



BOARD OF SUPERVISORS AGENDA ITEM REPORT
AWARDS / CONTRACTS / GRANTS

Award Contract Grant

Requested Board Meeting Date: 05/16/2023

* = Mandatory, information must be provided

or Procurement Director Award:

***Contractor/Vendor Name/Grantor (DBA):**

International Business Machines Corporation dba IBM Corporation (Headquarters: Armonk, NY)

***Project Title/Description:**

Maximo Subscription and Hosting

***Purpose:**

Award: Master Agreement No. MA-PO-23-164. This Master Agreement is effective May 16, 2023 to May 15, 2028 in the not-to-exceed contract amount of \$1,900,000.00 (including taxes). This contract is for the license subscription and hosting services for the upgraded Maximo system being integrated with the Workday Enterprise Resource Planning system. Administering Department: Information Technology

***Procurement Method:**

Pursuant to Pima County Procurement Code 11.12.020, Competitive sealed proposals, on 02/03/2023, the Board of Supervisors approved the purchase of the Enterprise Resource Planning (ERP) system to IBM Corporation (implementer) and Workday, Inc. (software), as the highest-ranking proposal for Solicitation Number RFP-PO-2200005. The option to integrate and utilize an upgraded version of Maximo within the Workday system was included in that proposal.

PRCUID: 425287

Attachment: IBM Maximo Software & Hosting Package

***Program Goals/Predicted Outcomes:**

Maximo currently provides Pima County asset and work management tools, and this implementation will update and increase functionality of that software to better integrate with the new ERP System. This will increase County efficiency and interoperability through the implementation of an integrated ERP system.

***Public Benefit:**

As the systems being replaced are vital to the operations of the County, a more fully integrated ERP system will allow County departments to more efficiently perform their duties, thereby permitting the County to better serve its constituents in a more cost-effective environment.

***Metrics Available to Measure Performance:**

Standard project management measurements to track progress of the project and validate implementation success. Analysis of life-long costs and support metrics during the life of the ERP system.

***Retroactive:**

No.

TO: COB 05-01-2023

PGS: 50

VERS: 1

THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED

Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (*) fields

Contract / Award Information

Document Type: MA Department Code: PO Contract Number (i.e., 15-123): 23-164
Commencement Date: 05/16/23 Termination Date: 05/15/28 Prior Contract Number (Synergen/CMS): N/A
[X] Expense Amount \$ 1,900,000.00 * [] Revenue Amount: \$ N/A

*Funding Source(s) required: Non-Bond Projects Fund

Funding from General Fund? [] Yes [X] No If Yes \$ N/A % N/A
Contract is fully or partially funded with Federal Funds? [] Yes [X] No
If Yes, is the Contract to a vendor or subrecipient?
Were insurance or indemnity clauses modified? [X] Yes [] No
If Yes, attach Risk's approval.
Vendor is using a Social Security Number? [] Yes [X] No
If Yes, attach the required form per Administrative Procedure 22-10.

Amendment / Revised Award Information

Document Type: Department Code: Contract Number (i.e., 15-123):
Amendment No.: AMS Version No.:
Commencement Date: New Termination Date:
Prior Contract No. (Synergen/CMS):
[] Expense [] Revenue [] Increase [] Decrease
Amount This Amendment: \$
Is there revenue included? [] Yes [] No If Yes \$
*Funding Source(s) required:
Funding from General Fund? [] Yes [] No If Yes \$ %

Grant/Amendment Information (for grants acceptance and awards)

[X] Award [] Amendment

Document Type: Department Code: Grant Number (i.e., 15-123):
Commencement Date: Termination Date: Amendment Number:
[] Match Amount: \$ [] Revenue Amount: \$
*All Funding Source(s) required:

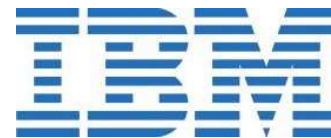
*Match funding from General Fund? [] Yes [] No If Yes \$ %
*Match funding from other sources? [] Yes [] No If Yes \$ %
*Funding Source:

*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?

Contact: Procurement Officer, Kelsey Braun-Shirley Acting Division Manager, Troy McMaster
Department: Procurement Director, Terri Spencer Telephone: 520.724.8728
Department Director Signature: Javier Baca
Deputy County Administrator Signature:
County Administrator Signature:

IBM Maximo Software & Hosting Package

1. Maximo Application Suite 5 Year Quote 19529872 (6 pages)
2. Maximo Managed Services 5 Year Quote 19529883 (5 pages)
3. IBM Passport Advantage Agreement 204090 (21 pages)
4. IBM General Cloud Terms (2 pages)
5. IBM Maximo Application Suite Dedicated (6 pages)
6. Pima County Standard Contract Addendum (3 pages)
7. Pima County Insurance Requirements Addendum (3 pages)
8. Pima Count Data Management & Security Addendum (2 pages)
9. Contract No. MA-PO-23-164 Signature Page.



IBM Software Quotation

27-Apr-2023

Customer Information

Attn: John Merritt
Pima County Government
150 West Congress
18th Floor
TUCSON AZ 85701-1333
UNITED STATES

Passport Advantage Agreement Number: 204090
IBM Customer Number: 7195827
Relationship SVP Level: GV

Passport Advantage Site Number: 3466986
Anniversary: **01-Jul**
Quotation SVP Level: GV

Dear Customer,

Thank you for your inquiry regarding IBM Software.

Any and all prices herein are suggested prices only and are subject to change at IBM's sole discretion. Products listed herein are subject to withdrawal or modification by IBM at any time at IBM's sole discretion. Final coverage dates for new license, Software Subscription and Support reinstatement, and Software Subscription and Support renewal part numbers will be based upon IBM's acceptance of the order, and as specified in the applicable agreements, irrespective of the dates which may appear in this quote.

Unless specifically agreed herein or in another signed agreement in writing between you and IBM, the licenses for the Programs and S&S acquired under this Quote / Agreement may not be used to settle or resolve any software license non-compliance by you that occurred prior to the Start Date of this Agreement. Further, unless otherwise agreed to by the parties in writing, the licenses for the Programs and S&S acquired under this Quote / Agreement may not be used as authorization to deploy the Programs prior to the date of your order against this Quote / Agreement. For more information about eligibility and reporting requirements for sub-capacity licensing, please visit <https://www.ibm.com/software/passportadvantage/subcaplicensing.html> and for more information about eligibility and reporting requirements for container licensing, please visit: <https://www.ibm.com/software/passportadvantage/containerlicenses.html>

This quotation is valid from 27-Apr-2023 and will expire on 30-Jun-2023.

Your order will be governed by and is subject to the terms of your Passport Advantage Agreement or the Passport Advantage Express Agreement, as applicable, against which this transaction will be placed.

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 Client personal data, if and to the extent: i) the European General Data Protection Regulation (EU/2016/679); and ii) other data protection laws identified at <http://www.ibm.com/dpa/dpl> apply.

If you need assistance with placing your order or wish to discuss your quotation, please contact the IBM Representative noted below.

