation, and maintenance of IA systems to include technical support, troubleshooting, and system testing. Conducts and/or supports authorized penetration testing on enterprise network assets.

Performs a variety of routine project tasks applied to specialized Cybersecurity problems. Tasks involve integration of tools and processes or methodologies to resolve total system problems, or technology problems as they relate to cybersecurity requirements. Analyzes information security requirements. Applies analytical and systematic approaches in the resolution of problems of work flow, organization, and planning. Provides security engineering support for planning, design, development, testing, demonstration, integration of information systems.

- Minimum Experience/ Qualification:
  -
  - Relevant certification from a nationally recognized organization (e.g. CISSP, CEH, CISM, CISA).
  - Experience with security tools such as SIEM tools, vulnerability scanners, monitoring tools and incident response processes and tools

CYBERSECURITYASSESSMENT AND AUTHORIZATION (A&A/C&A) ANALYST

Serves as a cybersecurity Subject Matter Expert (SME) with regards to Authorization of information systems and all associated cybersecurity policies and procedures. Fully versed in the general tenets supporting the overall organization implementation of its authorization process, to include supporting cybersecurity policy, procedures and processes. Performs a cybersecurity process while either authorizing an information system or serving as a SME for an information system undergoing authorization. Possess an understanding of how the security controls identified in the NIST 800-53 apply to the process of assessing and authorizing a large organization's IT infrastructure, in which there is a compilation of large and small enclaves, applications and IT processes. Determines the applicable severity value for an identified vulnerability (e.g., non-compliant security control), and determines the possible ramifications on the system's current or future authorization. Required to brief senior management on the progress or results of an information system undergoing the authorization process. Prepares, reviews, and evaluates documentation of compliance. Verifies that application software/network/system security postures are implemented as stated, document deviations, and recommend required actions to correct those deviations. Reviews IA and IA enabled software, hardware, and firmware for compliance with appropriate security configuration guidelines, policies, and procedures. Developed, reviews or updates IA security plans and A&A documentation. Identifies alternative functional IA security strategies to address organizational security concerns. Perform security reviews and identify security gaps in security architecture resulting in recommendations for inclusion in the risk mitigation strategy. Prepares, recommendations for the Designated Approving Authority (DAA) or Authorizing Official (AO).

- Minimum Experience:
- Relevant A&A (formerly known as C&A) experience;
- Risk Management Framework (RMF) and NIST A&A experience;
- Experience in assessing security controls and conducting authorization reviews for large, complex organizations.

- Relevant certification from a nationally recognized organization (e.g. CISSP, CEH, CISM, CISA).

CYBERSECURITY TECHNICAL WRITER

Under general supervision, edits and rewrites documents for grammatical, syntactical, and usage errors, spelling, punctuation, and adherence to standards. Proofreads documentation and graphics for accuracy and adherence to original content provides quality control checking for documents received from photocopying and word processing; assembles Master copies, including graphics, appendices, table of contents, and title pages; assists in scheduling printing, and copying. Assists in document tracking and logging, and consults with technical staff to determine format, contents, and the organization of technical reports and proposals. Assists in collecting and organizing information required for preparation of user's manuals, training materials, installation guides, proposals, and reports. Edits functional descriptions, system specifications, user's manuals, special reports, or any other customer deliverables and documents.

- Minimum Experience:
  - Relevant Technical Writing experience

CLOUD COMPUTING SECURITY SPECIALIST (CCSS)-SUBJECT MATTER EXPERT (SME)

Serves as an Information Assurance and Cloud computing SME with regards to Assessment and Authorization (A&A) (formerly known as C&A) and a broad coverage of the application of the National Institute of Standards and Technology (NIST) Risk Management Framework (RMF) standards and guidance as outlined in the NIST Special Publication(s) (SP) 800-53 and 800-37 (Current versions). Possesses the ability to work independently with substantial cloud computing security knowledge. The assessor must have the essential skill sets to identify, manage and resolve cloud computing security risk and implement “best practices” as applied within a cloud environment (across all of the different deployment and service models, and derivatives).The CCSS must be well versed in FedRAMP assessment methodology of security and privacy controls deployed in cloud information systems to include six (6) domain areas. The six domains include:

- Architectural Concepts & Design Requirements
- Cloud Data Security
- Cloud Platform & Infrastructure Security
- Cloud Application Security
- Operations
- Legal & Compliance

Qualifications:

- Relevant A&A experience; Risk Management Framework (RMF) and NIST A&A experience
- Relevant certification from a nationally recognized organization (e.g. CISSP, CCSP, CCSK, CEH, CISM, CISA).
- Experience in assessing IA Controls and conducting A&A reviews for large, complex Information systems

INFORMATION SECURITY ANALYST (DATA PROTECTION)

Serves as information security analyst performing incident response (identification, containment, eradication, recovery) for Personally Identifiable Information (PII) incidents and PII-related data breaches. Investigates, analyzes, and responds to cyber incidents within the network environment or enclave. Utilizes data loss prevention (DLP) tools to identify improperly stored PII data at rest and improperly transmitted PII data. Performs the quarantining of improperly stored PII data. Recommends appropriate actions to mitigate the risk of unauthorized access to PII data and ensures the implementation of appropriate security controls to safeguard PII data. Engages with stakeholders and mission partners to facilitate containment, eradication, and recovery for PII incidents. Validates remedial actions and ensures compliance with NIST and agency specific information security and privacy policy.

Qualifications

- Relevant certification from a nationally recognized organization (e.g. CISSP, CEH, CISM, CISA).
- Hands-on experience performing computer security incident handling
- Hands-on experience with data loss prevention software/tools

OPERATIONAL TECHNOLOGY SECURITY ENGINEER

Performs a variety of routine project tasks applied to specialized information assurance problems with IT systems. Tasks involve integration of processes or methodologies with information systems to resolve total system problems, or technology problems as they relate to IA requirements. Analyzes information security requirements. Applies analytical and systematic approaches in the resolution of problems of work flow, organization, and planning. Provides security engineering support for planning, design, development, testing, demonstration, integration of IT systems.

Provides expert support, analysis and research into exceptionally complex cyber security problems, and processes relating to the subject matter. Serves as technical expert on project teams providing technical direction, interpretation and alternatives.
Applies extensive technical expertise in the field of cybersecurity, and has full knowledge of other related disciplines. Guides the successful completion of major programs and may function in a project leadership role. Develops technical solutions to complex problems that require the regular use of ingenuity and creativity. Expertise isin a particular area of Information Technology (e.g., Product SME, Information Systems Architecture, Telecommunications Systems Design, Architecture, Implementation, Information Systems Integration, Software Development Methodologies, Security Engineering, Security Compliance, Cognitive Security, Analytics, Privacy, Communications and Network SystemsManagement), or a specific functional area (e.g., finance, logistics, and operations research).

VULNERABILITY MANAGEMENT ANALYST

Performs assessments of systems and networks within the network environment or enclave and identifies where those systems/networks deviate from acceptable configurations, enclave policy, or local policy. Measures effectiveness of defense-in-depth architecture against known vulnerabilities. Serves as vulnerability management analyst for assigned applications. Analyzes vulnerabilities and characterizes risk. Engages with stakeholders and mission partners to facilitate application, infrastructure and/or web vulnerability assessments. Performs code review, software assurance testing, and application vulnerability scanning. Facilitates the coordination of remediation efforts, prioritizing remediation efforts based on risk. Recommends appropriate actions to remediate vulnerabilities and mitigate risks and ensures the implementation of appropriate security settings to include those required by NIST and Defense Information Systems Agency (DISA) Security Technical Implementation Guides (STIG). Tracks and reports security and compliance issues. Validates remedial actions and ensures compliance with NIST and agency specific information security policy.

Qualifications:

- Hands-on experience working with application vulnerability scanners
- Understanding of application vulnerabilities and remediation techniques

Project Manager

- Provides direction to the teams to include cybersecurity staff
- Provides overall strategic management, defines the program scope and objectives, manages project's scope, schedule, budget, and risk.
- Develops project management plans, project documentation, work breakdown structures, project schedules, integrated master schedules, financial reports, and risk management documentation

- Plans, organizes, monitors, and oversees IT projects, business strategies, and technology development.
- Manages cross functional teams
- Understands needs of business users as well as development and service support areas.
- Defines program and project goals, plans and reports.
- Responsible for all aspects of the development and implementation of assigned projects.

Project Coordinator

- Advises project team and cybersecurity staff on processes
- Develops project schedule and supports deliverables
- Analyzes impact change requests have on the schedule
- Analyzes progress reported against work schedules
- Organizes and facilitates sessions regarding the project management of the project

Consultant

- Leads or participate in cybersecurity consulting projects that deliver customer-focused results aligned with strategic and operational goals of the Client.
- Obtains and shares internal and external learning and knowledge, problem solving, strategy, methodologies, tool and processes.
- Facilitates identification, review and analysis of cybersecurity strategic issues and advises regarding development and implementation of strategy for the client's environment.
- May assist in developing, leading and conducting education classes
- Provides guidance in analyzing, investigating, and resolving issues.
- Analyzes trends and issues and provides recommendations.
- Responsible for development, implementation, and maintenance of guidelines, policies, procedures, and processes.
- Provides vision and guidance for area of responsibility
- Provides consultation and vision on process tools, methods, product lines, technology, implementation, support, process design, client initiatives, and business activities.
- May be required to oversee technical implementation and execution of strategic plans.
- Research and provide information on technical trends, evaluate and implement exiting applications and/or customized solutions.
- Has expertise and operates across one or more industries and variety of services such as information technology, e-business, cloud, security, and latest business transformation solutions.

- Adhere to project development and documentation standards
- Provides assistance and responsible for aspects of the development and implementation process, including tasks associated with program office support.

Architect

- Responsible for guiding the design and implementation of secure solutions and services across our business and IT support areas. Driving the successful configuration and implementation of security solutions to reduce risk to an acceptable level.
- Responsible for overall system design or the component design of a large system or solution.
- Responsibility includes detailed documentation of technical requirements and design documents.
- Works with the development team for the development of applications or systems
- Facilitates and guides requirements gathering, analysis, development of hypotheses/conclusions
- Performs analysis of business models, logical specifications and/or user requirements to design client solutions.
- Has expert knowledge of application design and usability principles, issues, and techniques.
- Architects focused on solution architecture organizes the development effort of a system solution. Responsible for the overall vision that underlies the projected solution and transform the vision through the execution of the solution. Shapes, designs and plan specific service line in product areas.
- May include roles such as Application Architect, Portfolio Architect, Network Architect, Systems
- Architect, Mainframe Architect, Enterprise/Infrastructure Architect, Solutions Architect.

Business Analyst

- Acts as liaison between business areas and IT and cybersecurity business units
- Participates in research to evaluate business requirements and recommends solutions or assist in problem resolution.
- Works with client to plan and initiate the project
- Performs research, collection and collation of data from studies.
- Performs assessments and projections as part of analysis process.

Technical Systems and Solutions Specialist

- Track security violations and identify trends or exposures that could be addressed by additional training, technical measures, or use of application tools to enhance security. May lead or execute simulated attacks or security violations to assess the organization's data security measures.

- Works on client's key operations and business solutions. Analyzes, designs, and develops client's information systems and program specifications; involved in creation of specification/requirements, and maintenance/ design/build /test phases of systems and applications. May also be asked to provide technical support and analysis of infrastructure projects and production environment; develop upgrade/improvement recommendation; monitor, plan, and measure impact of new products and services.
- Codes, test and debugs applications and programs. May participate in the application design of systems, including use of analytical techniques. Develops program specifications and detail design documents. Assists in testing, training, and preparation of operations. Works on systems business intelligence or decision support systems supporting client's key operations.

Roles may include: System Analyst, Programmer, Developer, Designer, Tester:

Database Administrator

- Based on skill level, the administrator can be staffed to do one, or a combination of the following: 1) installs, upgrades, resolves (patches, updates) to applications, 2) Implements the database design, that may include setup (creating tables, columns, data types, constraints), improving availability and response times, 3) Creates databases logical design which involves data architecture design, data modeling, and schema definition, 4) performs industry research for data and DB technologies and related software, tools, standards and training. 5) Supports remediation of Plan of Action and Milestones (POA&M). 6) Perform database maintenance on IDS/IPS and other security management consoles

System Administrator

- Installs, configures, troubleshoots, and maintains server configurations (hardware and software) to ensure their confidentiality, integrity, and availability. Also manages accounts, firewalls, and patches. Responsible for access control, passwords, and account creation and administration.
- Provides technical support and analysis of infrastructure project and production environment; develops upgrade/improvement recommendation; monitors, plans, measures, and tests new products and services
- Works on client technologies including operating support systems
- Works on enterprise technologies, software configurations management and distribution, storage area networks
- Work on data center technologies such as network (LAN,WAN, router) management, server management, mainframe operating system.

Software Lab Services Specialist

- Collaborates closely with product development and product support, 2) Leading edge skill on the current versions of software products and on products in development/test, 3) Skills may include performance tuning, infrastructure logical designs, scaling, installation, integration, training, testing, migration. 4) Develop specifications to ensure risk, compliance, and assurance efforts conform with security, resilience, and dependability requirements at the

software application, system, and network environment level 5) Verify that application software/network/system security postures are implemented as stated, document deviations, and recommend required actions to correct those deviations 6) Troubleshoot prototype design and process issues throughout the product design, development, and post-launch phases

IT Analyst Solutions

- Create, analyze, coordinate, and document complex IT and cybersecurity projects, products processes and provide recommendations based on analysis for optimal solutions.
- Create/update reports, and propose action and/or implementation plans and present to leadership to assist in decision-making and drive the work to conclusion.
- Provide IT process and/or product subject matter expertise, conduct research, gather requirements, and conduct analysis and/or coordination activities related to IT processes, projects and/or services.
- Display a technical aptitude and the ability to coordinate, design, and manage IT processes and work.