International Business Machines Corporation
International Business Machines Corporation, 1 North Castle Drive, Armonk, NY 10504

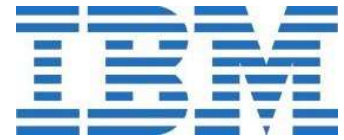


Yours sincerely,

Tom Mahon

Phone Number: 1-301-346-8643

E-mail Address: tom.mahon@us.ibm.com



IBM Software Quotation

Quotation Information

Number: 19529872
Effective Date: 27-Apr-2023
Expiration Date: 30-Jun-2023

Customer Information

Attn: John Merritt
Pima County Government
150 West Congress
18th Floor
TUCSON AZ 85701-1333
UNITED STATES

Sales Representative

IBM Contact: Tom Mahon
Phone Number: 1-301-346-8643

Passport Advantage Agreement Number: 204090
IBM Customer Number: 7195827
Relationship SVP Level: GV

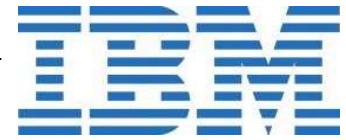
Passport Advantage Site Number: 3466986
Anniversary: 01-Jul
Quotation SVP Level: GV

Summary

Current Transaction		
Total Points		6,372.00
Software		536,160.00
Total		536,160.00 USD

Useful/Important web resources:

Passport Advantage information, customer secure site access, training, etc.: www.ibm.com/software/passportadvantage
IBM's International Program License Agreement and product License Information documents: www.ibm.com/software/sla
IBM Software Support web site: <https://www.ibm.com/software/support/handbook.html>
IBM Customer Number: 7195827



Current Transaction

Software

Line Item	Part Number	Quantity	Points	Unit SVP Price	Discounted Unit Price	Extended Amount
IBM Maximo Application Suite per AppPoint License + SW Subscription & Support 12 Months						
1	D28AYLL	300	3,540.00	2,261.00	938.32	281,496.00
Current Transaction						
Coverage Dates: 27-Apr-2023 - 30-Apr-2024						
IBM Maximo Application Suite per AppPoint Annual SW Subscription & Support Renewal						
2	EOR1HLL	300	708.00	451.40	196.95	59,085.00
Current Transaction						
Coverage Dates: 01-May-2024 - 30-Apr-2025						
IBM Maximo Application Suite per AppPoint Annual SW Subscription & Support Renewal						
3	EOR1HLL	300	708.00	451.40	206.80	62,040.00
Current Transaction						
Coverage Dates: 01-May-2025 - 30-Apr-2026						
IBM Maximo Application Suite per AppPoint Annual SW Subscription & Support Renewal						
4	EOR1HLL	300	708.00	451.40	217.14	65,142.00
Current Transaction						
Coverage Dates: 01-May-2026 - 30-Apr-2027						
IBM Maximo Application Suite per AppPoint Annual SW Subscription & Support Renewal						
5	EOR1HLL	300	708.00	451.40	227.99	68,397.00
Current Transaction						
Coverage Dates: 01-May-2027 - 30-Apr-2028						

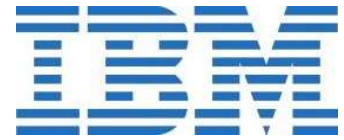
Useful/Important web resources:

Passport Advantage information, customer secure site access, training, etc.: www.ibm.com/software/passportadvantage

IBM's International Program License Agreement and product License Information documents: www.ibm.com/software/sla

IBM Software Support web site: <https://www.ibm.com/software/support/handbook.html>

IBM Customer Number: 7195827



Notes

Applicable tax will be recalculated at the time of order processing.

IBM acceptance of the order is subject to credit approval.

Your order is governed by and subject to the terms of your Passport Advantage Agreement or the Passport Advantage Express Agreement, as applicable, against which this transaction will be placed.

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 Client personal data, if and to the extent: i) the European General Data Protection Regulation (EU/2016/679); and ii) other data protection laws identified at <http://www.ibm.com/dpa/dpl> apply.

Useful/Important web resources:

Passport Advantage information, customer secure site access, training, etc.: www.ibm.com/software/passportadvantage

IBM's International Program License Agreement and product License Information documents: www.ibm.com/software/sla

IBM Software Support web site: <https://www.ibm.com/software/support/handbook.html>

IBM Customer Number: 7195827



IBM Terms and Conditions

IBM International Passport Advantage Agreement

The quote or order to which this document relates is governed by the terms of your Passport Advantage Agreement and its associated attachment(s).

Unless specifically agreed herein or in another signed agreement in writing between you and IBM, the licenses for the Programs and S&S acquired under this Quote / Agreement may not be used to settle or resolve any software license non-compliance by you that occurred prior to the Start Date of this Agreement. Further, unless otherwise agreed to by the parties in writing, the licenses for the Programs and S&S acquired under this Quote / Agreement may not be used as authorization to deploy the Programs prior to the date of your order against this Quote / Agreement. For more information about eligibility and reporting requirements for sub-capacity licensing, please visit <https://www.ibm.com/software/passportadvantage/subcaplicensing.html> and for more information about eligibility and reporting requirements for container licensing, please visit: <https://www.ibm.com/software/passportadvantage/containerlicenses.html>

If you have any trouble with the link(s) provided, please copy and paste the appropriate URL in your browser's navigation bar.

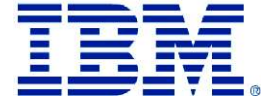
Useful/Important web resources:

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IBM's International Program License Agreement and product License Information documents: www.ibm.com/software/sla

IBM Software Support Web site: <https://www.ibm.com/software/support/handbook.html>

IBM Customer Number: 7195827



IBM Quotation

Attn: John Merritt
Pima County Government
18th Floor
150 West Congress
TUCSON AZ 85701-1333
UNITED STATES

IBM Site Number: 3466986
IBM Agreement Number: 204090
IBM Customer Number: 7195827

Dear John Merritt

Thank you for being an IBM Client. We are delighted to provide this quote for IBM offerings.

Worldwide, companies like yours are increasingly demanding more from their information technology infrastructure, increased flexibility, scalability and agility to meet changing business needs. At the same time, they want reduced cost, rapid deployment and investment recovery.

Over the years, our products, services and solutions capabilities have given our Clients the reliability, availability, security, and manageability to improve operations and achieve efficiency while accommodating growth at reduced cost. These characteristics have been and will remain fundamental to the IBM portfolio.

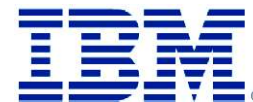
Unless specifically agreed herein or in another signed agreement in writing between you and IBM, the licenses for the Programs and S&S acquired under this Quote / Agreement may not be used to settle or resolve any software license non-compliance by you that occurred prior to the Start Date of this Agreement. Further, unless otherwise agreed to by the parties in writing, the licenses for the Programs and S&S acquired under this Quote / Agreement may not be used as authorization to deploy the Programs prior to the date of your order against this Quote / Agreement. For more information about eligibility and reporting requirements for sub-capacity licensing, please visit <https://www.ibm.com/software/passportadvantage/subcaplicensing.html> and for more information about eligibility and reporting requirements for container licensing, please visit: <https://www.ibm.com/software/passportadvantage/containerlicenses.html>.

This quotation is valid from 27-Apr-2023 and will expire on 30-Jun-2023.
We look forward to your order.

If you need assistance with placing your order or wish to discuss your quotation, please contact the IBM Representative noted below.

Yours sincerely,

Tom Mahon
Phone Number: 1-301-346-8643
Fax Number:
E-mail Address: tom.mahon@us.ibm.com



IBM Quotation

Quotation Information

Number: **19529883**
 Effective Date: **27-Apr-2023**
 Expiration Date: **30-Jun-2023**

Customer Information

Attn: **John Merritt**
 Pima County Government
 18th Floor
 150 West Congress
 TUCSON AZ 85701-1333
 UNITED STATES

Sales Representative

IBM Contact: **Tom Mahon**
 Phone Number: **1-301-346-8643**
 E-mail Address: tom.mahon@us.ibm.com

IBM Site Number: **3466986**
 IBM Customer Number: **7195827**
 IBM Agreement Number: **204090**

Summary

Current Transaction:

As a Service	1,163,144.16
Total	1,163,144.16 USD

Current Transaction

As a Service

1,163,144.16 USD

IBM Maximo Application Suite Dedicated

IBM Maximo Application Suite Dedicated Capacity Unit per Month

Subscription Part#: **D02QTZX**
 Billing: **Annual**
 Unit Price: **480.00**

Subscription Length: **60 Months**
 Price Change within Subscription: **Increase 3.000 % every 12 Months**
 Renewal Type: **Expires at end of Subscription**

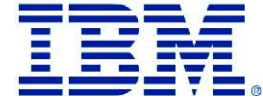
Line Item	Quantity	Month	Subscription Rate	Line Item Price
1	393	1-12	188,640.00	188,640.00
2	393	13-24	194,299.20	194,299.20
3	393	25-36	200,128.18	200,128.18
4	393	37-48	206,132.02	206,132.02
5	393	49-60	212,315.98	212,315.98
Subtotal				1,001,515.38 USD

IBM Maximo Application Suite Dedicated Data Gigabyte per Month

Subscription Part#: **D02QUZX**
 Billing: **Annual**
 Unit Price: **3.84**

Subscription Length: **60 Months**
 Price Change within Subscription: **Increase 3.000 % every 12 Months**
 Renewal Type: **Expires at end of Subscription**

Line Item	Quantity	Month	Subscription Rate	Line Item Price
6	2,048	1-12	7,864.32	7,864.32



7	2,048	13-24	8,100.25	8,100.25
8	2,048	25-36	8,343.26	8,343.26
9	2,048	37-48	8,593.55	8,593.55
10	2,048	49-60	8,851.36	8,851.36
Subtotal				41,752.74 USD

IBM Maximo Application Suite Dedicated SLA

Subscription Part#: **D02QVZX**
 Billing: **Upfront**
 Unit Price: **0.00**

Subscription Length: **60 Months**
 Price Change within Subscription: **Increase 3.000 % every 12 Months**
 Renewal Type: **Expires at end of Subscription**

Line Item	Quantity	Month	Subscription Rate	Line Item Price
11	1	1-60	0.00	0.00
Subtotal				0.00 USD

IBM Maximo Application Suite Dedicated Virtual Processor Core per Month

Subscription Part#: **D02QWZX**
 Billing: **Annual**
 Unit Price: **806.40**

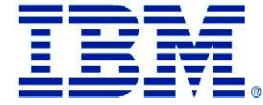
Subscription Length: **60 Months**
 Price Change within Subscription: **Increase 3.000 % every 12 Months**
 Renewal Type: **Expires at end of Subscription**

Line Item	Quantity	Month	Subscription Rate	Line Item Price
12	28	1-12	22,579.20	22,579.20
13	28	13-24	23,256.58	23,256.58
14	28	25-36	23,954.27	23,954.27
15	28	37-48	24,672.90	24,672.90
16	28	49-60	25,413.09	25,413.09
Subtotal				119,876.04 USD

Notes

Applicable tax will be recalculated at the time of order processing.

IBM acceptance of the order is subject to credit approval.
 Upon placing your order, please supply a Purchase Order or, if not PO driven, a signed Firm Order Letter. The Purchase Order value must cover the applicable charges for a minimum of one year. If the Total Term is less than one year, the Purchase Order value must cover the Total Commit Value.



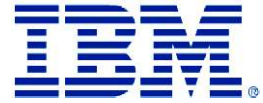
PAYMENT SCHEDULE PAGE

This is an estimate of payments, final determination of billing dependent on order date.

Month	Setup Products and Services	Subscription	Total
1	0.00	219,083.52	219,083.52
13	0.00	225,656.03	225,656.03
25	0.00	232,425.71	232,425.71
37	0.00	239,398.47	239,398.47
49	0.00	246,580.43	246,580.43
Total in USD	0.00	1,163,144.16	1,163,144.16

International Business Machines Corporation

International Business Machines Corporation, 1 North Castle Drive, Armonk, NY 10504



IBM Terms and Conditions

IBM International Passport Advantage Agreement

The quote or order to which this document relates is governed by the terms of your Passport Advantage Agreement and its associated attachment(s).

IBM Terms for IBM Cloud Offerings

The referenced Cloud Services are governed by the terms of your International Passport Advantage Agreement, its associated attachment(s), and the referenced Transaction Documents. Your order and use of the Cloud Services are your acceptance of the prices and terms referenced in this document, except to the extent superseded by a written amendment or agreement signed by both of us.

Final coverage dates for offerings listed are provided in your Proof of Entitlement.

Transaction Documents

IBM Terms of Use - General Terms for IBM Cloud Offerings at:

<https://www.ibm.com/software/sla/sladb.nsf/sla/tou-gen-terms>

Service Description(s) for ordered Cloud Services:

IBM MAXIMO APPLICATION SUITE MANAGED SERVICE

<https://www.ibm.com/support/customer/csol/terms/?id=i126-8819>

Please read all terms for each of the above referenced Transaction Document(s) to ensure you are agreeing to the most recent version of the document. If you have any trouble with the link provided, please copy and paste the appropriate URL in your browser's navigation bar.

Billing and Provisioning

At time of acceptance of this quote either by Purchase Order or Firm Order Letter, IBM will begin billing for the SaaS Subscription(s) as indicated above. When IBM is ready to provision the SaaS Subscription(s) in the quote IBM will use information provided by the Client, as well as default technical data to configure the clients SaaS Subscription for access. IBM will notify the Client with details on the provisioning on the date in which the Client can access the SaaS and the term for the SaaS will begin on the date indicated. If provisioning information needs to be updated please refer to the IBM Software as a Service (SaaS) Support Handbook.

Please work with your IBM Sales Representative or your IBM Business Partner to complete the provisioning data at or prior to time of order.

Unless specifically agreed herein or in another signed agreement in writing between you and IBM, the licenses for the Programs and S&S acquired under this Quote / Agreement may not be used to settle or resolve any software license non-compliance by you that occurred prior to the Start Date of this Agreement. Further, unless otherwise agreed to by the parties in writing, the licenses for the Programs and S&S acquired under this Quote / Agreement may not be used as authorization to deploy the Programs prior to the date of your order against this Quote / Agreement. For more information about eligibility and reporting requirements for sub-capacity licensing, please visit <https://www.ibm.com/software/passportadvantage/subcaplicensing.html> and for more information about eligibility and reporting requirements for container licensing, please visit: <https://www.ibm.com/software/passportadvantage/containerlicenses.html>.