Substitution Table

Degree	Experience Equivalence	Other Equivalence
Bachelors	Associate degree +2 years relevant experience or 6 years relevant experience	Professional certifications such as (CompTIA Security + -CPTE - Certified Penetration Testing Engineer or CEH - Certified Ethical Hacker -Certified Information System Security Professional (CISSP), CISA, CISM, CRISC)
Masters (Advanced degree)	Bachelors +2 years relevant experience, or Associate + 4 years relevant experience	Masters Certificate or Professional license
Doctorate (Advanced degree)	Masters + 2 years relevant experience, or Bachelors + 4 years relevant experience	
* Successful completion of higher education which has not yet resulted in a degree may be counted as 1 year of experience for each year of college completed. * Skill Level minimum years of experience is defined as total years of experience		

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APPENDIX C.3 GS-35F-110DA GSA SCHEDULE LABOR RATES FOR CLOUD LABOR SIN 518210C

IBM Cloud Labor Rates SIN 518210C				(Jan 1, 2020 - Dec 31, 2020)	Year 1 (Jan 1, 2021 - Dec 31, 2021)	Year 2 (Jan 1, 2022 - Dec 31, 2022)	Year 3 (Jan 1, 2023 - Dec 31, 2023)	Year 4 (Jan 1, 2024 - Dec 31, 2024)	Year 5 (Jan 1, 2025 - Dec 31, 2025)
Labor Category	Degree	Minimum Years Experience (see Equivalency Table)	Both Contractor or Customer Facility	GSA Price	GSA Price	GSA Price	GSA Price	GSA Price	GSA Price
Cloud Architect V	Bachelors	12	Both	$323.96	$330.44	$337.05	$343.79	$350.66	$357.68
Cloud Architect IV	Bachelors	7	Both	$260.14	$265.34	$270.65	$276.06	$281.58	$287.22
Cloud Architect III	Bachelors	5	Both	$215.25	$219.56	$223.95	$228.43	$232.99	$237.65
Cloud Architect II	Bachelors	3	Both	$184.14	$187.82	$191.58	$195.41	$199.32	$203.31
Cloud Architect I	Bachelors	1	Both	$153.02	$156.08	$159.20	$162.39	$165.63	$168.95
Cloud Business Analyst V	Bachelors	12	Both	$323.96	$330.44	$337.05	$343.79	$350.66	$357.68
Cloud Business Analyst IV	Bachelors	7	Both	$260.14	$265.34	$270.65	$276.06	$281.58	$287.22
Cloud Business Analyst III	Bachelors	5	Both	$215.25	$219.56	$223.95	$228.43	$232.99	$237.65
Cloud Business Analyst II	Bachelors	3	Both	$168.83	$172.21	$175.65	$179.16	$182.75	$186.40
Cloud Business Analyst I	Bachelors	1	Both	$122.42	$124.87	$127.37	$129.91	$132.51	$135.16
Cloud Consultant V	Bachelors	12	Both	$335.93	$342.65	$349.50	$356.49	$363.62	$370.89
Cloud Consultant IV	Bachelors	7	Both	$294.26	$300.15	$306.15	$312.27	$318.52	$324.89
Cloud Consultant III	Bachelors	5	Both	$259.35	$264.54	$269.83	$275.22	$280.73	$286.34
Cloud Database Administrator IV	Bachelors	7	Both	$219.53	$223.92	$228.40	$232.97	$237.63	$242.38
Cloud Database Administrator III	Bachelors	5	Both	$153.02	$156.08	$159.20	$162.39	$165.63	$168.95
Cloud Database Administrator II	Bachelors	3	Both	$137.72	$140.47	$143.28	$146.15	$149.07	$152.05
Cloud Project Coordinator IV	Bachelors	7	Both	$137.72	$140.47	$143.28	$146.15	$149.07	$152.05
Cloud Project Coordinator III	Bachelors	5	Both	$117.31	$119.66	$122.05	$124.49	$126.98	$129.52
Cloud Project Coordinator II	Bachelors	3	Both	$106.37	$108.50	$110.67	$112.88	$115.14	$117.44
Cloud Project Coordinator I	Bachelors	1	Both	$96.92	$98.86	$100.84	$102.85	$104.91	$107.01
Cloud Project Manager V	Bachelors	12	Both	$323.95	$330.43	$337.04	$343.78	$350.65	$357.67
Cloud Project Manager IV	Bachelors	7	Both	$229.53	$234.12	$238.80	$243.58	$248.45	$253.42
Cloud Project Manager III	Bachelors	5	Both	$178.90	$182.48	$186.13	$189.85	$193.65	$197.52
Cloud Project Manager II	Bachelors	3	Both	$120.88	$123.30	$125.76	$128.28	$130.84	$133.46
Cloud Project Manager I	Bachelors	1	Both	$118.51	$120.88	$123.30	$125.76	$128.28	$130.84
Cloud Systems Administrator V	Bachelors	12	Both	$206.86	$211.00	$215.22	$219.52	$223.91	$228.39
Cloud Systems Administrator IV	Bachelors	7	Both	$172.40	$175.85	$179.36	$182.95	$186.61	$190.34
Cloud Systems Administrator III	Bachelors	5	Both	$150.98	$154.00	$157.08	$160.22	$163.43	$166.69
Cloud Systems Administrator II	Bachelors	3	Both	$137.20	$139.94	$142.74	$145.60	$148.51	$151.48
Cloud Systems Administrator I	Bachelors	1	Both	$123.42	$125.89	$128.41	$130.97	$133.59	$136.27
Cloud Technical Systems and Solutions Specialist V	Bachelors	12	Both	$265.95	$271.27	$276.69	$282.23	$287.87	$293.63
Cloud Technical Systems and Solutions Specialist IV	Bachelors	7	Both	$237.90	$242.66	$247.51	$252.46	$257.51	$262.66
Cloud Technical Systems and Solutions Specialist III	Bachelors	5	Both	$215.25	$219.56	$223.95	$228.43	$232.99	$237.65
Cloud Technical Systems and Solutions Specialist II	Bachelors	3	Both	$168.83	$172.21	$175.65	$179.16	$182.75	$186.40
Cloud Analyst - Solutions V	Bachelors	12	Both	$184.91	$188.61	$192.38	$196.23	$200.15	$204.16
Cloud Analyst - Solutions IV	Bachelors	7	Both	$153.02	$156.08	$159.20	$162.39	$165.63	$168.95
Cloud Analyst - Solutions III	Bachelors	5	Both	$137.72	$140.47	$143.28	$146.15	$149.07	$152.05
Cloud Analyst - Solutions II	Bachelors	3	Both	$124.97	$127.47	$130.02	$132.62	$135.27	$137.98
Cloud Analyst - Solutions I	Bachelors	1	Both	$112.22	$114.46	$116.75	$119.09	$121.47	$123.90
Cloud Security Analyst - Senior	Bachelors	7	Both	$165.56	$168.87	$172.25	$175.69	$179.20	$182.79
Cloud Security Analyst - Intermed	Bachelors	5	Both	$126.68	$129.22	$131.80	$134.44	$137.12	$139.87
Cloud Security Analyst - Junior	Bachelors	1	Both	$90.33	$92.13	$93.98	$95.86	$97.77	$99.73
Cloud Computer Network	Bachelors	7	Both	$177.01	$180.55	$184.17	$187.85	$191.61	$195.44
Cloud Computer Network	Bachelors	5	Both	$138.14	$140.90	$143.72	$146.59	$149.53	$152.52
Cloud Computer Network	Bachelors	1	Both	$101.79	$103.82	$105.90	$108.02	$110.18	$112.38
Cloud Security Architect - Senior	Bachelors	7	Both	$217.93	$222.29	$226.74	$231.27	$235.90	$240.62
Cloud Security Architect - Interme	Bachelors	5	Both	$179.06	$182.64	$186.29	$190.02	$193.82	$197.69
Cloud Information Assurance	Bachelors	7	Both	$191.46	$195.29	$199.19	$203.18	$207.24	$211.39
Cloud Information Assurance	Bachelors	5	Both	$157.98	$161.14	$164.36	$167.65	$171.00	$174.42
Cloud Information Assurance	Bachelors	1	Both	$121.63	$124.06	$126.54	$129.07	$131.65	$134.29
Cloud Penetration Tester - Senior	Bachelors	6	Both	$168.09	$171.45	$174.88	$178.38	$181.95	$185.58
Cloud Penetration Tester -	Bachelors	3	Both	$150.01	$153.01	$156.07	$159.19	$162.38	$165.62
Cloud Cybersecurity Engineer -	Bachelors	7	Both	$169.92	$173.31	$176.78	$180.32	$183.92	$187.60
Cloud Cybersecurity Engineer -	Bachelors	5	Both	$131.04	$133.66	$136.33	$139.06	$141.84	$144.68
Cloud Cybersecurity Engineer -	Bachelors	1	Both	$94.69	$96.58	$98.51	$100.48	$102.49	$104.54
Cloud Cybersecurity Technical	Bachelors	5	Both	$122.32	$124.77	$127.26	$129.81	$132.41	$135.05
Cloud Cybersecurity Technical	Bachelors	1	Both	$85.96	$87.68	$89.44	$91.23	$93.05	$94.91
Cloud CyberSecurity Assessment	Bachelors	7	Both	$186.79	$190.53	$194.34	$198.22	$202.19	$206.23
Cloud CyberSecurity Assessment	Bachelors	5	Both	$147.91	$150.87	$153.89	$156.97	$160.11	$163.31
Cloud Information Security	Bachelors	5	Both	$184.94	$188.64	$192.41	$196.26	$200.19	$204.19
Cloud Vulnerability Management	Bachelors	7	Both	$218.77	$223.15	$227.61	$232.16	$236.81	$241.54
Cloud Vulnerability Management	Bachelors	5	Both	$179.90	$183.50	$187.17	$190.91	$194.73	$198.62
Cloud Vulnerability Management	Bachelors	1	Both	$143.55	$146.42	$149.34	$152.33	$155.38	$158.49
Cloud Computing Security Specialist (CCSS)-Subject Matter Expert (SME) - Senior	Bachelors	7	Both	$278.39	$283.96	$289.64	$295.43	$301.34	$307.37
Cloud Computing Security Specialist (CCSS)-Subject Matter Expert (SME) - Intermediate	Bachelors	5	Both	$217.27	$221.61	$226.05	$230.57	$235.18	$239.88
Cloud Operational Technology Security Engineer - Senior	Bachelors	7	Both	$210.13	$214.33	$218.62	$222.99	$227.45	$232.00
Cloud Operational Technology Security Engineer - Intermediate	Bachelors	5	Both	$171.25	$174.68	$178.17	$181.74	$185.37	$189.08
Cloud Operational Technology Security Engineer - Junior	Bachelors	1	Both	$134.90	$137.60	$140.35	$143.16	$146.02	$148.94

LABOR DESCRIPTIONS

Labor Category	Labor Description
Cloud Architect V	Responsible for the overall cloud vision that underlies the projected cloud solution, transforming the client vision through the execution of a cloud solution. Responsible for overall cloud design or the cloud component design of a large system or solution. Responsibility includes detailed documentation of cloud technical requirements and cloud design documents. Works with the development team for the development of cloud-based applications. Facilitates and guides cloud requirements gathering, analysis, development of hypotheses/conclusions. Performs analysis of business models, logical specifications and/or user requirements to design client cloud-based solutions. Has expert knowledge of cloud application design and usability principles, issues, and techniques. Shapes, designs and organizes the development effort of a cloud-based solution. Focused on cloud solution architecture and engineering, roles may include: Cloud Application Architect, Cloud Portfolio Architect, Cloud Network Architect, Cloud Systems Architect, zCloud Mainframe Architect, Cloud Infrastructure Architect, Cloud Solutions Architect, Subject Matter Expert (SME), Cloud Engineer, Cloud Applications Engineer, Cloud Enterprise Architect. NOTE Skill level - Recognized expert within IBM, who designs, researches and develops highly advanced applications and provides highly innovative solutions. Develops technical solutions to complex problems. Leads and pursues courses of action necessary to obtain desired results.
Cloud Architect IV	See above. Skill level - Considered an emerging authority, who applies extensive technical experience. Develops technical solutions to complex problems. Exercises considerable latitude in determining objectives and approaches to assignments.
Cloud Architect III	See above. Skill level - Career level with a complete understanding and wide application of technical principles, theories and concepts. Working under only general direction, provides technical solutions to a wide range of difficult problems. Independently determines and develops approach to solutions.
Cloud Architect II	See above. Skill level - Experienced with frequent use and application of technical standards, principals and theories. Works under general supervision, providing solutions to technical problems of moderate scope and complexity.
Cloud Architect I	See above. Skill level - Under direct supervision, general knowledge in field, works on assinments that are generally semi routine in nature, may assist with moderately complex projects.
Cloud Business Analyst V	Acts as liaison between business areas and IT for cloud-focused solutions. Participates in research to evaluate business requirements and recommends appropriate cloud-based solutions. Assists in cloud-based problem resolution. Works with client to plan and initiate cloud projects. Performs cloud-based research, collection and collation of data from studies. Performs assessments and projections as part of client cloud analysis process. Additional roles may include: Subject Matter Expert (SME). NOTE Skill level - Recognized expert within IBM, who designs, researches and develops highly advanced applications and provides highly innovative solutions. Develops technical solutions to complex problems. Leads and pursues courses of action necessary to obtain desired results.
Cloud Business Analyst IV	See above. Skill level - Considered an emerging authority, who applies extensive technical experience. Develops technical solutions to complex problems. Exercises considerable latitude in determining objectives and approaches to assignments.
Cloud Business Analyst III	See above. Skill level - Career level with a complete understanding and wide application of technical principles, theories and concepts. Working under only general direction, provides technical solutions to a wide range of difficult problems. Independently determines and develops approach to solutions.
Cloud Business Analyst II	See above. Skill level - Experienced with frequent use and application of technical standards, principals and theories. Works under general supervision, providing solutions to technical problems of moderate scope and complexity.
Cloud Business Analyst I	See above. Skill level - Under direct supervision, general knowledge in field, works on assignments that are generally semi routine in nature, may assist with moderately complex projects.

Cloud Consultant V	Leads or participates in cloud consulting projects to deliver customer-focused results aligned with strategic and operational goals of Client pertaining to cloud architecture and solutions. Focused primarily on cloud vision and utilization, obtains and shares internal/external knowledge, problem solving, strategy, methodologies, tool and processes. Facilitates identification, review and analysis of strategic IT, and cloud issues and trends. Advises and recommends on cloud strategy development and implementation for client's environment. Assist in developing, leading and conducting cloud knowledge transfer and education classes. Provides guidance in analyzing, investigating, and resolving cloud-based issues. Responsible for development, implementation, and maintenance of cloud-based guidelines, policies, procedures, and processes. Provides consultation and vision on process tools, methods, product lines, technology, implementation, support, process design, client initiatives, and business activities, particularly focused on cloud-based IT landscape. May be required to oversee technical implementation and execution of cloud strategic plans. Research and provide information on cloud technical trends, evaluate and implement exiting applications and/or customized solutions and their potential for cloud deployment. Has expertise and operates across one or more industries and variety of services such as information technology, e-business, cloud, security, and latest business transformation solutions. Adhere to project development and documentation standards with knowledge of the cloud environment. Provide assistance and responsible for aspects of a cloud development and implementation process, including tasks associated with program office support. Additional roles may include: Subject Matter Expert (SME). NOTE Skill level - Recognized expert within IBM, who designs, researches and develops highly advanced applications and provides highly innovative solutions. Develops technical solutions to complex problems. Leads and pursues courses of action necessary to obtain desired results.
Cloud Consultant IV	See above. Skill level - Considered an emerging authority, who applies extensive technical experience. Develops technical solutions to complex problems. Exercises considerable latitude in determining objectives and approaches to assignments.
Cloud Consultant III	See above. Skill level - Career level with a complete understanding and wide application of technical principles, theories and concepts. Working under only general direction, provides technical solutions to a wide range of difficult problems. Independently determines and develops approach to solutions.
Cloud Database Administrator IV	Based on skill level, the cloud-based Database administrator can be staffed to do one, or a combination of the following: 1) installs, upgrades, resolves (patches, updates) to cloud applications, 2) Implements the cloud database design, that may include setup (creating tables, columns, data types, constraints), improving availability and response times, 3) Creates cloud databases logical design which involves data architecture design, data modeling, and schema definition,and 4) performs industry research for cloud-based data and DB technologies and related software, tools, standards and training. Additional roles may include: Cloud Database Management Specialist. NOTE Skill level - Considered an emerging authority, who applies extensive technical experience. Develops technical solutions to complex problems. Exercises considerable latitude in determining objectives and approaches to assignments.
Cloud Database Administrator III	See above. Skill level - Career level with a complete understanding and wide application of technical principles, theories and concepts. Working under only general direction, provides technical solutions to a wide range of difficult problems. Independently determines and develops approach to solutions.
Cloud Database Administrator II	See above. Skill level - Experienced with frequent use and application of technical standards, principals and theories. Works under general supervision, providing solutions to technical problems of moderate scope and complexity.
Cloud Project Coordinator IV	Advises cloud project team on processes. Develops cloud project schedule and supports cloud deliverables. Analyzes impact change requests have on the cloud project schedule. Analyzes progress reported against work schedules. Organizes and facilitates sessions regarding the project management of the cloud project. Additonal roles may include: Task Order Project Manager, Project Control specialist, Program Administration Specialist, Subject Matter Expert (SME). NOTE Skill level - Considered an emerging authority, who applies extensive technical experience. Develops technical solutions to complex problems. Exercises considerable latitude in determining objectives and approaches to assignments.
Cloud Project Coordinator III	See above. Skill level - Career level with a complete understanding and wide application of technical principles, theories and concepts. Working under only general direction, provides technical solutions to a wide range of difficult problems. Independently determines and develops approach to solutions.
Cloud Project Coordinator II	See above. Skill level - Experienced with frequent use and application of technical standards, principals and theories. Works under general supervision, providing solutions to technical problems of moderate scope and complexity.
Cloud Project Coordinator I	See above. Skill level - Under direct supervision, general knowledge in field, works on assignments that are generally semi routine in nature, may assist with moderately complex projects.
Cloud Project Manager V	Manages cross functional teams,, including cloud-focused. Understands needs of business users as well as development and service support areas for cloud projects. Defines cloud program and project goals, plans and reports. Responsible for all aspects of the development and implementation of assigned cloud projects. Provides direction to the cloud teams. Prepares and manages the overall cloud project work plan. Plans, organizes, monitors, and oversees cloud projects, business strategies, and cloud technology development. Additonal roles may include: Task Order Project Manager, Project Control Specialist, Program Administration Specialist, Subject Matter Expert (SME). NOTE Skill level - Recognized expert within IBM, who designs, researches and develops highly advanced applications and provides highly innovative solutions. Develops technical solutions to complex problems. Leads and pursues courses of action necessary to obtain desired results.