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IBM Software Support Web site: <https://www.ibm.com/software/support/handbook.html>

IBM Customer Number: 7195827



International Passport Advantage Agreement

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

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

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

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

1. IPAA Acceptance

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

2. Content and Data Protection

- a. Content consists of all data, software, and information that Client or its authorized users provide, authorize access to, or inputs to the Cloud Services or information or data Client may provide, make available or grant access to, in connection with IBM providing the Cloud Services or other Services. Client grants the rights and permissions to IBM, its affiliates, and contractors of either, to use, provide, store, and otherwise process Content solely for the purpose of providing the Cloud Services or other Services. As between IBM and Client, use of the Cloud Services or other Services will not affect Client's ownership or license rights in Content.
- b. IBM, its affiliates, and their respective contractors may access and use the Content solely for the purpose of providing and managing the IBM Cloud Services or other IBM Services. IBM will treat all Content as confidential by only disclosing the Content to IBM employees and contractors to the extent necessary to provide the IBM Cloud Services or other IBM Services.
- c. Client is responsible for obtaining all necessary rights and permissions to permit processing of Content in the Cloud Services or for IBM to perform other Services. Client will make disclosures and obtain consent required by law before Client provides, authorizes access to, or inputs individuals' information, including personal or other regulated data, for processing in the IBM Cloud Services or use by IBM in providing the other Services.
- d. If any Content could be subject to governmental regulation or may require security measures beyond those specified by IBM for the Cloud Services or to provide other Services, Client will not provide, allow access to, or input the Content for processing in the Cloud Services or provide or allow access of Content to IBM to provide other Services unless specifically permitted in the applicable TD or unless IBM has first agreed in writing to implement additional security and other

measures. Client is responsible for adequate back-up of Content on Client managed systems prior to providing or allowing access of Content to IBM to provide other Services.

- e. IBM Data Security and Privacy Principles (DSP), at <http://ibm.com/terms/?id=z126-7745>, apply for generally-available, standard IBM Cloud Services and other IBM Services as identified in a TD. At IBM's discretion, IBM may change the DSP from time to time and the change will be effective when published or on the specified effective date. The intent of any change will be to improve and clarify existing commitments and maintain alignment to current adopted operational and security standards or applicable laws. The intent is not to degrade the security or functionality.
- f. The specific security features and functions of an IBM Cloud Service or other IBM Services will be described in the applicable Attachment and/or TD(s). Client is responsible for selecting, ordering, enabling, or using available data protection features appropriate to support Client's use of Cloud Services. Client is responsible for assessing the suitability of the Cloud Services for the Content and Client's intended use of Content with Services IBM will provide. Client acknowledges that the use of Cloud Services and other Services meets Client's requirements and processing instructions required to comply with applicable laws.
- g. IBM's Data Processing Addendum (DPA) is found at <http://www.ibm.com/dpa>. A DPA Exhibit(s) will specify how IBM will process personal data contained in Content. The DPA and applicable DPA Exhibit(s) apply to personal data contained in Content, if and to the extent: i) the European General Data Protection Regulation (EU/2016/679); or ii) other data protection laws identified at <http://www.ibm.com/dpa/dpl> apply. Upon request by either party, IBM, Client and/or their respective affiliates, will enter into additional agreements as required by law in the prescribed form for the protection of regulated personal data included in Content. The parties agree (and will ensure that their respective affiliates agree) that such additional agreements will be subject to the terms of the Agreement.
- h. For IBM Cloud Services with self-managed features, Client can remove Content at any time. Otherwise, IBM will return or remove Content from IBM computing resources upon the expiration or cancellation of the IBM Cloud Services or other IBM Services, or earlier upon Client's request. IBM may charge for certain activities performed at Client's request (such as delivering Content in a specific format). IBM does not archive Content; however, some Content may remain in backup files until expiration of such files as governed by IBM's backup retention practices.

3. Warranties

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

4. Charges, Taxes, Payment, and Verification

- a. Client's right to use an EP is contingent on Client paying applicable charges as specified in the Agreement under which Client acquired the entitlements.
- b. Client agrees to pay all applicable charges for acquired entitlements and any charges for use of excess authorizations. Charges are exclusive of any customs or other duty, tax, and similar levies

imposed by any authority resulting from Client's acquisitions of entitlements and will be invoiced in addition to such charges. Amounts are due upon receipt of the invoice and payable within 30 days of the invoice date to an account specified by IBM and if not paid within 30 days, late payment fees may apply. Client is responsible to properly acquire additional entitlements in advance to increase its use. Prepaid EPs must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid except as specified in this Agreement. IBM may pro-rate charges for select EPs to align with a common date such as Anniversary dates.

- c. Client agrees to: i) pay any withholding tax directly to the appropriate government entity where required by law; ii) furnish a tax certificate evidencing such payment to IBM; iii) unless otherwise stated, pay IBM only the net proceeds after tax; and iv) fully cooperate with IBM in seeking a waiver or reduction of such taxes and promptly complete and file all relevant documents.
- d. If Client imports, exports, transfers, accesses, or uses an EP across a border, Client agrees to be responsible for and pay authorities any custom, duty, tax, or similar levy assessed by the authorities. This excludes those taxes based on IBM's net income.
- e. If Client pays for Subscription License charges through periodic (annual, quarterly, monthly) billings, Client's obligation to pay such charges is absolute and unconditional and Client agrees not to assert any right of setoff against IBM or any assignee of IBM. Neither IBM nor IBM's affiliates and subsidiaries make any representation regarding Client's accounting treatment of such payments; IBM may account for such receivables as financing receivables for United States reporting purposes.

4.1 License Verification

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

4.2 Volume Pricing

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

not be lowered by more than one level below Client's RSVP level at the end of the prior PA Program Term.

RSVP/SVP Level Table

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

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

5. Liability and Intellectual Property Protection

- a. IBM's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the EP that is the subject of the claim, regardless of the basis of the claim. IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings. These limitations apply collectively to IBM, its affiliates, contractors, and suppliers.
- b. The following amounts are not subject to the above cap: i) third-party payments related to infringement claims described in the paragraph 5(c) below; and ii) damages that cannot be limited under applicable law.
- c. If a third party asserts a claim against Client that an IBM EP acquired under the Agreement infringes a patent or copyright, IBM will defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM. To obtain IBM's defense against and payment of infringement claims, Client must promptly: i) notify IBM in writing of the claim; ii) supply information requested by IBM; and iii) allow IBM to control, and reasonably cooperate in, the defense and settlement, including mitigation efforts. IBM's defense and payment obligations for infringement claims extend to claims of infringement based on open-source code that IBM selects and embeds in an IBM EP.
- d. IBM has no responsibility for claims based on Non-IBM EPs, items not provided by IBM, or any violation of law or third-party rights caused by Content, or any Client materials, designs, specifications, or use of a non-current version or release of an IBM EP when an infringement claim could have been avoided by using a current version or release.

6. Termination

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

7. Governing Laws and Geographic Scope

- a. Both parties agree to the application of the laws of the country where the transaction is performed (or for IBM or Non-IBM Cloud Services, the laws of the country of Client's business address), without regard to conflict of law principles.

- b. The rights and obligations of each party are valid only in the country where the transaction is performed (or for IBM or Non-IBM Cloud Services the country of Client's business address) or, if IBM agrees, the country where the IBM EP or Non-IBM EP is placed in productive use, except all licenses are valid as specifically granted.
- c. Each party is also responsible for complying with: i) laws and regulations applicable to its business and Content; and ii) import, export and economic sanction laws and regulations, including the defense trade control regime of the United States of America and any applicable jurisdiction that prohibit or restrict the import, export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. IBM will not serve as Client's exporter or importer, except as required by data protection laws, for: i) any Content; ii) use of any portion of a Cloud Service from a country outside Client's business address.
- d. If any provision of the Agreement is invalid or unenforceable, the remaining provisions remain in full force and effect. Nothing in the Agreement affects statutory rights of consumers that cannot be waived or limited by contract. The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under the Agreement.