Cloud Project Manager IV	See above. Skill level - Considered an emerging authority, who applies extensive technical experience. Develops technical solutions to complex problems. Exercises considerable latitude in determining objectives and approaches to assignments.
Cloud Project Manager III	See above. Skill level - Career level with a complete understanding and wide application of technical principles, theories and concepts. Working under only general direction, provides technical solutions to a wide range of difficult problems. Independently determines and develops approach to solutions.
Cloud Project Manager II	See above. Skill level - Experienced with frequent use and application of technical standards, principals and theories. Works under general supervision, providing solutions to technical problems of moderate scope and complexity.
Cloud Project Manager I	See above. Skill level - Under direct supervision, general knowledge in field, works on assignments that are generally semi routine in nature, may assist with moderately complex projects.
Cloud Systems Administrator V	Provides technical support and analysis of cloud infrastructure project and production environments. Develops cloud upgrade/improvement recommendations. Monitors, plans, measures, and tests new cloud-based products and services. Works on client and cloud-based technologies. Works on cloud-based implementation and deployment use of software, SaaS/PaaS , configurations management and distribution, storage area networks, network management, server management, and cloud-based mainframe management. Additional roles may include: Systems Operator, Help Desk Manager, Help Desk Specialist. NOTE Skill level - Recognized expert within IBM, who designs, researches and develops highly advanced applications and provides highly innovative solutions. Develops technical solutions to complex problems. Leads and pursues courses of action necessary to obtain desired results.
Cloud Systems Administrator IV	See above. Skill level - Considered an emerging authority, who applies extensive technical experience. Develops technical solutions to complex problems. Exercises considerable latitude in determining objectives and approaches to assignments.
Cloud Systems Administrator III	See above. Skill level - Career level with a complete understanding and wide application of technical principles, theories and concepts. Working under only general direction, provides technical solutions to a wide range of difficult problems. Independently determines and develops approach to solutions.
Cloud Systems Administrator II	See above. Skill level - Experienced with frequent use and application of technical standards, principals and theories. Works under general supervision, providing solutions to technical problems of moderate scope and complexity.
Cloud Systems Administrator I	See above. Skill level - Under direct supervision, general knowledge in field, works on assignments that are generally semi routine in nature, may assist with moderately complex projects.
Cloud Technical Systems and Solutions Specialist V	Works on client's key cloud operations and business solutions. Analyzes, designs, and develops client's cloud systems and cloud program specifications. Involved in creation of cloud pecification/requirements, and maintenance/ design/build /test phases of cloud solutions and applications. May also be asked to provide technical and engineering support and analysis of cloud-based projects and production environments. Develop upgrade/improvement recommendation for cloud-based solutions and applications. Monitor, plan, and measure impact of new cloud offerings to solve business requirements. Codes, test and debugs cloud applications and programs. May participate in the application design and engineering of cloud solutions, including use of analytical techniques. Develops program specifications and detail design documents for cloud-based solutions. Assists in testing, training, and preparation of cloud operations. Works on systems business intelligence or decision support systems supporting client's key cloud operations. Roles may include: Cloud Engineer, Cloud System Analyst, Cloud Programmer, Cloud Developer, Cloud Designer, Cloud Tester, Cloud Hardware/Software Specialist, Cloud Applications Engineer, Subject Matter Expert (SME), IT Consultant, Cloud & IT Consultant. NOTE Skill level - Recognized expert within IBM, who designs, researches and develops highly advanced applications and provides highly innovative solutions. Develops technical solutions to complex problems. Leads and pursues courses of action necessary to obtain desired results.
Cloud Technical Systems and Solutions Specialist IV	See above. Skill level - Considered an emerging authority, who applies extensive technical experience. Develops technical solutions to complex problems. Exercises considerable latitude in determining objectives and approaches to assignments.
Cloud Technical Systems and Solutions Specialist III	See above. Skill level - Career level with a complete understanding and wide application of technical principles, theories and concepts. Working under only general direction, provides technical solutions to a wide range of difficult problems. Independently determines and develops approach to solutions.
Cloud Technical Systems and Solutions Specialist II	See above. Skill level - Experienced with frequent use and application of technical standards, principals and theories. Works under general supervision, providing solutions to technical problems of moderate scope and complexity.

Cloud Analyst - Solutions V	Create, analyze, coordinate, and document complex cloud projects, and processes. Provide recommendations based on analysis for optimal cloud solutions. Create/update reports, and propose action and/or implementation plans and present to leadership to assist in cloud decision-making and drive the cloud-relasted work to conclusion. Provide cloud process and/or cloud subject matter expertise. Conduct cloud research, gather cloud requirements, and conduct cloud analysis and/or coordination activities related to cloud solution processes, projects and/or services. Display a technical aptitude for cloud-based solutions and possess the ability to coordinate, design, and manage cloud solutions, processes and work. Additional roles may include: Information Technology Consultant. NOTE Skill level - Recognized expert within IBM, who designs, researches and develops highly advanced applications and provides highly innovative solutions. Develops technical solutions to complex problems. Leads and pursues courses of action necessary to obtain desired results.
Cloud Analyst - Solutions IV	See above. Skill level - Considered an emerging authority, who applies extensive technical experience. Develops technical solutions to complex problems. Exercises considerable latitude in determining objectives and approaches to assignments.
Cloud Analyst - Solutions III	See above. Skill level - Career level with a complete understanding and wide application of technical principles, theories and concepts. Working under only general direction, provides technical solutions to a wide range of difficult problems. Independently determines and develops approach to solutions.
Cloud Analyst - Solutions II	See above. Skill level - Experienced with frequent use and application of technical standards, principals and theories. Works under general supervision, providing solutions to technical problems of moderate scope and complexity.
Cloud Analyst - Solutions I	See above. Skill level - Under direct supervision, general knowledge in field, works on assignments that are generally semi routine in nature, may assist with moderately complex projects.
Cloud Security Analyst - Senior	Responsible for the analysis and development of the integration, testing, operations, and maintenance of systems security within cloud environment. Performs all procedures necessary to ensure the safety of the organization's systems, information, and transactions with in the cloud environment and across the Internet/intranet. Uses defensive measures and information collected from a variety of sources to identify, analyze, and report events that occur or might occur within the cloud network in order to protect information, information systems, and networks from threats. Identifies and mitigates vulnerabilities using alternate or compensating controls if necessary. Applies Internet firewall technologies to maintain security. Ensures that the user community understands and adheres to necessary procedures to maintain security. Updates and deletes users, monitors and performs follow-up on compliance violations, and develops security policies, practices, and guidelines. Supports Security Operations Center (SOC).Assists with the installation, daily operation, and maintenance of IA systems to include technical support, troubleshooting, and system testing. NOTE Skill level - Considered an emerging authority, who applies extensive technical experience. Develops technical solutions to complex problems. Exercises considerable latitude in determining objectives and approaches to assignments.
Cloud Security Analyst - Intermediate	See above. Skill level - Career level with a complete understanding and wide application of technical principles, theories and concepts. Working under only general direction, provides technical solutions to a wide range of difficult problems. Independently determines and develops approach to solutions.
Cloud Security Analyst - Junior	See above. Skill level - Under direct supervision, general knowledge in field, works on assignments that are generally semi routine in nature, may assist with moderately complex projects.
Cloud Computer Network Defense (CND) Analyst - Senior	Uses data collected from a variety of cyber defense tools (e.g., IDS alerts, firewalls, network traffic logs) to analyze events that occur within the cloud for the purposes of mitigating threats. Performs actions to protect, monitor, detect, analyze, and respond to unauthorized activity within assigned cloud information systems and computer networks. Employs Cybersecurity capabilities and deliberate actions to respond to a CND alert or emerging situational awareness/threat. Serves as an expert on CND requirements and compliance to such requirements by using IA tools and techniques to perform compliance analysis and correlation, tracking and remediation coordination, and escalating CND non-compliance. Provides technical analysis and sustainment support for the cloud IA tools and applications, and assists with the application of Defense-In-Depth signatures and perimeter defense controls to diminish network threats. NOTE Skill level - Considered an emerging authority, who applies extensive technical experience. Develops technical solutions to complex problems. Exercises considerable latitude in determining objectives and approaches to assignments.
Cloud Computer Network Defense (CND) Analyst - Intermediate	See above. Skill level - Career level with a complete understanding and wide application of technical principles, theories and concepts. Working under only general direction, provides technical solutions to a wide range of difficult problems. Independently determines and develops approach to solutions.
Cloud Computer Network Defense (CND) Analyst - Junior	See above. Skill level - Under direct supervision, general knowledge in field, works on assignments that are generally semi routine in nature, may assist with moderately complex projects.

Cloud Security Architect - Senior	Responsible for guiding the design and implementation of secure solutions and services within the cloud. Driving the successful configuration and implementation of cloud based security solutions to reduce risk to an acceptable level. Ensures that the stakeholder security requirements necessary to protect the organization's mission and business processes are adequately addressed in all aspects of enterprise architecture including reference models, segment and cloud solution architectures, and the resulting systems supporting those missions and business processes. Serves as an IA Subject Matter Expert (SME) with regards to IA Architecture policies and procedures. Provides IA Management support to Program Management Offices (PMO) for emerging information systems through the acquisition lifecycle and where applicable into sustainment. Provides technical support and guidance to facilitate the identification and integration of IA controls at the onset of the acquisition lifecycle for emerging cloud capabilities. Serves as a principal liaison for Enterprise-level boundary defense initiatives to ensure consistent and sufficient identification and implementation of applicable IA controls in concert with the agency IA and cloud architecture and National Institute of Standards and Technology (NIST) security guidelines. Provides oversight for the design and implementation of Enterprise-level IA solutions providing standards for access control capabilities across the Enterprise. NOTE Skill level - Considered an emerging authority, who applies extensive technical experience. Develops technical solutions to complex problems. Exercises considerable latitude in determining objectives and approaches to assignments.
Cloud Security Architect - Intermediate	See above. Skill level - Career level with a complete understanding and wide application of technical principles, theories and concepts. Working under only general direction, provides technical solutions to a wide range of difficult problems. Independently determines and develops approach to solutions.
Cloud Information Assurance Analyst - Senior	Conducts comprehensive assessments of the management, operational, and technical security controls and control enhancements employed within or inherited by an cloud system to determine the overall effectiveness of the controls (as defined in NIST SP 800-53 and/or SP 800-37). Demonstrated ability to independently perform complex security analysis of cloud applications and systems for compliance with security requirements. Performs cybersecurity vulnerability evaluations. Uses a variety of security techniques, technologies, and tools to evaluate security posture in cloud based highly complex computer systems and networks. Analyzes and defines security requirements for cloud based systems, applications and infrastructure. Recommends solutions to meet security requirements. Gathers and organizes technical information about an organization's mission goals and needs, and makes recommendations to improve existing security posture. Demonstrated experience and ability to provide enterprise-wide technical analysis and direction for problem definition, analysis and remediation for complex cloud based systems and enclaves. Ability to provide workable recommendations and advice to client executive management on system security posture and process improvements, optimization and maintenance. Develops and maintains cybersecurity plans, strategy, and policy to support and align with organizational cybersecurity initiatives and regulatory compliance. Reviews, consolidates, develops and/or implements cybersecurity policy in accordance with agency/client and NIST security requirements and assess cloud based policies, standards, guidelines or procedures to ensure a balance of security and operational requirements. NOTE Skill level - Considered an emerging authority, who applies extensive technical experience. Develops technical solutions to complex problems. Skill level - Recognized expert within IBM, who designs, researches and develops highly advanced applications and provides highly innovative solutions. Develops technical solutions to complex problems. Leads and pursues courses of action necessary to obtain desired results. Exercises considerable latitude in determining objectives and approaches to assignments.
Cloud Information Assurance Analyst - Intermediate	See above. Skill level - Under direct supervision, general knowledge in field, works on assignments that are generally semi routine in nature, may assist with moderately complex projects. Skill level - Career level with a complete understanding and wide application of technical principles, theories and concepts. Working under only general direction, provides technical solutions to a wide range of difficult problems. Independently determines and develops approach to solutions.
Cloud Information Assurance Analyst - Junior	See above. Skill level - Under direct supervision, general knowledge in field, works on assignments that are generally semi routine in nature, may assist with moderately complex projects.

Cloud Penetration Tester - Senior	Demonstrated ability to independently perform penetration testing of cloud based applications, systems and enclaves. Identifies security flaws in computing platforms and applications and devise strategies and techniques to mitigate identified cybersecurity risks. Perform application and network penetration testing and wireless security assessments. Apply offensive cybersecurity testing techniques, coordinate testing projects with internal and external system owners. Reports the nature of identified cyber security risks and recommends risk mitigation measures to improve the cyber security posture of the enterprise. NOTE Skill level - Career level with a complete understanding and wide application of technical principles, theories and concepts. Working under only general direction, provides technical solutions to a wide range of difficult problems. Independently determines and develops approach to solutions.
Cloud Penetration Tester - Intermediate	See above with the following guidance. Under general supervision, perform penetration testing of cloud based applications, systems and enclaves. Skill level - Experienced with frequent use and application of technical standards, principals and theories. Works under general supervision, providing solutions to technical problems of moderate scope and complexity.
Cloud Cybersecurity Engineer - Senior	Performs a variety of routine project tasks applied to specialized Cybersecurity problems. Tasks involve integration of tools and processes or methodologies to resolve total system problems, or technology problems as they relate to cybersecurity requirements. Analyzes information security requirements. Applies analytical and systematic approaches in the resolution of problems of work flow, organization, and planning. Provides security engineering support for planning, design, development, testing, demonstration, integration of information systems. NOTE Skill level - Considered an emerging authority, who applies extensive technical experience. Develops technical solutions to complex problems. Exercises considerable latitude in determining objectives and approaches to assignments.
Cloud Cybersecurity Engineer - Intermediate	See above. Skill level - Career level with a complete understanding and wide application of technical principles, theories and concepts. Working under only general direction, provides technical solutions to a wide range of difficult problems. Independently determines and develops approach to solutions.
Cloud Cybersecurity Engineer - Junior	Uses defensive measures and information collected from a variety of sources to identify, analyze, and report events that occur or might occur within the cloud environment in order to protect information, information systems, and networks from threats. Identifies and mitigates vulnerabilities using alternate or compensating controls if necessary. Supports, monitors, tests, and troubleshoots IA software issues in conjunction with other IA staff to ensure timely response actions to security incidents. Recognizes potential security violations, takes appropriate action to report the incident as required by regulation, and mitigates any adverse impact. Implements applicable patches including vulnerabilities from the National Vulnerability Database, US CERT alerts, IA vulnerability alerts (IAVA), IA vulnerability bulletins (IAVB), and technical advisories (TA) for assigned operating system(s). Under technical supervision, performs information assurance activities in data center and cloud environments. Supports Security Operations Center (SOC). Assists with the installation, daily operation, and maintenance of IA systems to include technical support, troubleshooting, and system testing. Conducts and/or supports authorized penetration testing on enterprise network assets. Skill level - Under direct supervision, general knowledge in field, works on assignments that are generally semi routine in nature, may assist with moderately complex projects.