8. Program License

- a. IBM Programs available under this IPAA are licensed under IBM's International Program License Agreement (IPLA) or a designated IBM license agreement available at <http://www.ibm.com/terms/pla>, and the Program's LI available at <http://www.ibm.com/terms/?cat=software-license>. If there is a conflict between the terms of this IPAA, including its applicable Attachments and TDs, and the terms of the IPLA including the applicable LI, the terms of this IPAA prevail.
- b. Trade-up licenses for Programs that replace qualifying IBM Programs active on S&S or qualifying Non-IBM Programs may be acquired for a reduced charge. When Client installs a replacement Program, the replaced Program license terminates, Client is required to uninstall and destroy all terminated copies of the replaced Program, and upon request from IBM, provide evidence of such.

8.1 IBM Software Subscription and Support

- a. IBM Software Subscription and Support (S&S) for IBM Programs is detailed in the IBM Support Guide at <http://www.ibm.com/support/guide>. IBM provides S&S for each IBM Program licensed under this IPAA that Client has active S&S. S&S begins and ends as specified in a TD.
- b. Software Subscription provides Client access to generally-available defect corrections, restrictions, bypasses, and any new versions, releases, or updates.
- c. Software Support (Support) provides Client assistance with Client's: i) routine, short duration installation and usage (how-to) questions; and ii) code-related questions. Support for a specific version or release of an IBM Program is available only until IBM withdraws the Support for that IBM Program's version or release. Client must upgrade to a supported version or release of the IBM Program to continue to receive Support. The IBM Software Support Lifecycle policy is available at <http://www.ibm.com/support/lifecycle>.
- d. After Support is withdrawn for selected IBM Program versions or releases, listed in the IBM Support Guide and while Client has current S&S coverage for such IBM Programs, IBM will continue to provide Support only for existing code patches and fixes. IBM will not develop or provide new patches or fixes for those selected IBM Program versions or releases.
- e. IBM uses information about errors and problems to improve IBM Programs and Services and assist with the provision of related support offerings.
- f. If Client elects to continue S&S for an IBM Program at a designated Site, Client must maintain S&S for all uses and installations of the IBM Program at that Site.
- g. If Client requests to renew expiring S&S at a lesser quantity of IBM Program uses and installations than the expiring quantity, Client must provide system generated documentation that verifies current uses and installations of the IBM Program to IBM, as specified in the Agreement. If the documentation is not received by IBM at least 30 days prior to the S&S renewal date, Client must renew all expiring quantities.
- h. If Client's S&S coverage lapses, the benefits of S&S will no longer be available to the Client including the ability to access the Program's downloads, media, and fixes. To reinstate S&S, Client must acquire S&S at then current prices for all uses and installations.

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

9. Term Licenses and Renewal

- a. Programs IBM offers under term licensing models give Client access to a Program and S&S for a term duration specified in applicable TDs. The license term begins and ends as specified in a TD.
- b. When the license term of the Program ends, Client's access to the Program and S&S will terminate and Client is required to uninstall and destroy all terminated copies of the affected Program. Client agrees to provide evidence of such upon request from IBM.

9.1 Subscription License

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

9.2 Monthly License

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

9.3 Fixed Term License

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

9.4 Term License Renewal

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

10. Full Capacity and Virtualization Requirements

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

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

- a. Sub-Capacity Licensing – EPs that meet the requirements for Sub-Capacity usage (see <http://www.ibm.com/software/passportadvantage/subcaplicensing.html>) may be licensed under Sub-Capacity Licensing terms (Eligible Sub-Capacity Product). Client must acquire entitlements equal to the virtualization capacity available to the Eligible Sub-Capacity Product.

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

10.2 Client's Reporting Responsibilities

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

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

10.3 Excess Use Resolution

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

any additional charges and other liabilities determined, including but not limited to taxes, duties, and regulatory fees.

11. Selected Support

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

12. CEO (Complete Enterprise Option) Product Categories

- a. Collections of EPs may be offered by IBM on a per user basis subject to a minimum initial user quantity (a CEO Product Category). For Client's first CEO Product Category, Client must acquire licenses for all users in their Enterprise who have been assigned a machine capable of copying, using, or extending the use of any Program in the CEO Product Category (CEO User). For each additional CEO Product Category, Client must meet the applicable minimum initial order user quantity requirement for the CEO Product Category but is not required to acquire licenses for all CEO Users.
- b. Any installs of any component of a CEO Product Category can only be used by or for users for whom licenses have been obtained. All Programs used on an end user device to access a Program on a server must be acquired from the same CEO Product Category as the server Program they access.

13. Appliances

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

13.1 Appliance Services

- a. IBM provides Appliance Services consisting of Machine maintenance and S&S as a single offering as well as other service offerings described in the IBM Appliance Support Guide at <https://www.ibm.com/support/pages/node/737691>.
- b. Appliance Services cover undamaged and properly maintained and installed Appliances used as authorized by IBM with unaltered identification labels. Services do not cover alterations, accessories, supply items, consumables (such as batteries), structural parts (such as frames and covers), or failures caused by a product for which IBM is not responsible. One year of Appliance Services is included with the purchase of an Appliance starting on the Warranty Start Date specified in a TD.
- c. If Client renews Appliance Services for an Appliance, Client must: i) also renew any expansions or add-ons applied to the Appliance; and ii) maintain Appliance Services for all uses and installations of the Appliance and expansions at a designated Site. All renewals will be fulfilled with Appliance Services offered at the same level of service, if available, that Client was entitled to during that prior coverage.
- d. If Client allows Appliance Services coverage to lapse, the benefits of Appliance Services will no longer be available to the Client. To reinstate Appliance Services, Client must acquire Appliance Services at then current prices for all uses and installations. The Appliance may be inspected by IBM no later than 30 days after Appliance Services have been reinstated. If the Appliance is not in acceptable condition, Client must restore the Appliance into acceptable working condition, as determined by IBM, to receive Appliance Service for that Appliance.
- e. Parts removed or exchanged for upgrade, warranty service, or maintenance become IBM property and must be returned to IBM within 30 days. A replacement takes on the warranty or maintenance status of the replaced part. If Client returns an Appliance to IBM, Client will remove all features not supported under Appliance Services, securely erase all data, and ensure that it is free of any legal restrictions that would prevent its return.

14. Cloud Services

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

and may include additional Client responsibilities. These documents can be viewed at <http://www.ibm.com/terms/?cat=cloud-sd>. Technical support and service level commitments, if any, are specified in a TD.

- h. Client acquires Cloud Services on a subscription basis or as specified in a TD. Client may increase authorization levels to the Cloud Services by placing an order. Client may only decrease Client's authorization levels when renewing the Cloud Services.