Cloud Cybersecurity Technical Writer -Intermediate	Under general supervision, edits and rewrites documents for grammatical, syntactical, and usage errors, spelling, punctuation, and adherence to standards. Proofreads documentation and graphics for accuracy and adherence to original content provides quality control checking for documents received from photocopying and word processing; assembles Master copies, including graphics, appendices, table of contents, and title pages; assists in scheduling printing, and copying. Assists in document tracking and logging, and consults with technical staff to determine format, contents, and the organization of technical reports and proposals. Assists in collecting and organizing information required for preparation of user's manuals, training materials, installation guides, proposals, and reports. Edits functional descriptions, system specifications, user's manuals, special reports, or any other customer deliverables and documents. NOTE Skill level - Career level with a complete understanding and wide application of technical principles, theories and concepts. Working under only general direction, provides technical solutions to a wide range of difficult problems. Independently determines and develops approach to solutions.
Cloud Cybersecurity Technical Writer - Junior	See above. Skill level - Under direct supervision, general knowledge in field, works on assignments that are generally semi routine in nature, may assist with moderately complex projects.
Cloud CyberSecurity Assessment and Authorization Analyst - Senior	Serves as a Cybersecurity Subject Matter Expert (SME) with regards to Authorization of cloud environments and all associated cybersecurity policies and procedures. Fully versed in the general tenets supporting the overall organization implementation of its authorization process, to include supporting cybersecurity policy, procedures and processes. Performs a cybersecurity process while either authorizing an cloud environment or serving as a SME for a cloud environment undergoing authorization. Possess an understanding of how the security controls identified in the NIST 800-53 apply to the process of assessing and authorizing a large organization's IT infrastructure, in which there is a compilation of large and small enclaves, applications and IT processes. Determines the applicable severity value for an identified vulnerability (e.g., non-compliant security control), and determines the possible ramifications on the system's current or future authorization. Required to brief senior management on the progress or results of cloud environment undergoing the authorization process. Prepares, reviews, and evaluates documentation of compliance. Verifies that application software/network/system security postures are implemented as stated, document deviations, and recommend required actions to correct those deviations. Reviews IA and IA enabled software, hardware, and firmware for compliance with appropriate security configuration guidelines, policies, and procedures. Developed, reviews or updates IA security plans and A&A documentation. Identifies alternative functional IA security strategies to address organizational security concerns. Perform security reviews and identify security gaps in security architecture resulting in recommendations for inclusion in the risk mitigation strategy. Prepares, recommendations for the Designated Approving Authority (DAA) or Authorizing Official (AO). NOTE Skill level - Considered an emerging authority, who applies extensive technical experience. Develops technical solutions to complex problems. Exercises considerable latitude in determining objectives and approaches to assignments.
Cloud CyberSecurity Assessment and Authorization (A&A) Analyst - Intermediate	See above. Skill level - Career level with a complete understanding and wide application of technical principles, theories and concepts. Working under only general direction, provides technical solutions to a wide range of difficult problems. Independently determines and develops approach to solutions..
Cloud Information Security Analyst (Data Protection) - Intermediate	Serves as information security analyst performing incident response (identification, containment, eradication, recovery) for Personally Identifiable Information (PII) incidents and PII-related data breaches. Investigates, analyzes, and responds to cyber incidents within the cloud environment or enclave. Utilizes data loss prevention (DLP) tools to identify improperly stored PII data at rest and improperly transmitted PII data. Performs the quarantining of improperly stored PII data. Recommends appropriate actions to mitigate the risk of unauthorized access to PII data and ensures the implementation of appropriate security controls to safeguard PII data. Engages with stakeholders and mission partners to facilitate containment, eradication, and recovery for PII incidents. Validates remedial actions and ensures compliance with NIST and agency specific information security and privacy policy. NOTE Skill level - Career level with a complete understanding and wide application of technical principles, theories and concepts. Working under only general direction, provides technical solutions to a wide range of difficult problems. Independently determines and develops approach to solutions.

Cloud Vulnerability Management Analyst - Senior	Performs assessments of systems and networks within the cloud environment or enclave and identifies where those systems/networks deviate from acceptable configurations, enclave policy, or local policy. Measures effectiveness of defense-in-depth architecture against known vulnerabilities. Serves as vulnerability management analyst for assigned applications. Analyzes vulnerabilities and characterizes risk. Engages with stakeholders and mission partners to facilitate application, infrastructure and/or web vulnerability assessments. Performs code review, software assurance testing, and application vulnerability scanning. Facilitates the coordination of remediation efforts, prioritizing remediation efforts based on risk. Recommends appropriate actions to remediate vulnerabilities and mitigate risks and ensures the implementation of appropriate security settings to include those required by NIST and Defense Information Systems Agency (DISA) Security Technical Implementation Guides (STIG). Tracks and reports security and compliance issues. Validates remedial actions and ensures compliance with NIST and agency specific information security policy. NOTE Skill level - Considered an emerging authority, who applies extensive technical experience. Develops technical solutions to complex problems. Exercises considerable latitude in determining objectives and approaches to assignments.
Cloud Vulnerability Management Analyst - Intermediate	see above. Skill level - Career level with a complete understanding and wide application of technical principles, theories and concepts. Working under only general direction, provides technical solutions to a wide range of difficult problems. Independently determines and develops approach to solutions.
Cloud Vulnerability Management Analyst - Junior	See above. Skill level - Under direct supervision, general knowledge in field, works on assignments that are generally semi routine in nature, may assist with moderately complex projects.
Cloud Computing Security Specialist (CCSS)-Subject Matter Expert (SME) - Senior	Serves as an Information Assurance and Cloud computing SME with regards to Assessment and Authorization (A&A) (formerly known as C&A) and a broad coverage of the application of the National Institute of Standards and Technology (NIST) Risk Management Framework (RMF) standards and guidance as outlined in the NIST Special Publication(s) (SP) 800-53 and 800-37 (Current versions). Possesses the ability to work independently with substantial cloud computing security knowledge. The assessor must have the essential skill sets to identify, manage and resolve cloud computing security risk and implement “best practices” as applied within a cloud environment (across all of the different deployment and service models, and derivatives).The CCSS must be well versed in FedRAMP assessment methodology of security and privacy controls deployed in cloud information systems to include six (6) domain areas. The six domains include: Architectural Concepts & Design Requirements, Cloud Data Security, Cloud Platform & Infrastructure Security, Cloud Application Security, Operations, Legal & Compliance. NOTE Skill level - Considered an emerging authority, who applies extensive technical experience. Develops technical solutions to complex problems. Exercises considerable latitude in determining objectives and approaches to assignments.
Cloud Computing Security Specialist (CCSS)-Subject Matter Expert (SME) - Intermediate	See above. Skill level - Career level with a complete understanding and wide application of technical principles, theories and concepts. Working under only general direction, provides technical solutions to a wide range of difficult problems. Independently determines and develops approach to solutions.
Cloud Operational Technology Security Engineer - Senior	Performs a variety of routine project tasks applied to specialized information assurance problems within the Cloud. Tasks involve integration of processes or methodologies with information systems to resolve total system problems, or technology problems as they relate to IA requirements. Analyzes information security requirements. Applies analytical and systematic approaches in the resolution of problems of work flow, organization, and planning. Provides security engineering support for planning, design, development, testing, demonstration, integration of IT systems. Provides expert support, analysis and research into exceptionally complex cloud based cyber security problems, and processes relating to the subject matter. Serves as technical expert on project teams providing technical direction, interpretation and alternatives. NOTE Skill level - Considered an emerging authority, who applies extensive technical experience. Develops technical solutions to complex problems. Exercises considerable latitude in determining objectives and approaches to assignments.
Cloud Operational Technology Security Engineer - Intermediate	See above. Skill level - Career level with a complete understanding and wide application of technical principles, theories and concepts. Working under only general direction, provides technical solutions to a wide range of difficult problems. Independently determines and develops approach to solutions.
Cloud Operational Technology Security Engineer - Junior	See above. Skill level - Under direct supervision, general knowledge in field, works on assignments that are generally semi routine in nature, may assist with moderately complex projects.

SKILL DESCRIPTION AND SUBSTITUTION TABLE

Skill Level I

Under direct supervision, general knowledge in field, works on assignments that are generally semi routine in nature, may assist with moderately complex projects.
Minimum 1 year experience, Bachelor Degree

Skill Level II

Experienced with frequent use and application of technical standards, principals and theories. Works under general supervision, providing solutions to technical problems of moderate scope and complexity.
Minimum 3 years experience, Bachelor Degree

Skill Level III

Career level with a complete understanding and wide application of technical principles, theories and concepts. Working under only general direction, provides technical solutions to a wide range of difficult problems. Independently determines and develops approach to solutions.
Minimum 5 years experience, Bachelor Degree

Skill Level IV

Considered an emerging authority, who applies extensive technical experience.
Develops technical solutions to complex problems.
Exercises considerable latitude in determining objectives and approaches to assignments.
Minimum 7 years experience, Bachelor Degree

Skill Level V

Recognized expert within IBM, who designs, researches and develops highly advanced applications and provides highly innovative solutions. Develops technical solutions to complex problems.
Leads and pursues courses of action necessary to obtain desired results.
Minimum 12 years experience, Bachelor Degree

Substitution Table

Degree	Experience Equivalence	Other Equivalence
Bachelors	Associate degree +2 years relevant experience Or a minimum of 6 years relevant experience	Professional certifications such as (Project Management, Lean Sigma, or ITIL) Professional certifications such as (CompTIA Secu + -CPTE - Certified Penetration Testing Engineer or CEH - Certified Ethical Hacker -Certified Information System Security Professiona (CISSP), CISA, CISM, CRISC)
Masters (Advanced degree)	Bachelors +2 years relevant experience, or Associate + 4 years relevant experience	Masters Certificate or Professional license
Doctorate (Advanced degree)	Masters + 2 years relevant experience, or Bachelors + 4 years relevant experience	

* Successful completion of higher education which has not yet resulted in a degree may be counted as 1 year of experience for each year of college completed. * Skill Level minimum years of experience is defined as total years of experience.

APPENDIX C.4 SIN ANCILLARY

LABOR RATES

Ancillary SIN

Labor Category	Minimum Years of Experience	(Jan 1, 2021 - Dec 31, 2021) GSA PRICE	Year 1 (Jan 1, 2022 - Dec 31, 2022) GSA PRICE	Year 2 (Jan 1, 2023 - Dec 31, 2023) GSA PRICE	Year 3 (Jan 1, 2024 - Dec 31, 2024) GSA PRICE	Year 4 (Jan 1, 2025 - Dec 31, 2025) GSA PRICE
Junior Research Assistant	1	$89.97	$91.77	$93.61	$95.48	$97.39

MDC271

DESCRIPTION

Junior Research Assistance

Duties include: Conducts research tasks, collects, analyzes, summarizes data. Assists with client ready document preparation and production coordination.
Functional Activity include: Research using various methods including surveys and coordinate, collect, and analyzes documentation for on-going Contract requirements and proposals (including in the Health IT area). Produces status reports and assists with production of documentation.

Substitution Table

Degree	Experience Equivalence	Other Equivalence
Bachelors	Associate degree +2 years relevant experience	

Masters (Advanced degree)	Bachelors +2 years relevant experience, or Associate + 4 years relevant experience	
Doctorate (Advanced degree)	Masters + 2 years relevant experience, or Bachelors + 4 years relevant experience	
* Successful completion of higher education which has not yet resulted in a degree may be counted as 1 year of experience for each year of college completed. * Skill Level minimum years of experience is defined as total years of experience		

MDC272

Attachment 5 – Green Initiatives

Resilience, Sustainability & Energy Solutions

Green Initiatives

Sustainability and Resilience Solutions

Introduction

IBM has been committed to environmental leadership in all of its activities since 1971. We were one of the first companies in the world to publish an environmental policy, and to this day, our achievements regularly cause us to appear in lists compiled by various sources of the world's greenest companies. Drawing on this heritage, we have also become one of the world's vendors of IT solutions to sustainability and resilience issues.

This attachment sets out IBM's solutions (products and/or services) that help cities become more sustainable and/or more resilient.

Definitions

Sustainability solutions address the environmental footprint of the city: its energy or water consumption, its waste management, greenhouse gas emissions, air or water pollution and so on. Sustainability can be thought of as the *chronic* stresses that the city places upon the environment.

Resilience solutions address the ability of the city to anticipate, plan for, deal with and recover from natural or manmade disasters. This ability applies to multiple "systems" within the city – physical infrastructure, education, health, law and order, organizational, social, financial, and so on. Resilience may be thought of as dealing with *acute* stresses on the city.

Note the following implications of these definitions:

- A solution may deliver a sustainability and resilience benefit even if that is not its primary purpose. For example, traffic management solutions reduce traffic and so improve quality of life and economic vitality – but they also reduce air pollution (sustainability) and may well help with evacuation management (resilience).
- Sustainability and resilience may interact. For example, urban greenery (sustainability) may help in dealing high temperature events or storm water (resilience); or conservation of coastal marshland may help protect wildlife (sustainability) while also buffering the coast against storm surges (resilience).
- Sustainability and resilience may also directly overlap. For example, smart water or smart grid solutions are both sustainable in that they save energy and/or water; they are also both resilient, in that they can provide information to emergency managers on the location and severity of the damage incurred, and often also be reconfigured "on the fly" to deal with that damage.

Collectively, we refer to sustainability and resilience as S&R.

IBM defines a solution as any combination of the following, both our own and/or 3rd party

- Application software, whether for cloud, PC, or mobile device, including user interface design
- Computing and communications infrastructure:
    - Physical computing infrastructure, whether stand-alone or cloud based
    - Infrastructure software middleware, databases, system management, catalogs
    - GIS (3rd party)
    - Wide or local area communications, including signal management
    - Data ingestion and cleansing
    - Data warehousing
    - Cyber-security software and services
- Sensors and meters as applicable (3rd party IoT devices)
- Design, configuration, customization and integration services for any of the above
- Supporting services such as operations, help-desk, disaster recovery and back-up
- Process management and operation
- Business consulting services
- Analytics services
- Research services

Note that where necessary we are happy, in the course of designing, implementing or operating a solution to partner with 3rd parties such as engineering companies, specialist data communications companies, sensor vendors, application vendors, and subject matter specialists such as traffic or water management consultants. We are in principle willing to consider either a prime or sub-contracting role with such partners.

IBM's S&R Solutions

IBM's S&R solutions are largely, but not entirely, offered from our software & consulting portfolios. The areas into which these solutions fall – based on our approach to Smarter Cities generally - are shown in Figure 1, below.

It should be noted that S&R solutions fall into two groups: those that directly address some S&R issue, and those that provide S&R benefits as a side-effect of their normal operations. Both are covered here.

Each of the areas shown in Figure 1 is covered in turn.

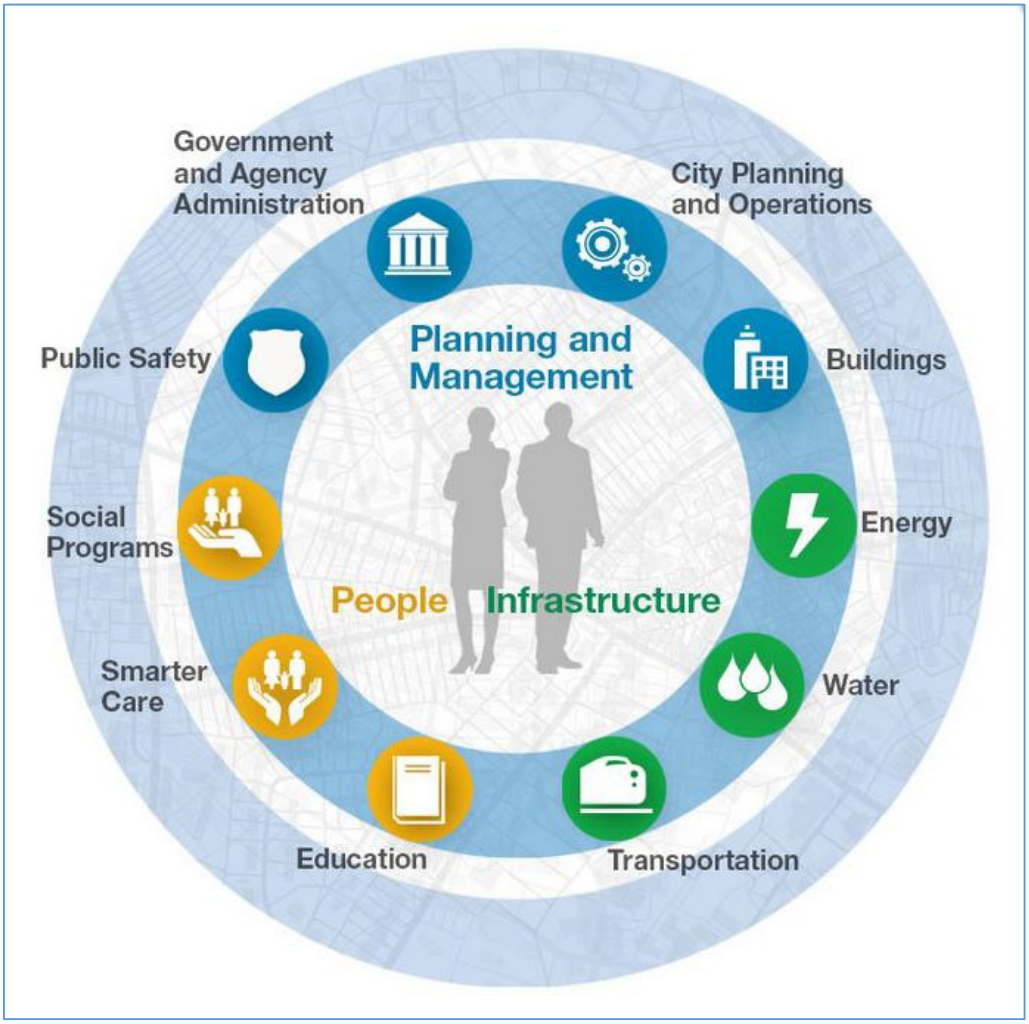


Figure 1: IBM Sustainability and Resilience Solution areas

Planning and Management: Public Safety

IBM solutions in this area with an S&R role include:

- Analytics focused on risk identification and assessment, and on warning and alert generation
- Emergency management, covering all aspects of single or multi-agency event management
- Video correlation and analysis
- Content analytics (for example, for analyzing emergency situations from SMS or Twitter data)
- Cyber security for public infrastructure – risk analysis, threat detection and management.

Planning and Management: Government and Agency Administration

IBM Solutions in this area with an S&R role include:

- GIS solutions from IBM and ESRI, including data preparation, spatial analytics and visualization
- Enterprise asset management:
    - Infrastructure optimization
    - Condition-based and predictive maintenance
    - Critical asset identification and management, including dependencies between such assets
- Cloud computing for governments to support any solution listed in this document:
    - public, private, on- or off-premises, hybrid
    - managed or self-service
    - compliance solutions – HIPAA, CJIS etc
- Performance management for government – includes environmental or resilience KPIs and collection of performance data on these
- Disaster back-up and management:
    - data center and IT operations
    - business continuity, covering critical back and front-office functions (including emergency staffing if required)
- Enterprise Cybersecurity –full suite of cybersecurity tools for risk analysis, threat detection and management.

Planning and Management: City Planning and Operations

IBM Solutions in this area with an S&R role include:

- Risk analysis and simulation
- Simulation and optimization of specific environmental impacts – for example, GHG emissions
- Resilience scorecard (based on UN City Disaster Resilience Scorecard, co-written by IBM)
- High resolution weather forecasting
    - Includes integration with operations, for example, indicating best location for snowplows or utility crews based on micro weather forecasts.

Planning and Management: Buildings

IBM Solutions in this area with an S&R role include:

- Facilities management
- Building energy management and optimization (includes design of energy management sensing solutions, although IBM is not an ESCO)

- Data center energy management and optimization – including integration of compute loads and HVAC
- Smarter Stadiums
- Enterprise asset management, as above
- Building data management (via integration with Autodesk)

Infrastructure: Energy

IBM Solutions in this area with an S&R role include:

- Energy grid management and optimization
- Energy optimization, and other tools, as above
- Smart metering:
    - Implementation, integration, analytics
    - Revenue analysis and optimization
- Customer operations transformation (for example, for engaging customers in energy conservation)
    - CRM (via 3rd party product as IBM does not make a CRM product)
    - Customer "systems of engagement" based on smartphone, PC, tablet etc
    - Revenue and customer satisfaction analytics
- Asset management, as above

Infrastructure: Water

IBM Solutions in this area with an S&R role include:

- Water resource management (marine, fresh-water)
- Water system management and optimization:
    - Pressure and leak management
    - Water and waste water quality management
    - Urban flood management
    - Combined sewer overflow management and mitigation
- Smart metering, as above
- Customer operations transformation, as above
- Asset management, as above

Infrastructure: Transportation

IBM Solutions in this area with an S&R role include:

- Traffic management and prediction
- Tolling and road use charges
- Integrated fare management
- Airport operations

- Fleet optimization
- Transportation system/network optimization
- Asset management, as above

Infrastructure: Waste Management (not shown in Figure 1)

IBM Solutions in this area with an S&R role include:

- "Circular economy" and waste management
- Collection route optimization
- Asset management, as above

People: Education

IBM Solutions in this area with an S&R role include:

- Campus and asset management (including energy and water optimization)
- Education and awareness collateral, including "serious games" for conservation or disaster risk awareness

People: Smarter Care

IBM Solutions in this area with an S&R role include:

- Asset management and maintenance, as above
- Health record protection and post-disaster recovery

People: Social Programs

IBM Solutions in this area with an S&R role include:

- Social care record protection and post-disaster recovery

IBM Software Tools

The IBM software tools used in the forgoing include, but are not restricted to:

- Traffic Prediction Tool
- Maximo Enterprise Asset Management
- Tririga Facilities management and energy optimization
- ILOG and SPSS analysis tools
- Watson family of cognitive computing products
- Master Data Management
- IBM Internet of Things (IOT) Platform:
    - Sensor data ingestion and analytics

    - Video analytics
    - Content analysis
- Cognos business dashboard
- Connect 360
- IBM/Apple mobile applications
- Infosphere Streams streaming data management, and other items from the Infosphere product set
- Cloud Managed Services (cloud computing)
- IBM middleware and database products

Attachment 6 – Cloud Solutions

IBM Internet Delivered Offerings
Cloud Solutions & Capabilities

Achieve more with an open hybrid cloud strategy

Most IT decision makers think IT is more complex today than two years ago. Make your IT investments work together seamlessly with an integrated, open hybrid cloud strategy.

Build anywhere. Accelerate modernization by up to 66%[1] with consistent innovation using the same cloud services, DevOps tools and skills across clouds and on premises.

Deploy everywhere. Get to market up to 3x faster[2] with a custom approach to virtualization and containers that modernizes and deploys in any cloud or IT environment while meeting unique workload requirements.

Govern consistently. Reduce the chance of a security breach by up to 80%[3] with a single point of control to enforce and monitor security and compliance policies across all your cloud, edge and IT environments.

Modernize your most critical applications

Want to simplify operations and drive innovation? Transform your business and embark on your hybrid cloud journey with a unified point of accountability to seamlessly move your mission-critical SAP workloads to a secure cloud.

Get cloud-like flexibility on premises

One size doesn't fit all. Do your workloads require upfront capacity? Spikes for seasonal workloads? Extra resources for migration projects? With our cloud-like consumption models for on-premises infrastructure, you can pay for what you need as you need it, reducing capital expenditures.

Seamless data access from edge to cloud to core

What does storage made simple look like? A unified platform that enables seamless data mobility and storage management no matter where it lives or goes; on-prem, in the cloud or at the edge.

De-risk your cloud journey

Ensure risk mitigation and regulatory compliance by automating critical compliance tasks. Unlock innovation with a trusted ecosystem of vetted apps and services, safeguard data with a zero-trust approach, all while building and deploying with a common platform.

IBM Cloud Solutions
With IBM Cloud solutions, you can gain the speed and flexibility to keep pace with today's demanding business dynamics. Explore our cloud solutions designed to help you innovate quickly, enrich user experiences, make better decisions and build affordable new business models—all with the security you need—to help you get ahead.

1. Business analytics on the IBM Cloud

Uncover insights quickly and easily from all types of data—including big data—and on multiple platforms and devices. With built-in expertise and intelligence, our self-service cloud-based business analytics solutions provide you with the ability to confidently make smarter decisions that better address your real-time business imperatives.

2. Big data and analytics in the IBM Cloud

Big data offers enormous opportunities for insight that can set you apart from the competition. But you need the right technology to help you manage and use that data. Cloud-based solutions from IBM can help you harness the power of big data more quickly while reducing costs and enabling a security-rich environment.

3. DevOps with the IBM Cloud: From idea to production in minutes

Your team depends on a collection of services for application development and deployment, but limited integration can slow you down. Consistently deliver high-quality software faster across hybrid environments. Use IBM Cloud DevOps solutions and get access to all the services you need to develop and deliver your innovative applications quickly.

4. Deploy and manage your enterprise applications with confidence on the IBM Cloud

The IBM Cloud offers a range of application platform options for building, deploying and managing your enterprise apps. You can choose to self-manage or have IBM manage your enterprise applications on a security rich, reliable cloud platform. IBM Cloud supports SAP, SAP HANA and Oracle environments as well as hundreds of other IBM, third-party and Business Partner applications.

5. Enterprise grade infrastructure and services with the best power, flexibility and control with the IBM Cloud

The IBM Cloud offers security-rich and reliable cloud environments for building, deploying and managing your enterprise custom or off-the-shelf applications. Our self-managed SoftLayer

infrastructure, along with fully managed infrastructure cloud environments, provide all the options you need for high-performance, robust, flexible enterprise application implementations in the IBM Cloud.

6. For cloud gaming developers and publishers-the game is on

To capture and impress players around the world, cloud gaming developers and publishers can gain an advantage with the SoftLayer global high-performance hosting and delivery network—ideal for cloud gaming—along with our Bluemix development platform. All from the IBM Cloud.

7. Engaging employees to drive the business with IBM Cloud for HR

Make your workforce the strategic asset it should be. Identify your top performers and attract and hire more like them. Engage, develop and retain your employees, with real-time learning, networking, social collaboration and knowledge sharing. With the power of workforce science and analytics, you have quick access to the insights and information you need to build a foundation for talent success, improve decision making, and positively impact business outcomes.

8. Optimize your cloud IT service management with IBM Cloud

Your organization is only as good as the IT services that support it, and delivering exceptional service is vital to your success. You need the tools that give you visibility, control and automation regardless of where your services run: on-premises, in the cloud or both. Service management solutions from the IBM Cloud enable you to do just that.

9. Change the way you engage

Leading companies are changing the way they engage to attract new customers, increase brand loyalty and grow their business. With IBM Experience One customer engagement solutions on IBM Cloud, you gain the analytics and agility you need.

10. Build mobile apps and manage mobile devices with IBM Cloud

The IBM Cloud can help you become a mobile enterprise. From efficiently building and deploying mobile apps that run smoothly on a wide variety of devices to enabling your employees to work anytime, anywhere with trusted mobile interactions, you can put your business in motion with cloud-based mobile solutions from IBM.

11. Improve your defenses and reduce risk with security solutions for and from the cloud

IBM can help you move to the cloud with confidence. Solutions from IBM Security can help you manage and protect against risks associated with all models of cloud computing. Services are available to help you build and deploy secure apps, and you can better manage and monitor access to business critical applications with cost-effective cloud security services.

12. How the modern business connects for success

Get work done simply and intelligently. Cut through the noise and elevate the insights most important to your work. Building on decades of experience in creating a people-centered workplace, IBM continues to innovate with leading business mail and social collaboration solutions—now delivered from the IBM Cloud.

IBM Cloud Capabilities

Full spectrum of cloud capabilities

IBM Cloud offers a virtually unmatched spectrum of capabilities—from consulting to infrastructure to business applications to application development and deployment. Open by design with robust underlying security and an integrated platform, IBM Cloud empowers businesses of all sizes to innovate faster and transform the way they work.

Hybrid cloud computing

Embrace the portability of apps, services and data in the cloud along with greater visibility and control to meet time-to-value demands.

Business apps (SaaS)

Transform your processes using more than 100 business applications that serve lines of business across the enterprise.

Open cloud

Liberate your systems, data, applications and services to connect and interact with each other regardless of where they physically reside.

Developer services (PaaS)

Access the data and services you need on a robust platform for fast app development.

Security

Protect your cloud-based environments, data, devices and transactions with confidence while managing compliance.

Infrastructure services (IaaS)

Choose from public or private, managed or self-managed infrastructure for a flexible platform.

Consulting

Develop and execute an optimal strategy for cloud using robust analytics and expert advisors from IBM.

Attachment 7

Installment Payment Agreement for State and Local Government Sample Forms

International Business Machines Corporation
Installment Payment Agreement for State and Local Government

Installment Payment Agreement No. [tbd]

This Installment Payment Agreement for State and Local Government ("Agreement") covers the terms and conditions under which IBM (as defined below) will finance various charges.

This Agreement and its applicable Supplements and Addenda along with any required documents that reference this Agreement or a Supplement and which are listed in the applicable Supplement, are the complete agreement regarding the Installment Payment Transactions and replace any prior oral or written communications between both parties. Any addenda to this Agreement or an applicable Supplement ("Addenda") must be agreed to in writing by both County and IBM. Any attachment to this Agreement or an applicable Supplement ("Attachment") must be referenced in such Agreement or Supplement. If there is a conflict of terms among the documents, the order of precedence will be as follows: (a) Attachments or Addenda to the Supplement, (b) Supplement, (c) Attachments or Addenda to the Agreement, (d) this Agreement.

By signing below, both parties agree to the terms of this Agreement. Once signed, any reproduction of this Agreement or a Supplement made by reliable means (for example, photocopy or facsimile) is considered an original.

Part 1 - Definitions

The following terms will have the meanings indicated below unless the context clearly requires otherwise:

"Agreement" means Installment Payment Agreement between the County and IBM related to payment terms outlined herein.

"Commencement Date" is the date when the term of an Installment Payment Transaction and County's obligation to pay Installment Payments for such Installment Payment Transaction commence, which date shall be: (i) for Equipment, the date of the Supplier's Invoice, provided County does not notify IBM of County's rejection of the Equipment within ten (10) days following County's receipt of the Equipment; (ii) for software, date of the Supplier's Invoice; or (iii) for services or if IBM requires County's acceptance, the date specified by County on a County executed certificate of acceptance ("Acceptance Date"), in form and satisfactory to IBM("COA").