15. General Terms

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

- j. IBM Business Partners who use or make available IBM EPs or Non-IBM EPs are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings. If IBM notifies Client their current IBM Business Partner will no longer resell an IBM EP, Client may select to acquire the EP directly from IBM or another authorized IBM Business Partner as available.
- k. IBM may offer Non-IBM EPs, or an IBM EP may enable access to Non-IBM EP, that may require acceptance of third-party terms presented to the Client. Linking to or use of Non-IBM EPs constitutes Client's agreement with such third-party terms. Third-party terms and privacy practices govern use of Content Client may provide, grant access to or input to a Non-IBM Cloud Service or other Non-IBM Service. IBM is not a party to any third-party agreement and is not responsible for Non-IBM EPs. Access to Non-IBM EPs may be discontinued at any time if the third party discontinues or IBM no longer makes available such Non-IBM EPs.
- l. A preview product is when IBM makes an IBM EP or Non-IBM EP or feature of an IBM EP or Non-IBM EP available at no charge, with limited or pre-release functionality, or for a limited time, to try available functionality (such as beta, trial, evaluation, no-charge, or designated preview products). Services levels agreements set forth in the Agreement (including in a TD or Attachment) that provides service levels does not apply to preview products. A preview product may not be covered by support and IBM may change or discontinue a preview product at any time and without notice. For any preview product that is provided as a pre-release, IBM is not obligated to release a generally available product. Client is responsible for placing an order under generally available terms for generally available EPs when a preview expires.
- m. Neither party may assign the Agreement, in whole or in part, without the prior written consent of the other. IBM may assign its right to receive payments without consent. IBM will remain responsible to perform its obligations. Assignments by IBM in conjunction with the sale of the portion of IBM's business that includes an IBM EP or Non-IBM EP is not restricted by the foregoing. IBM may share the Agreement and related documents in conjunction with any assignment.
- n. The parties' consent to use electronic means and facsimile transmissions for communications as a signed writing. Any reproduction of the Agreement made by reliable electronic means is considered an original. The Agreement supersedes any course of dealing, discussions, or representations between the parties. Where approval acceptance, consent, access, cooperation, or similar action by either party is required, such action will not be unreasonably delayed or withheld.
- o. No right or cause of action for any third party is created by the Agreement or any transaction under it. Neither party will bring a legal action arising out of or related to the Agreement more than two years after the cause of action arose. Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control.
- p. IBM may use personnel and resources in locations worldwide, including third-party contractors to support the delivery of IBM EPs and Non-IBM EPs. Client's use of IBM EPs or Non-IBM EPs may result in the transfer of Content, including personally identifiable information, across country borders. A list of countries where Content may be transferred and processed is described in the TD or as specified in Services support documentation. IBM is responsible for the obligations under the Agreement even if IBM uses a third-party contractor and will have appropriate agreements in place to enable IBM to meet its obligations.
- q. If IBM and Client agree to use a Client requested third-party service to support the procurement or payment activities associated with the Agreement, IBM agrees to submit or receive applicable documents (such as invoices or similar contracting documents) using the third-party service. Client agrees to reimburse IBM for any third-party fees associated with IBM's use of such third-party service. In the event: i) the third-party service becomes unavailable for any reason; or ii) the third-party provider modifies the service or terms of use in a manner IBM deems commercially unacceptable, the Client agrees to directly accept documents from IBM and pay IBM directly. Client remains responsible to IBM for timely payments of invoices. If there is a claim or proceeding against IBM related to IBM's proper use of Client's requested third-party service, Client is responsible to reimburse IBM for reasonable defense costs and any amounts IBM is required to pay due to such claim or proceeding. Such claims or proceedings include those due to the third-party service provider's use, misuse, or disclosure of data or confidential information disclosed through the third-party service or the third-party's failure to comply with applicable data protection laws. IBM agrees to promptly notify Client in writing of any such claim or proceeding.

Part 2 – Country Required Terms

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

AMERICAS

Section 2. Content and Data Protection

In paragraph a, second sentence, and paragraph b, in both the first and second sentences:

In Mexico:

Replace the word "contractors" with the word "providers".

Section 4. Charges, Taxes, Payment, and Verification

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

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

In paragraph b:

In Mexico:

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

In Mexico:

Add the following new sentence after the third sentence:

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

Add at the end of paragraph b the following sentence:

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

Add at the end of paragraph b the following sentence:

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

Section 5. Liability and Intellectual Property Protection

In paragraph a:

In Mexico:

Eliminate the word "contractors," in the last sentence.

Insert the following disclaimer at the end of paragraph a:

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

Section 7. Governing Laws and Geographic Scope

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 is performed (or for IBM or Non-IBM Cloud Services, the laws of the country of Client's business address)" with:

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

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

In Mexico: Mexico

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

In Argentina: Argentina

In Chile: Chile

In Colombia: Colombia

In Ecuador: Ecuador

In Mexico: Mexico

In Peru: Peru

In Uruguay: Uruguay

In Venezuela: Venezuela

Add the following as a new item e paragraph:

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 13. Appliances

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

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

Section 14. Cloud Services

In Mexico:

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

Add as a new paragraph i, the following:

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

Section 15. General Terms

In paragraph c:

In Mexico:

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

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

In Mexico:

Replace the word "contractors" with the word "providers".

In paragraph o:

In Brazil: delete the entire 2nd sentence 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".

In paragraph p:

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

Add as a new paragraph r to this section:

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

ASIA PACIFIC

Section 3. Warranties

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

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

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

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

Section 4. Charges, Taxes, Payment, and Verification

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

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

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

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 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.

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 Client requests a waiver or reduction; and v) promptly complete, file, and keep current all relevant documents for any such waiver, reductions, or exemptions.

Section 5. Liability and Intellectual Property Protection

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

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

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

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

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

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

Section 6. Termination

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

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

Section 7. Governing Laws and Geographic Scope

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

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

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

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

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

In 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 c, 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 e:

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 15. General Terms

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

In India: three years

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

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

EUROPE, MIDDLE EAST, AND AFRICA

Section 2. Content and Data Protection

Replace first sentence of paragraph g with the following:

In Switzerland: IBM's Data Processing Addendum (DPA) at <http://ibm.com/dpa> and the applicable DPA Exhibit apply and supplement the Agreement, if and to the extent the European General Data Protection Regulation (EU/2016/679) (GDPR) or the Swiss Federal Privacy Act (SFPA) apply to personal data contained in Content.

Section 3. Warranties

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

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

Section 4. Charges, Taxes, Payment, and Verification

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

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

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

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

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

In 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 sixth sentence that starts with "IBM does not give credit...":

In Lithuania:, or except as provided by law

At the end of paragraph b, add the following:

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

Section 5. Liability and Intellectual Property Protection

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

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

In Ireland and United Kingdom: 125% of

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

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

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

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

In 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 the following and bold the text:

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

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

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

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

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

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

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

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

Section 6. Termination

In paragraph a, insert the following at the end of clause i) before "; or":

In Russia: without payment of any damages or penalties to the other party on the basis of early termination

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

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

In paragraph b, delete the sentence:

In Switzerland: Failure to pay is a material breach.

Section 7. Governing Laws and Geographic Scope

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

In Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Romania, 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 new sentence after 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, 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.

In Estonia, Latvia, and Lithuania: All disputes arising out of this Agreement shall be finally settled by the Arbitration Institute of the Finland Chamber of Commerce (FAI) (Arbitration Body), under the Arbitration Rules of the Finland Chamber of Commerce (Rules), in Helsinki, Finland, with English as the official language, by three impartial arbitrators appointed in accordance with those Rules. Each party will nominate one arbitrator, who will jointly appoint an independent chairman within 30 days or else the chairman will be appointed by the Arbitration Body under the Rules. The arbitrators will have no authority to award injunctive relief or damages excluded by or

exceeding limits in this Agreement. Nothing in this Agreement will prevent either party from resorting to judicial proceedings for (1) interim relief to prevent material prejudice or a breach of confidentiality provisions or intellectual property rights, or (2) determining the validity or ownership of any copyright, patent or trademark owned or asserted by a party or its Enterprise company, or (3) debt collection in amounts below USD 500,000.00.

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

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

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

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

In Andorra: the Commercial Court of Paris.

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

In Cyprus: the competent court of Nicosia.

In France: Commercial Court of Paris.