"Equipment" means, collectively, the equipment financed pursuant to this Agreement, and with respect to each Installment Payment Supplement, the equipment described in each Installment Payment Supplement, and all repairs, restorations, modifications and improvements thereof or thereto made pursuant to Section 8.1 or Part 9.

"Event of Default" is defined in Section 13.1.

"Financed Items" means any software program licenses, maintenance, services, and other one-time charges to be financed pursuant to this Agreement, and with respect to each Installment Payment Supplement, such items described therein.

"IBM" means International Business Machines Corporation, and its successors and assigns.

"Installment Payment Transaction" means the financed transaction for Property set forth in any Installment Payment Supplement entered into pursuant this Agreement.

"Installment Payment Supplement" or **"Supplement"** means an Installment Payment Supplement in the form attached hereto.

"Installment Payments" means the installment payments payable by County under Part 6 of this Agreement and with respect to each Installment Payment Supplement, the Payment Amounts set forth in each applicable Payment Schedule for such Supplement.

"Installment Payment Dates" means the dates for the Installment Payments as set forth in the Payment Schedules for each Installment Payment Supplement.

"Nonappropriation Event" is defined in Section 6.6.

"Original Term" means, with respect to an Installment Payment Transaction, the period from the Commencement Date until the end of the budget year of County in effect at the Commencement Date.

"Payment Schedule" means, with respect to an Installment Payment Transaction, one or more schedules of installment payments for the Original Term and all Renewal Terms that indicates the Payment Due Date, the Installment Payment, and the Prepayment Price as set forth in each Payment Schedule.

"Property" means, collectively, the Equipment and Financed Items financed pursuant to this Agreement, and with respect to each L Installment Payment Supplement, the Equipment and Financed Items described in such Installment Payment Supplement.

"Purchase Price" means the amount that County may, in its discretion, pay to IBM to purchase the Property under an Installment Payment Supplement, as provided in Section 11.1 and as set forth in the Installment Payment Supplement.

"Renewal Terms" means the renewal terms of an Installment Payment Transaction, each having a duration of one year and a term coextensive with County's budget year.

"State" means the state where County is located.

"Supplier" means International Business Machines Corporation "IBM", or any other manufacturer, vendor or provider of the Property financed by County.

"Term" means, with respect to an Installment Payment Transaction, the Original Term and all Renewal Terms. The Term for each Installment Payment Transaction entered into hereunder shall be set forth in an Installment Payment Supplement, as provided in Section 4.2.**"County" or "Customer" or "Client"** means the entity identified as such on the signature line below, and its permitted successors and assigns.

Part 2 - Separate Installment Payment Transactions

Each Supplement executed and delivered under this Agreement shall be a separate Installment Payment Transaction, distinct from other Supplements. Without limiting the foregoing, upon the occurrence of an Event of Default or a Nonappropriation Event with respect to a Supplement, IBM shall have the rights and remedies specified herein with respect to the Property financed and the Installment Payments payable under such Supplement, and except as expressly provided in Section 12.2 below, IBM shall have no rights or remedies with respect to Property financed or Installment Payments payable under any other Supplements unless an Event of Default or Nonappropriation Event has also occurred under such other Supplements.

Part 3 - County's Covenants

As of the Commencement Date for each Supplement executed and delivered hereunder, County shall be deemed to represent, covenant, and warrant for the benefit of IBM as follows:

a. County is a public body corporate and politic duly organized and existing under the constitution and laws of the State with full power and authority to enter into this Agreement and the Supplement and the transactions contemplated thereby and to perform all of its obligations thereunder. County has a substantial amount of one or more of the following sovereign powers: (i) the power to tax, (ii) the power of eminent domain, and (iii) the police power.

b. County will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic. To the extent County should merge with another entity under the laws of the State, County agrees that as a condition to such merger it will require that the remaining or resulting entity shall be assigned County's rights and shall assume County's obligations hereunder.

c. County has been duly authorized to execute and deliver this Agreement and the Supplement by proper action by its governing body, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Agreement and the Supplement, and County has complied with such public bidding requirements as may be applicable to this Agreement and the Supplement and the acquisition by County of the Property thereunder. County further represents, covenants, and warrants with respect to each Supplement that it has been, or will be prior to its Commencement Date, approved by the Board of County Commissioners of County.

d. During the Term for the Supplement, the Property thereunder will perform and will be used by County only for the purpose of performing essential governmental uses and public functions within the permissible scope of County's authority.

e. County will provide IBM with current financial statements, budgets, and proof of appropriation for the ensuing budget year and other financial information relating to the ability of County to continue this Agreement and the Supplement in such form and containing such information as may be requested by IBM.

f. County will comply with all applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code"), including Sections 103 and 148 thereof, and the regulations of the Treasury Department thereunder, from time to time proposed or in effect, in order to maintain the excludability from gross income for federal income tax purposes of the interest component of Installment Payments under the Supplement and will not use or permit the use of the Property in such a manner as to cause a Supplement to be a "private activity bond" under Section 141(a) of the Code. County covenants and agrees that no part of the proceeds of the Supplement shall be invested in any securities, obligations or other investments except for the temporary period pending such use nor used, at any time, directly or indirectly, in a manner which, if such use had been reasonably anticipated on the date of issuance of the Agreement, would have caused any portion of the Supplement to be or become "arbitrage bonds" within the meaning of Section 103(b)(2) or Section 148 of the Code and the regulations of the Treasury Department thereunder proposed or in effect at the time of such use and applicable to obligations issued on the date of issuance of the Supplement.

g. The execution, delivery and performance of this Agreement and the Supplement and compliance with the provisions hereof and thereof by County does not conflict with, or result in a violation or breach or constitute a default under, any resolution, bond, agreement, indenture, mortgage, note, lease of, or other instrument to which County is a party or by which it is bound by any law or any rule, regulation, order or decree of any court, governmental agency or body having jurisdiction over County or any of its activities or properties resulting in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any property or assets of County or to which it is subject.

h. County's exact legal name is as set forth on the first page of this Agreement. County will not change its legal name in any respect without giving thirty (30) days' prior notice to IBM.

Part 4 - The Transactions

1. **Financing of Property.** On the Commencement Date of each Installment Payment Transaction executed in the Supplement hereunder, IBM will be deemed to demise and finance to County, and County will be deemed to finance and hire from IBM, the Property described in such Supplement, in accordance with this Agreement and such Supplement, for the Term set forth in such Supplement.

2. **Installment Payment Term.** The term of each Installment Payment Transaction shall commence on the Commencement Date and shall terminate upon payment of the final Installment Payment set forth in such Payment Schedule unless terminated sooner pursuant to this Agreement or the Supplement. If the term of a Supplement exceeds 5 years, County represents and covenants that the Installment Payments are payable from sources other than ad valorem taxes.

3. **Delivery and Installation.** County shall order the Property, shall cause the Property to be delivered and installed at the locations specified in the applicable Supplement, and shall pay all taxes, delivery costs and installation costs, if any, in connection therewith. To the extent funds are deposited under an escrow agreement for the acquisition of the Property, such funds shall be disbursed as provided therein.

4. **Assignment to IBM.** Although IBM shall have the obligation to pay the Supplier for the Property, not to exceed the principal amount set forth in the Supplement, title to the Property shall pass directly from Supplier to County unless otherwise provided. All other rights and obligations as defined in the agreement between County and County's Supplier governing the purchase of the Property ("Purchase Agreement") shall remain with County. County represents that it has reviewed and approved the Purchase Agreement. IBM will not modify or rescind the Purchase Agreement.

5. **Credit Review.** For each Installment Payment Transaction, County consents to a reasonable credit review by IBM.

Part 5 - IBM's Rights of Access

1. **Enjoyment of Property.** County shall during the Term peaceably and quietly have, hold and enjoy the Property, without suit, trouble or hindrance from IBM, except as expressly set forth in this Agreement. Neither IBM nor its successors or assigns shall interfere with such quiet use and enjoyment during the Term so long as County is not in default under the subject Supplement.

2. **Location; Inspection.** The Property will be initially located or based at the location specified in the applicable Supplement. Upon reasonable advance request, County agrees to allow IBM to inspect the Equipment and its maintenance records during County's normal business hours, subject to County's reasonable security

procedures. County will affix to the Equipment any identifying labels supplied by IBM indicating ownership.

Part 6 - Payments

1. **Installment Payments to Constitute a Current Expense of County.** IBM and County understand and intend that the obligation of County to pay Installment Payments hereunder shall constitute a current expense of County and shall not in any way be construed to be a debt of County in contravention of any applicable constitutional, statutory or charter limitation or requirement concerning the creation of indebtedness by County, nor shall anything contained herein constitute a pledge of the faith and credit or taxing power of County. Upon the appropriation of Installment Payments for a fiscal year, the Installment Payments for said fiscal year, and only the Installment Payments for said current fiscal year, shall be a binding obligation of County; provided that such obligation shall not include a pledge of the taxing power of County. IBM acknowledges that in no event may it compel the use of ad valorem taxing power to compel County to pay Installment Payments or other payment obligations under this Agreement. County further represents and covenants that the Installment Payments are payable from sources other than ad valorem taxes.

2. **Payment of Installment Payments.** County shall promptly pay Installment Payments under each Supplement, exclusively from legally available funds, in lawful money of the United States of America, to IBM in such amounts and on such dates as described in the applicable Payment Schedule, at IBM's address set forth as the "remit to" address in the invoice, unless IBM instructs County otherwise. County shall pay IBM a charge on any delinquent Payments in an amount sufficient to cover all additional costs and expenses incurred by IBM from such delinquent Payment. In addition, County shall pay a late charge of five cents per dollar or the highest amount permitted by applicable law, whichever is lower, on all delinquent Payments and interest on said delinquent amounts from 30 days after the date such amounts were due until paid at the rate of 12% per annum or the maximum amount permitted by law, whichever is less. Notwithstanding the foregoing, Payments made in accordance with Florida Statute 218.74 and Section 2-8.1.4 of the Code of Miami-Dade County shall not be subject to any late charge hereunder.

3. **This section intentionally left blank.**

4. **Installment Payments to be Unconditional.** SUBJECT TO SECTION 6.6, THE OBLIGATIONS OF COUNTY TO PAY THE INSTALLMENT PAYMENTS DUE UNDER THE SUPPLEMENTS AND TO PERFORM AND OBSERVE THE OTHER COVENANTS AND AGREEMENTS CONTAINED HEREIN SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS WITHOUT ABATEMENT, DIMINUTION, DEDUCTION, SET-OFF OR DEFENSE, FOR ANY REASON, INCLUDING WITHOUT LIMITATION, ANY DEFECTS, MALFUNCTIONS, BREAKDOWNS OR INFIRMITIES IN THE PROPERTY OR ANY ACCIDENT, CONDEMNATION OR UNFORESEEN CIRCUMSTANCES. THIS PROVISION SHALL NOT LIMIT COUNTY'S RIGHTS OR ACTIONS AGAINST ANY SUPPLIER AS PROVIDED IN SECTION 10.2.

5. **Continuation of Financing by County.** County intends to continue all Supplements entered into pursuant to this Agreement and to pay the Installment Payments thereunder. County reasonably believes that legally available funds in an amount sufficient to make all Installment Payments during the term of all Supplements can be obtained. County agrees that during the budgeting process for each budget year its staff will provide to the governing body of County notification of any Installment Payments due under the Supplements during the following budget year.

6. **Nonappropriation.** If, during the then current Original Term or Renewal Term, sufficient funds are not appropriated to make Installment Payments required under a Supplement for the following fiscal year, County shall be deemed to not have renewed such Supplement for the following fiscal year and the Supplement shall terminate at the end of the then current Original Term or Renewal Term and County shall not be obligated to make Installment Payments under said Supplement beyond the then current fiscal year for which funds have been appropriated. Upon the occurrence of such nonappropriation (a "Nonappropriation Event") County shall, no later than the end of the fiscal year for which Installment Payments have been appropriated, deliver possession of the Property under said Supplement, including free and clear title thereof to IBM. If County fails to deliver possession of the Property to IBM upon termination of said Supplement by reason of a Nonappropriation Event, the termination shall nevertheless be effective but County shall be responsible for the payment of damages in an amount equal to the portion of Installment Payments thereafter coming due that is attributable to the number of days after the termination during which the County fails to deliver possession and for any other loss suffered by IBM as a result of County's failure to deliver possession as required. In the event of a Nonappropriation Event under a Supplement, County shall cease use of all software financed or acquired under the applicable Supplement and shall confirm and state in writing to IBM that it has: (1) deleted or disabled all files and copies of the software from the equipment on which it was installed; (2) returned all software

documentation, training manuals, and physical media on which the software was delivered; and (3) has no ability to use the returned software. IBM may, by written instructions to any escrow agent who is holding proceeds of the Supplement, instruct such escrow agent to release all such proceeds and any earnings thereon to IBM, such sums to be credited to County's obligations under the Supplement and this Agreement. County shall notify IBM in writing within seven (7) days after the failure of the County to appropriate funds sufficient for the payment of the Installment Payments, but failure to provide such notice shall not operate to extend the Term or result in any liability to County. In the event of such nonappropriation, upon request from IBM, County agrees to provide in a timely manner, written evidence of such nonappropriation, a copy of the fiscal year budget in which such nonappropriation occurred and any other related documentation reasonably requested by IBM.

Part 7 - Title

1. **Title to the Property.** Upon acceptance of the Equipment by County and unless otherwise required by the laws of the State, title to the Equipment shall vest directly in County from the Supplier. Software that the County acquires from the Supplier and finances with IBM remains the property of the licensor. Ownership of the software is governed by the license agreement between the licensor and the County and is not affected by this Agreement.

2. **Personal Property.** The Equipment is and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. If requested by IBM, County will, at County's expense, furnish a waiver of any interest in the Equipment from any party having an interest in any such real estate or building.

Part 8 - Maintenance and Ancillary Charges

1. **Maintenance of Equipment by County.** County shall keep and maintain the Equipment in good condition and working order and in compliance with the manufacturer's specifications, shall use, operate and maintain the Equipment in conformity with all laws and regulations concerning the Equipment's ownership, possession, use and maintenance, and shall keep the Equipment free and clear of all liens and claims. County shall have sole responsibility to maintain and repair the Equipment.

2. **Liens, Taxes, Other Governmental Charges and Utility Charges.**

County shall keep the Property free of all levies, liens and encumbrances. The parties to this Agreement contemplate that the Property will be used for a governmental or proprietary purpose of County and, therefore, that the Property will be exempt from all property taxes. The Installment Payments payable by County under this Agreement and the Supplements hereunder have been established to reflect the savings resulting from this exemption from taxation. County will take such actions necessary under applicable law to obtain said exemption. Nevertheless, if the use, possession, or acquisition of the Property is determined to be subject to taxation or later becomes subject to such taxes, County shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to the Property. County shall pay all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Property. County shall pay such taxes or charges as the same may become due; provided that, with respect to any such taxes or charges that may lawfully be paid in installments over a period of years, County shall be obligated to pay only such installments as accrue during the then current fiscal year of the Term for such Property.

3. **Insurance.** At its own expense, County shall maintain (a) casualty insurance insuring the Property against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State and any other risks reasonably required by IBM in an amount equal to at least the outstanding principal component of Installment Payments, and (b) liability insurance that protects IBM from liability in all events in an amount reasonably acceptable to IBM, and (c) worker's compensation insurance covering all employees working on, in, near or about the Property; provided that County may self-insure against all such risks. All such insurance shall contain a provision to the effect that such insurance shall not be canceled or modified without first giving written notice thereof to IBM and County at least thirty (30) days in advance of such cancellation or modification. Such changes shall not become effective without IBM's prior written consent. The amount of insurance proceeds from casualty losses necessary to satisfy the remainder of the Installment Payments for the Property shall be payable to IBM within thirty (30) days of receipt by County. Upon IBM's request, County shall, within thirty (30) days of such request, furnish to IBM, for each Supplement, certificates evidencing such coverage, or, if County self-insures, a written description of its self-insurance program together with a certification from County's risk manager or insurance agent or consultant to the effect that County's self-insurance program provides adequate coverage against the risks listed above.

4. This section intentionally left blank.

Part 9 - Casualty Loss

1. **Damage or Destruction.** If (a) the Property under a Supplement or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty, or (b) title to, or the temporary use of, the Property under a Supplement or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, such events shall not relieve County of any obligations hereunder.

Part 10 - Warranties; Use of Equipment and/or Financed Items

1. **Disclaimer of Warranties.**

UNDER ANY ASSIGNMENT HEREUNDER, ASSIGNEE MAKES NO (AND SHALL NOT BE DEEMED TO HAVE MADE ANY) WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN, OPERATION OR CONDITION OF, OR THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE PROPERTY, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE STATE OF TITLE THERETO OR ANY COMPONENT THEREOF, THE ABSENCE OF LATENT OR OTHER DEFECTS (WHETHER OR NOT DISCOVERABLE), AND ASSIGNEE HEREBY DISCLAIMS THE SAME; IT BEING UNDERSTOOD THAT THE PROPERTY IS LEASED TO COUNTY "AS IS" ON THE DATE OF THIS AGREEMENT OR THE DATE OF DELIVERY, WHICHEVER IS LATER, AND ALL SUCH RISKS, IF ANY, ARE TO BE BORNE BY COUNTY. County acknowledges that it has made (or will make) the selection of the Property from the Supplier based on its own judgment and expressly disclaims any reliance upon any statements or representations made by Assignee. County understands and agrees that (a) neither the Supplier nor any sales representative or other agent of Supplier, is (i) an agent of Assignee, or (ii) authorized to make or alter any term or condition of this Agreement, and (b) no such waiver or alteration shall vary the terms of this Agreement unless expressly set forth herein. In no event shall IBM or Assignee be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement, the Supplements, or the existence, furnishing, functioning or use of any item, product or service provided for in this Agreement or the Supplements.

2. **Supplier's Warranties.**

IBM (except when IBM Is the Supplier of the Property) and any permitted assignee hereunder hereby irrevocably assigns to County all rights that IBM may have to assert from time to time whatever claims and rights (including without limitation warranties) related to the Property against the Supplier. County's sole remedy for the breach of such warranty, indemnification or representation shall be against the Supplier of the Property, and not against IBM or its permitted assignee hereunder, nor shall such matter have any effect whatsoever on the rights and obligations of IBM or its permitted assignees hereunder with respect to this Agreement, including the right to receive full and timely payments hereunder. County expressly acknowledges that IBM and any permitted assignee hereunder makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties of the Supplier of the Property.

3. **Use of the Property.** County will not install, use, operate or maintain the Property improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement and the applicable Supplement. County shall provide all permits and licenses, if any, necessary for the installation and operation of the Property. In addition, County agrees to comply in all respects with all laws of the jurisdiction in which its operations involving any item of Property may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the items of the Property (including compliance with any applicable privacy laws, rules or regulations and in conjunction therewith County, upon cessation of the use, operation and control of, and prior to any disposition of the Equipment, shall destroy any data contained thereon that would be subject to such privacy laws, rules or regulations); provided that County may contest in good faith the validity or application of any such law or rule in any reasonable manner that does not, in the opinion of IBM, adversely affect the interest of IBM in and to the Property or its interest or rights under this Agreement. County shall promptly notify IBM in writing of any pending or threatened investigation, inquiry, claim or action by any governmental authority which could adversely affect this Agreement, any Supplement or the Property thereunder.

4. **Modifications.** Subject to the provisions of this Section, County shall have the right, at its own expense, to make alterations, additions, modifications, or improvements to the Equipment. All such alterations, additions, modifications, and improvements shall thereafter comprise part of the Equipment and shall be subject to the provisions of this Agreement. Such alterations, additions, modifications and improvements shall not in any

way damage the Equipment, substantially alter its nature or cause it to be used for purposes other than those authorized under the provisions of state and federal law; and the Equipment, on completion of any alterations, additions, modifications or improvements made pursuant to this Section, shall be of a value which is equal to or greater than the value of the Equipment immediately prior to the making of such alterations, additions, modifications and improvements. County shall, at its own expense, make such alterations, additions, modifications, and improvements to the Equipment as may be required from time to time by applicable law or by any governmental authority.

Part 11 - Prepayments

1. **This section intentionally left blank.**

2. **Option to Prepay.** County shall have the option to prepay (a) in whole, but not in part, the Installment Payments due under a Supplement on any Installment Payment Date, at the Prepayment Price set forth in the Payment Schedule as the "Prepayment Price", or (b) in part, by requesting, in writing, the Prepayment Price for the portion of the remaining Installment Payments allocable to the Property being prepaid. When electing to prepay, County shall also pay any past due amounts, and any other monetary amounts due under the Supplement to IBM.

The Prepayment Price shall be an amount equal to the present value of the portion of the remaining Installment Payments allocable to the Property being prepaid ("PV of Payments") plus a Prepayment Fee, if applicable. The Prepayment Fee is calculated by multiplying the PV of Payments by the Prepayment Fee Rate set forth in such Payment Schedule as the "Prepayment Fee Rate". If no Prepayment Fee Rate is shown on the Payment Schedule, then the Prepayment Fee is not applicable.

Part 12 - Assignment; Risk of Loss

1. **Assignment by IBM.** IBM's right, title and interest in, to and under each Supplement and the Property under such Supplement may be assigned and reassigned in whole or in part to one or more assignees or subassignees by IBM with the prior written consent of County. The parties acknowledge that a one time assignment of Contractor's rights under the Installment Payment Supplement pursuant to the Installment Payment Agreement to IBM Credit LLC shall not require written consent of the County provided that IBM Credit LLC shall be required to comply with Article 33, Vendor Registration/Conflict of Interest. County shall retain all such approvals of assignment as a register of all assignees and shall make all payments to the assignee or assignees designated in such register without abatement and County shall not assert against any assignee any claim, defense, setoff or counterclaim. If any such assignment is approved by the County, the County agrees to execute all documents, including notices of assignment that may be reasonably requested by IBM or any assignee to protect its interests in this Agreement and the Supplements. IBM named above will remain the billing and collection agent for any of its assignees under this Section 12. Any assignment as provided for in this Section 12 of this Agreement shall not cause the assignee to assume IBM 's obligations under the Purchase Agreement that are not set forth in this Agreement or a Supplement, and nothing in this Agreement requires that any assignee assume any obligations under the Purchase Agreement that are not set forth in this Agreement or a Supplement.

2. **Supplements. Separate Financings.** Assignees of the IBM 's rights in one Supplement shall have no rights in any other Supplement unless such rights have been separately assigned.

3. **Assignment and Subleasing by County.** NONE OF COUNTY'S RIGHT, TITLE AND INTEREST IN, TO AND UNDER THIS AGREEMENT OR ANY SUPPLEMENT AND IN THE PROPERTY MAY BE ASSIGNED, SUBLEASED OR ENCUMBERED BY COUNTY FOR ANY REASON, WITHOUT THE PRIOR WRITTEN CONSENT OF IBM . Any request by County to assign a Supplement or any Property thereunder must be accompanied by an opinion of tax counsel satisfactory to IBM that the assignment will cause no material change to the federal income tax treatment of the amounts payable as interest under the Supplement.

4. **Risk of Loss Covenants.** County shall not be required to indemnify or hold IBM harmless against liabilities arising from the Agreement. However, as between IBM and County, and to the extent permitted by law, County shall bear the risk of loss for and shall pay directly any and all claims, liabilities, proceedings, actions, expenses, damages or losses arising under or related to the Property, including, but not limited to, the possession, ownership, lease, use or operation thereof, except that (provided that County has complied with its obligations under Section 10.3) County shall not bear the risk of loss of, nor pay for, any claims, liabilities, proceedings, actions, expenses, damages or losses that arise directly from events occurring after County has surrendered possession of the Property in accordance with the terms of the Agreement to IBM or that arise

directly from the gross negligence or willful misconduct of the IBM .

Part 13 - Defaults and Remedies

1. **Events of Default Defined.** Any of the following shall constitute an "Event of Default" under a Supplement:

   a. Failure by County to pay any Installment Payment under the Supplement or other payment required to be paid with respect thereto at the time specified therein;

   b. Failure by County to observe and perform any covenant, condition or agreement on its part to be observed or performed with respect to the Supplement, other than as referred to in subparagraph (a) above, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to County by IBM , unless IBM shall agree in writing to an extension of such time prior to its expiration; provided that, if the failure stated in the notice cannot be corrected within the applicable period, IBM will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by County within the applicable period and diligently pursued until the default iscorrected;

   c. Any statement, representation or warranty made by County in or pursuant to the Supplement or its execution, delivery or performance shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made;

   d. County shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of County, or of all or a substantial part of the assets of County, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against County in any bankruptcy, reorganization or insolvency proceeding; or

   e. An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of County or of all or a substantial part of the assets of County, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of 60 consecutive days.

The foregoing provisions of Section 13.1 are subject to the following limitation: if by reason of force majeure County is unable in whole or in part to perform its agreements under this Agreement and the Supplement (other than the obligations on the part of County contained in Part 6 hereof) County shall not be in default during the continuance of such inability. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of County.

A Nonappropriation Event is not an Event of Default.

2. **Remedies on Default.** Whenever any Event of Default exists with respect to a Supplement, IBM shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

   a. Without terminating the Supplement, and by written notice to County, IBM may declare all Installment Payments and other amounts payable by County thereunder to the end of the then current budget year of County to be due, including without limitation delinquent Installment Payments under the Supplement from prior budget years, and such amounts shall thereafter bear interest at the rate of 12% per annum or the maximum rate permitted by applicable law, whichever is less;

   b. IBM may terminate the Supplement;

   c. By written notice to any escrow agent who is holding proceeds of the Supplement, IBM may instruct such escrow agent to release all such proceeds and any earnings thereon to IBM , such sums to be credited to payment of County's obligations under the Supplement;

   d. IBM may take any action, at law or in equity, that is permitted by applicable law and that may appear necessary or desirable to enforce or to protect any of its rights under the Supplement and this Agreement.

e. e. Following an Event of Default or an Event of Nonappropriation hereunder and upon failure of County to voluntarily comply with Section 6.6, IBM may take any action, at law, that is permitted by applicable law and that may appear necessary or desirable to enforce or to protect any of its rights under the Supplement and this Agreement against County's legally available funds. IBM and County agree that there is no intention to create under this Agreement and the applicable Supplement a right of IBM to dispossess County involuntarily of the legal title to or the right of use of the Property. IBM hereby irrevocably waives any right to specific performance of County's covenant to transfer legal title to and return of possession of the Property to IBM.

3. **No Remedy Exclusive.** No remedy herein conferred upon or reserved to IBM is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle IBM to exercise any remedy reserved to it in this Part it shall not be necessary to give any notice, other than such notice as may be required in this Part.

13.4 This section is intentionally left blank.

Part 14 - General

1. **Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when emailed or three days after mailing by standard or trackable mail, to the parties hereto at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto shall designate in writing to the other for notices to such party), to any assignee at its address as it appears on the registration books maintained by County. Notices of an Event of Default shall be delivered by certified or registered mail.

2. **Arbitrage Certifications.** County shall be deemed to make the following representations and covenants as of the Commencement Date for each Supplement:

a. The estimated total costs, including taxes, freight, installation, cost of issuance, of the Financed Items under the Supplement will not be less than the total amount of the Installment Payments.

b. County has not created or established, and does not expect to create or establish, any sinking fund or other similar fund (i) that is reasonably expected to be used to pay the Installment Payments under the Supplement, or (ii) that may be used solely to prevent a default in the payment of the Payments under the Supplement.

c. The Property under the Supplement has not been and is not expected to be sold or otherwise disposed of by County, either in whole or in major part, prior to the last maturity of the Installment Payments under the Supplement.

d. There are no other obligations of County which (i) are being sold within 15 days of the Commencement Date of the Supplement; (ii) are being sold pursuant to the same plan of financing as the Supplement; and (iii) are expected to be paid from substantially the same source of funds.

e. The officer or official who has executed the Supplement on County's behalf is familiar with County's expectations regarding this Section 14.2. To the best of County's knowledge, information and belief, the facts and estimates set forth in herein are accurate and the expectations of County set forth herein are reasonable.

3. **Further Assurances.** County agrees to execute such other and further documents, including, without limitation, confirmatory financing statements, continuation statements, certificates of title and the like, and to take all such action as may be necessary or appropriate, from time to time, in the reasonable opinion of IBM , to perfect, confirm, establish, reestablish, continue, or complete the interests of IBM in this Agreement and the Supplements, to consummate the transactions contemplated hereby and thereby, and to carry out the purposes and intentions of this Agreement and the Supplements.

4. **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon IBM and County and their respective successors and assigns.

5. **Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other

provisionhereof.

6. **Amendments, Changes and Modifications.** This Agreement may be amended in writing by IBM and County to the extent the amendment or modification does not apply to outstanding Supplements at the time of such amendment or modification

7. **Execution in Counterparts.** This Agreement and the Supplements hereunder may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

8. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State.

9. **Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

10. **Accounting.** Neither IBM, nor any other IBM organization or affiliate makes any representation whatsoever regarding County's accounting treatment applicable to the Agreement. IBM accounts for receivables under this Agreement as financing receivables for US reporting purposes.

11. **Business Contact Information.** IBM and its affiliates, and their contractors and subprocessors, may store and otherwise process business contact information (BCI) of County personnel and authorized users, for example name, business telephone, address and email, in connection with this Agreement wherever they do business. Where notice to or consent by the individuals is required for such processing, County will notify and obtain the consent of any such individuals.

12. **Account Data.** Account Data is information, other than data and information ("Content") from all equipment and BCI, that County provides to IBM to enable County's acquisition and use of Eligible Products or that IBM collects using tracking technologies, such as cookies and web beacons, regarding County's use of IBM products. IBM and its affiliates, its contractors and subprocessors may use Account Data for example, to enable product features, administer use, personalize experience, and otherwise support or improve use of IBM Products. The IBM Online Privacy Statement at https://www.ibm.com/privacy/details/us/en/ and applicable attachments or transaction documents provides additional details.

THIS SECTION INTENTIONALLY LEFT BLANK

Agreed to by County: MIAMI-DADE COUNTY

By: _____

Authorized Signature Name (type or print): _____

Title: _____

Date: _____

Email Address: _____

Agreed to by:
International Business Machines Corporation

By: _____

Authorized Signature Name (type or print): _____

Title: _____

Date: _____

Installment Payment Agreement for State and Local Government

Appendix A - Sample attachments for individual transactions

International Business Machines Corporation
Appendix A-1: COMPOSITE SIGNATURE PAGE

Date: [month day, year]

Client Name and Address:
Miami-Dade County
111 NW 1st ST
Miami, FL. 33128

Client Agreement Number (*)	**Document Description**	**Amount($)**
[TBD]	Installment Payment Agreement For State and Local Government	n/a
[xxxxxx]	Installment Payment Supplement	$xx,xxx,xxx.xx
N/A	Payment Schedule for Installment Payment Supplement No.[xxxxxx]	$xx,xxx,xxx.xx

(*) Document Numbers are the Agreement Numbers, Schedule Numbers, Amendment Numbers and/or Addendum Numbers for the listed documents.