In Germany: the courts of Stuttgart.

In Greece: the competent court of Athens.

In Israel: the courts of Tel Aviv Jaffa.

In Italy: the courts of Milan.

In Portugal: the courts of Lisbon.

In Spain: the courts of Madrid.

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

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

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

Section 13. Appliances

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

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

Section 15. General Terms

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

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

In paragraph o, add to the end the paragraph:

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

In Bulgaria, Croatia, Russia, Serbia, and Slovenia:

In paragraph o, delete the 2nd sentence that says: "Neither party will bring a legal action arising out of or related to the Agreement more than two years after the cause of action arose".

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

In Lithuania:, except as provided by law

In paragraph o, replace the second sentence with:

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

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

In Latvia and Ukraine: three

In Slovakia: four

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

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

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

In Hungary:

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

Selected Support, CEO (Complete Enterprise Option) Product Categories; Appliances; and Cloud Services.

In Italy:

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

In Czech Republic:

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

In Romania:

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



Terms of Use

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.

1. 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. The intent of any change will be to: (i) make available additional features and functionality; (ii) improve and clarify existing commitments; or (iii) maintain alignment to current adopted operational and security standards or applicable laws. Changes will not degrade the security or data protection features or functionality of the IBM Cloud Services. Changes to the published descriptions, or published other documents, 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.

2. Payment

- 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.

3. 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. Clients' failure to pay, or Client providing inaccurate or fraudulent Client account or payment information to acquire Cloud Services, 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.

4. Hybrid and Dual Entitlement Offerings

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 function provided in an IBM cloud environment. Programs, Support, and Program updates are provided in accordance with the Base Agreement and 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.

5. General

- a. 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.**

6. 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.

6.1 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 or information or data Client may provide, make available or grant access to, in connection with IBM providing other Services. Client grants the rights and permissions to IBM, its affiliates, and contractors of either, to use, provide, store, and otherwise process Content solely for the purpose of providing the IBM Cloud Services or other Services. Use of the IBM Cloud Services or other 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 or other 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 or other 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 or provide or allow access of Content to IBM to provide other 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.

6.2 Warranty

- a. IBM warrants that it provides IBM Cloud Services or other 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 Services end.

6.3 Scheduled Maintenance

- a. IBM Cloud Services are designed to be available 24/7, subject to maintenance. IBM will provide advance notice of scheduled maintenance.

Service Description

IBM Maximo Application Suite Dedicated

This Service Description describes the Cloud Service. The applicable order documents provide pricing and additional details about Client's order.

1. Cloud Service

The IBM Maximo Application Suite Dedicated Cloud Service hosts and manages IBM Maximo Application Suite (MAS) in the IBM Cloud.

IBM manages the infrastructure (network, storage, and compute resources), applies fixes to the MAS Applications and maintains the IBM software, infrastructure and applicable security and privacy controls.

This Cloud Service includes:

- Hosting of the MAS Applications which are part of MAS in the IBM Cloud with Red Hat OpenShift.
- One (1) Production Instance for all deployed MAS Applications. A Production Instance in the Cloud Service is an instance that support Clients' business in a fully operational mode for productive commercial purposes. A Production Instance will have continuous monitoring, twenty-four (24) hour coverage for outages, and longer backup retention periods.
- One (1) Non-Production Instance for all deployed MAS Applications. A Non-Production Instance in the Cloud Service is an instance not used for productive commercial purposes. Non-Production Instances will have shorter backup retention periods, and outages for Non-Production Instances are covered on a non-priority basis. Additional Non-Production Instances may be purchased for any MAS Application.

Client must have an associated software license entitlement to MAS with (a) sufficient entitlements to cover installation and usage and (b) a current entitlement to Software Subscription and Support, as a prerequisite to this Cloud Service. MAS software entitlements used in the Cloud Service may not be used simultaneously in other MAS implementations.

For additional technical details and operational descriptions, including Production Instance(s) and Non-Production Instance(s) sizing parameters and the quantity of entitlements required to be purchased for given Production Instance(s) or Non-Production Instance(s) sizes, visit our sizing calculator under the section titled Part Numbers and Order Considerations at <https://cloud.ibm.com/docs/mas-ms>. The IBM sizing calculator and related content is for reference purposes only and is not incorporated into this Service Description except to the extent the output is attached to a related Transaction Document.

MAS Applications

MAS Applications are uniquely named software programs that are part of the Maximo Application Suite and are deployed in the Cloud Service.

1.1 Offering Resources

The following required resources will be sized for the Production Instance(s) and Non-Production Instance(s).

1.1.1 IBM Maximo Application Suite Dedicated Capacity Unit

This base service establishes the managed service Production Instance(s) and Non-Production Instance(s) to support the various MAS Applications deployed. The Capacity Unit includes prerequisite core applications, middleware, and databases. Client must acquire the appropriate number of Capacity Unit entitlements based on the MAS Applications being provisioned and the size of the Production Instance(s) and Non-Production Instance(s).

1.1.2 IBM Maximo Application Suite Dedicated Virtual Processor Cores (VPC)

Client will be required to obtain VPCs entitlements to complete the Production Instance(s) and Non-Production Instance(s) configuration depending on which MAS Applications are deployed.

Additional VPC entitlements may be acquired should Client require more compute capacity than what is included in the MAS Application's basic configuration. VPCs are deployed in increments of sixteen (16) VPCs.

1.1.3 IBM Maximo Application Suite Dedicated Data

Client will be required to obtain Gigabyte entitlements to complete the Production Instance(s) and Non-Production Instance(s) configuration depending on which MAS Applications are deployed.

Additional Gigabyte entitlements may be acquired should Client require more data storage capacity than what is included in the MAS Application's basic configuration.

1.2 Deployment Options

The Cloud Service supports two architectural deployment options, Dedicated Cluster and Shared Cluster, each of which require Capacity Units, Virtual Processor Cores and Gigabyte entitlements. The difference between the two options is how the Cloud Service is deployed and used. For both deployment options, the Client will have their own MAS Applications and their own database schemas. The Cloud Service will be configured based on the deployment option purchased.

1.2.1 Dedicated Cluster Deployment (Default)

With the Dedicated Cluster deployment, IBM Red Hat OpenShift on IBM Cloud and IBM Cloud Pak for Data are not shared by multiple Production Instance(s) or Non-Production Instance(s) or Clients. Each MAS Client Production Instance and Non-Production Instance will have its own IBM Cloud Services and it will not be shared across Clients.

Clients choosing the Dedicated Cluster deployment will determine when they wish to implement MAS Dedicated software upgrades. The upgrade may be postponed or deferred by the Client. Client will need to communicate to IBM Support if they wish to defer any upgrade. The following exceptions apply:

- Client must always be on a supported version. Client will need to upgrade their current version before it reaches the end of support date.
- Client will always be required to accept critical security patches. IBM alone will determine whether a patch is deemed a critical security patch and the date it will be applied.

1.2.2 Shared Cluster Deployment (Optional)

In the Shared Cluster deployment, IBM Red Hat OpenShift on IBM Cloud and IBM Cloud Pak for Data will be shared across multiple Production Instance(s) and Non-Production Instance(s) and Clients.

Clients choosing the Shared Cluster deployment will be subject to the MAS Dedicated offering software upgrade policy that is set by IBM. IBM will determine and communicate when upgrades will occur, and no deferrals or exceptions will be allowed.

1.3 MAS Applications available in the Cloud Service

The following MAS Applications and optional features are available to be deployed in the Cloud Service.