BY CLIENT'S SIGNATURE BELOW, THE CLIENT ACKNOWLEDGES THAT CLIENT HAS READ, UNDERSTANDS AND AGREES TO THE TERMS OF THE DOCUMENTS LISTED ABOVE, AND CLIENT IS SIGNING THIS COMPOSITE SIGNATURE PAGE AS A CONVENIENCE IN LIEU OF SIGNING EACH SUCH DOCUMENT SEPARATELY. ONCE THIS SIGNATURE PAGE IS SIGNED BY CLIENT, EACH OF THE DOCUMENTS LISTED ABOVE SHALL BE DEEMED TO BE EXECUTED AND ACCEPTED BY CLIENT, AND ONCE THIS SIGNATURE PAGE IS SIGNED BY INTERNATIONAL BUSINESS MACHINES CORPORATION, EACH OF THE DOCUMENTS LISTED ABOVE SHALL BE DEEMED TO BE EXECUTED AND ACCEPTED BY I NTERNATIONAL BUSINESS MACHINES CORPORATION. THIS SIGNATURE PAGE SHALL BE DEEMED A SIGNATURE PAGE TO, AND A PART OF, EACH OF THE DOCUMENTS LISTED ABOVE. ANY REPRODUCTION OF ANY DOCUMENT LISTED ABOVE AND THIS SIGNATURE PAGE (FROM A COPY THEREOF MAINTAINED BY INTERNATIONAL BUSINESS MACHINES CORPORATION IN ELECTRONIC FORM, OR REPRODUCED BY ANY OTHER RELIABLE MEANS (FOR EXAMPLE, PHOTOGRAPHY, IMAGE, OR FACSIMILE)) SHALL IN ALL RESPECTS BE CONSIDERED EQUIVALENT TO AN ORIGINAL OF SUCH DOCUMENT. BY SIGNING BELOW, CLIENT REPRESENTS AND WARRANTS THAT CLIENT'S NAME AS SET FORTH IN THE SIGNATURE BLOCK BELOW IS CLIENT'S EXACT LEGAL NAME AND THE INFORMATION IDENTIFYING CLIENT'S STATE OF ORGANIZATION IS TRUE, ACCURATE AND COMPLETE IN ALL RESPECTS.

Accepted by:

Miami-Dade County	**INTERNATIONAL BUSINESS MACHINES CORPORATION**
For or as Client	For or as IBM:
By: _____	By: _____
Authorized Signature	Authorized Signature
_____	_____
Name (Type or Print)	Name (Type or Print)
_____	_____
Title	Title
_____	_____
Date	Date
State of Organization	Florida

APPENDIX A-2

PRICE SCHEDULE

The Pricing schedule for this Agreement is as follows:

Hardware	X,xxx,xxx.xx
Software	X,xxx,xxx.xx
Maintenance	X,xxx,xxx.xx
Professional Services	X,xxx,xxx.xx
[Other]	X,xxx,xxx.xx
Total	X,xxx,xxx.xx

At your request, we are providing an option for an installment payment plan for this purchase. The proposed payment plan for this package would allow the County to spread the cost of this project over five fiscal years without additional costs. Detailed in the latter portion of this Appendix A is a set of three (3) documents that are required for execution by the County that would effectuate this payment plan, which are titled as follow:

Document 1 – Installment Payment Supplement
Document 2 – Installment Payment Schedule
Document 3 – Certificate(s) of Acceptance

By executing the Composite Signature Page in Attachment A-1, the County is executing the Installment Payment Agreement in Attachment 8 and Documents 1 and 2 listed above. Document 3 Certificate(s) of Acceptance will need to be executed separately.

[optional paragraphs describing hardware, software, services, etc. being acquired]

Document 1 – MDC IPA Supplement

INTERNATIONAL BUSINESS MACHINES CORPORATION
Installment Payment Supplement

Supplement No.: [xxxxxx]

Associated Supplement: n/a
Amendment/ Addendum No.: n/a

Installment Payment Agreement No.: [XXxxxxxxxxx]

County Name and Address:
Miami-Dade County
111 NW 1st ST
Miami, FL. 33128

IBM Name and Address:
International Business Machines Corporation
7100 Highlands Parkway
Smyrna, GA 30082

County Reference No.:

This Supplement to the above referenced Installment Payment Agreement ("Agreement") is executed between Miami-Dade County ("County") and International Business Machines Corporation ("IBM ").

Payment Period means the period for which a Payment is due and payable (e.g., Month, Quarter).
Payment Period is: [Annual [for example]]

Quote Validity Date is the date by which the executed Supplement must be returned to IBM.
Quote Validity Date is: [mm/dd/yyyy]
Supplier: International Business Machines Corporation [or other supplier]

TAXABLE FINANCING TRANSACTION(S)							
Ref. No.	**Machine Type/Model**	**Qty.**	**Property Description**	**Original Term (months)**	**Amount Financed ($)**	**Interest Rate**	**Planned Commencement Month**
Example: 1	9SW1-IBM	1	IBM Software	48	$x,xxx,xxx.xx	x.x%	[mm/yyyy]
2					$xxx,xxx.xx		
3					$xxx,xxx.xx		
4					$xxx,xxx.xx		
Etc.					**[TOTAL $$]**		

International Business Machines Corporation
Installment Payment Supplement

Supplement No.: [xxxxxx]

SPECIAL TERMS AND CONDITIONS:

1) As indicated on the Payment Schedule, this installment payment transaction consists of xxxxx (x) equal Installment Payments with a xxxx percent interest component. Title shall pass to County as per Section 7.1 of the Agreement.

2) County shall be deemed to represent, covenant and warrant for the benefit of IBM as follows:

(a) County has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current budget year to make the Installment Payments scheduled to come due during the current budget year under the Installment Payment Supplement and to meet its other obligations for the current budget year and such funds have not been expended for other purposes.

(b) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default or a Non-appropriation Event (as such terms are defined in the Agreement) exists at the date hereof with respect to this Installment Payment Supplement or any other Installment Payment Supplements under the Agreement.

(c) County represents and warrants that the Property is essential to the proper, efficient and economic functioning of County or to the services that County provides; and County has immediate need for and expects to make immediate use of substantially all of the Property, which need is not temporary or expected to diminish in the foreseeable future. The parties acknowledge that this representation by the County does not affect or hinder the County's ability to nonappropriate as provided in Section 6.6 of the Agreement.

(d) This section intentionally left blank.

(e) As of the date hereof, no litigation is pending or threatened against County in any court (i) seeking to restrain or enjoin the delivery of the Agreement or this Installment Payment Supplement or of other agreements similar to the Agreement; (ii) questioning the authority of County to execute the Agreement or this Installment Payment Supplement, or the validity of the Agreement or this Installment Payment Supplement (iii) questioning the constitutionality of any statute, or the validity of any proceedings, authorizing the execution of the Agreement and this Installment Payment Supplement; or (iv) affecting the provisions made for the payment of or security for the Agreement and this Installment Payment Supplement.

3) [other special terms for this transaction, if necessary]

ADDITIONAL TERMS AND CONDITIONS:

"Planned Commencement Month" means for the Installment Payment Transaction to commence, the Commencement Date (as defined in the Agreement) must be prior to the end of the month of "Planned Commencement Month" indicated above unless otherwise approved by IBM.

The Payment Schedule for this Supplement sets forth the scheduled Installment Payments under this Supplement. The Commencement Date for this Supplement is set forth in the Payment Schedule.

With respect to Financed Items consisting of prepaid maintenance and prepaid services, County accepts the terms of the prepaid maintenance and prepaid services and agrees to look solely to the maintenance and services provider for provision of such maintenance and services in accordance with the terms of the contracts with the maintenance and services provided for said maintenance and services. Acceptance for purposes of a Supplement shall be the date of acceptance by County in the Certificate of Acceptance.

International Business Machines Corporation
Installment Payment Supplement

Supplement No.: [xxxxxx]

For a Taxable Financing Transactions, the following provisions of the Installment Payment Agreement shall not be applicable: (i) Part 3, paragraph (f), (ii) Section entitled Arbitrage Certifications.

IBM reserves the right to reject any invoice that is: (i) not for information technology Equipment or related software or services, or (ii) dated more than 90 days prior to the date IBM receives authorization from County to finance..

Capitalized terms set forth in this Supplement or in the attachments, but not defined herein or therein, shall have the meaning set forth in the Installment Payment Agreement. The complete terms and conditions of the Installment Payment Agreement are incorporated by reference.

In addition to a Supplement, and as a requirement to entering into of Installment Payment Supplement, County shall provide in completed and executed form, acceptable to IBM, the additional documents attached to this Supplement that may include:

(a) Payment Schedule for a Supplement, (b) Certificate of Acceptance.

The Agreement referenced above shall be incorporated herein by reference. County hereunder shall be bound to the terms and conditions of the Agreement as County. The Agreement, this Supplement and any applicable attachments or addenda are the complete, exclusive statement of the parties with respect to the subject matter herein. These documents supersede any prior oral or written communications between the parties. By signing below, County represents and warrants that County's name as set forth in the signature block below is County's exact legal name and the information identifying County's state of organization is true, accurate and complete in all respects. By signing below, both parties agree to the terms represented by this Agreement as it may be amended or modified. Delivery of an executed copy of any of these documents by facsimile or other reliable means shall be deemed to be as effective for all purposes as delivery of a manually executed copy. County acknowledges that we may maintain a copy of these documents in electronic form and agrees that copy reproduced from such electronic form or by any other reliable means (for example, photocopy, image or facsimile) shall in all respects be considered equivalent to an original.

Agreed to:
MIAMI-DADE COUNTY

BY:_____

Authorized Signature Name (type or print): _____
Title: _____

Date: _____

Email Address: _____

Agreed to:
International Business Machines Corporation

BY:_____

Authorized Signature Name (type or print): _____
Title: _____

Date: _____

Email Address: _____

Document 2 – Payment Schedule

International Business Machines Corporation

PAYMENT SCHEDULE

County Name: Miami-Dade County
Installment Payment Supplement No.: [xxxxxx]

Commencement Date

The Commencement Date shall be: (i) for Equipment, the date of the Supplier's Invoice, provided County does not notify IBM of County's rejection of the Equipment within ten (10) days following County's receipt of the Equipment; (ii) for software, date of the Supplier's Invoice; or (iii) for services or if IBM requires County's acceptance, the date specified by County on a County executed certificate of acceptance ("Acceptance Date"), in form and satisfactory to IBM ("COA").

The Installment Payment Due Dates listed below are based on the Commencement Date being a date on or before the end of the Planned Commencement Month.

Payment Schedule

Total Principal Amount: $x,xxx,xxx.xx
Interest Rate for Schedule: x.xx%
Prepayment Fee Rate: n/a

Payment No.	Installment Payment Due Dates	Installment Payments ($)	Principal Component ($)	Interest Component ($)	Prepayment Price (After Making Payment for Said Due Date ($)
1	mm/dd/yyyy	$xxx,xxx.xx	$xxx,xxx.xx	$xxx,xxx.xx	$x,xxx,xxx.xx
2	mm/dd/yyyy	$xxx,xxx.xx	$xxx,xxx.xx	$xxx,xxx.xx	$x,xxx,xxx.xx
3	mm/dd/yyyy	$xxx,xxx.xx	$xxx,xxx.xx	$xxx,xxx.xx	$x,xxx,xxx.xx
4	mm/dd/yyyy	$xxx,xxx.xx	$xxx,xxx.xx	$xxx,xxx.xx	$x,xxx,xxx.xx
5	mm/dd/yyyy	$xxx,xxx.xx	$xxx,xxx.xx	$xxx,xxx.xx	$x,xxx,xxx.xx
(etc.)					$0.00

International Business Machines Corporation

PAYMENT SCHEDULE

County Name: Miami-Dade County
Installment Payment Supplement No.: [xxxxxx]

QTY	Machine Type / Model	Product Description	Serial No. / Alteration Reference No.	Principal Amount ($)
Example: 2	7014/T42	RS/6000 System Rack		$xx,xxx.xx
2	7063-CR1	Hardware Management Console		$xx,xxx.xx
1	9080-M9S	IBM Power System E980		$x,xxx,xxx.xx
			Total	**$x,xxx,xxx.xx**

County: MIAMI-DADE COUNTY

By: _____

Authorized Signature Name (type or print): _____
Title: _____

Date: _____

Email Address: _____

Document 3 – CERTIFICATE OF ACCEPTANCE
International Business Machines Corporation
Certificate of Acceptance

[ONLY FOR SERVICES ITEMS FINANCED]

Supplement No: [xxxxxx]
Certificate of Acceptance No.: [xxxxxxxxx]

County Name and Address:

Miami-Dade County
111 NW 1st ST
Miami, FL 33128

IBM Name and Address:

International Business Machines Corporation
7100 Highlands Parkway
Smyrna, GA 30082
cst@br.ibm.com

The County certifies and agrees that the information contained in the following table(s), which includes Property description and Amount Financed, is correct and relates to Property financed under the terms and conditions of the above referenced Supplement with International Business Machines Corporation.

Installed at:
Miami-Dade County
111 NW 1st Ave
Miami, FL 33128

TRANSACTION SUMMARY:
Customer Reference:
Payment Period: Annual
Payment Type**:** Advance

TAXABLE FINANCING TRANSACTION(S)

Qty	Machine Type /Model	Property Description	Original Term (months)	Amount Financed ($)	Interest Rate (%)	Annual Installment Payments ($)
Example 1	9MT3/IBM	Prepaid Maintenance	48	$xxx,xxx.xx	x.xx	$xxx,xxx.xx
1	9GB2/GTS	Prepaid IBM Consulting Services	48	$xxx,xxx.xx	x.xx	$xxx,xxx.xx
		TOTAL		**$xxx,xxx.xx**		**$xxx,xxx.xx**

County represents and certifies that County has accepted the items listed above or itemized on an attachment ("Accepted Item(s)") to this Certificate of Acceptance ("COA") on the date indicated below. County authorizes us to pay County's supplier for the Accepted Item(s). Amounts due under the Agreement shall commence upon the date County indicates below unless we have otherwise noted on the Supplement.

County represents and certifies that our direct payment to County's supplier for the Accepted Item(s) will be in full compliance with any and all relevant state laws and regulations or any other legal requirements relating to County's procurement or appropriation activities.

International Business Machines Corporation
Certificate of Acceptance

[ONLY FOR SERVICES ITEMS FINANCED]

Supplement No: [xxxxxx]
Certificate of Acceptance No.: [xxxxxxxxx]

Delivery of an executed copy of this COA by facsimile, email or any other reliable means shall be deemed to be as effective for all purposes as delivery of a manually executed copy. County understands that we may maintain a copy of this COA in electronic form and agrees that a copy produced from such electronic form or by any other reliable means (for example, photocopy, image or facsimile) shall in all respects be considered equivalent to an original. By signing below, County represents and warrants that County's name as set forth in the signature block below is County's exact legal name and the information identifying County's state of organization is true, accurate and complete in all respects.

County is a customer under the Installment Payment Agreement referenced above ("Agreement") with International Business Machines Corporation. By executing the above-referenced Supplement, County represents and certifies that County has accepted the Property supplied directly by International Business Machines Corporation ("IBM") or by another supplier and listed in the Supplement by the date indicated below. County authorizes International Business Machines Corporation to pay such supplier for the Property.

Supplier Information

Supplier's Name	Invoice Number	Invoice Date	Amount Financed
International Business Machines Corporation			

_____**(MM/DD/YYYY) ("Acceptance Date" for Accepted Item(s))**

By_____

Authorized signature

Name (type or print):_____

Title (type or print):_____

County shall return this executed COA to International Business Machines Corporation by mail, in an email, or by facsimile within ten (10) days of Acceptance Date.