1.3.1 Maximo Manage Application

The Maximo Manage Application provides asset lifecycle management and maintenance management functionality.

Maximo Manage Industry Solutions

The following Maximo Manage Industry Solutions provide additional, industry-specific functionality to the Maximo Manage Application. The following Industry Solutions are supported in the Cloud Service:

- Maximo Aviation
- Maximo Civil Infrastructure
- Maximo Nuclear
- Maximo Oil and Gas
- Maximo Transportation
- Maximo Utilities

Maximo Manage Application AddOns

The following Maximo Manage Application AddOns that extend the capabilities of the Maximo Manage Application are supported in the Cloud Service:

- Maximo Asset Configuration Manager
- Maximo Connector for Oracle Applications

- Maximo Connector for SAP Applications
- Maximo Connector for Workday
- Maximo Health, Safety and Environment
- Maximo Mobile
- Maximo Service Provided
- Maximo Spatial

Maximo Manage Application Options

The following Options are available in the Cloud Service for hosting of the Maximo Manage Application

Options	Description
Replica Database	Provides a second database schema that will use native database replication to create a copy of the selected Production or Non-Production Instance database.
Maximo Scheduler Optimizer	Provides an extension to the base scheduler Manage Addon to provide additional functionality around the scheduling of personnel
BDI Server	Provides a specific server to install and operate the BDI software, which is required for either Maximo Scheduler Optimizer or Maximo Aviation industry solution.
APIKEYs	Provides additional keys used to perform integration to the MAS Platform.

1.3.2 Maximo Health Application

The Maximo Health Application provides a first step in managing the performance of critical assets. By capturing information from the asset itself, along with its age and maintenance history. The Maximo Health Application can help organizations understand which assets are currently in poor health and need attention to prevent disruption.

1.3.3 Maximo Predict Application

The Maximo Predict Application helps identify and manage asset reliability risks that could adversely affect plant or business operations. The solution enables organizations to apply machine learning and analytics to assess maintenance strategies.

1.3.4 Maximo Health and Predict – Utilities Application

The Maximo Health and Predict – Utilities Application extends and enhances Maximo Health and Predict to offer capabilities needed by clients in the Utilities industry.

1.3.5 Maximo Monitor Application

The Maximo Monitor Application enables connectivity to devices and operational technology systems and allows application of analytics and AI-based anomaly detection. It also provides for the building and configuring of custom dashboards.

1.3.6 Maximo Visual Inspection Application

The Maximo Visual Inspection Application enables building AI computer vision models and deploying them for various asset monitoring and inspection purposes, including at the edge.

1.3.7 Maximo Assist Application

The Maximo Assist Application helps asset managers, maintenance managers, and equipment manufacturers to obtain greater availability, reliability, and productivity from critical assets, and implement maintenance and repair procedures.

1.4 Maximo Application Suite Sizing

The Cloud Service deploys each MAS Application in fixed sizes, depending on specific Client requirements. The sizing parameters depend on the MAS Application, and the specific size selected will depend on the anticipated and projected usage of the sizing parameters for each Client. The charge metric quantities required for each MAS Application will depend on the sizing selected and whether it is a Production or Non-Production Instance.

1.4.1 MAS Application Sizing

Each MAS Application hosted in the Cloud Service is provisioned based on a specified size. The size is determined by certain criteria unique to each MAS Application and include Extra Small, Small, Medium, and Large. For Non-Production Instances, a fixed size is used.

For purposes of sizing the MAS Application in the Cloud Service, the following parameter definitions apply:

- Concurrent Users are the number of distinct end users who have logged into or connected to a MAS Application at the same time.
- I/O Point is a data value that is written to the Maximo Monitor database by a distinct device with a frequency of no more than one write per minute.
- Graphical Processing Unit (GPU) is a special type of Core Processing Unit (CPU) with additional capabilities to process digital images and other digital inputs.

Each MAS Application size shown below corresponds to specific charge metric quantities of the purchasable Capacity Units, Virtual Processor Cores, and Gigabytes which are detailed in the IBM sizing calculator attached to the Transaction Document.

MAS Application	Size	Parameter
Maximo Manage Application	Extra Small Small Medium	One (1) – fifty (50) Concurrent User Fifty-one (51) – one hundred (100) Concurrent Users One hundred one (101) – two hundred fifty (250) Concurrent Users
	Large Non-Production Instance	Two hundred fifty-one (251) – five hundred (500) Concurrent Users Up to thirty (30) Concurrent Users
Maximo Predict Application	Extra Small Small Medium Large	Up to one hundred (100) I/O Points Up to two hundred (200) I/O Points Up to one thousand (1,000) I/O Points Up to ten thousand (10,000) I/O Points
	Non-Production Instance	Up to one hundred (100) I/O Points
Maximo Monitor Application	Extra Small Small Medium Large	Up to one thousand (1,000) I/O Points Up to five thousand (5,000) I/O Points Up to fifty thousand (50,000) I/O Points Up to three hundred thousand (300,000) I/O Points
	Non-Production Instance	Up to five hundred (500) I/O Points
Maximo Assist Application	Extra Small Small Medium Large	Up to two (2) Concurrent Users Up to three (3) Concurrent Users Up to five (5) Concurrent Users Up to fifteen (15) Concurrent Users
	Non-Production Instance	Up to one (1) Concurrent User
Maximo Visual Inspection	Extra Small Small Medium Large	Two (2) GPUs, Two (2) Concurrent Users Two (2) GPUs, Four (4) Concurrent Users Four (4) GPUs, Eight (8) Concurrent Users Eight (8) GPUs, Sixteen (16) Concurrent Users
	Non-Production Instance	One (1) GPU, One (1) Concurrent User

2. Data Processing and Protection Data Sheets

IBM's Data Processing Addendum at <http://ibm.com/dpa> (DPA) and the Data Processing and Protection Data Sheet(s) (referred to as data sheet(s) or DPA Exhibit(s)) in the links below provide additional data protection information for the Cloud Services and its options regarding the types of Content that may be processed, the processing activities involved, the data protection features, and specifics on retention and return of Content. The DPA applies 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://www.ibm.com/dpa/dpl> apply.

Maximo Application Suite Dedicated on Cloud

<https://www.ibm.com/software/reports/compatibility/clarity-reports/report/html/softwareReqsForProduct?deliverableId=3F0E2B305E7111EABE1C939145D7672E>

Maximo Application Suite Dedicated on AWS

<https://www.ibm.com/software/reports/compatibility/clarity-reports/report/html/softwareReqsForProduct?deliverableId=AD738DF05EE011ED96D2AB0A65203B44>

3. Service Levels and Technical Support

3.1 Service Level Agreement

IBM provides the Client with the following availability service level agreement (SLA). IBM will apply the highest applicable compensation based on the cumulative availability of the Cloud Service as shown in the table below. The availability percentage is calculated as the total number of minutes in a contracted month, minus the total number of minutes of Service Down in the contracted month, divided by the total number of minutes in the contracted month. The Service Down definition, the claim process and how to contact IBM regarding service availability issues are in IBM's Cloud Service support handbook at https://www.ibm.com/software/support/saas_support_overview.html.

Availability	Credit (% of monthly subscription fee*)
Less than 99.9%	2%
Less than 99.0%	5%
Less than 95.0%	10%

* The subscription fee is the contracted price for the month which is subject to the claim.

3.2 Technical Support

Technical support for the Cloud Service, including support contact details, severity levels, support hours of availability, response times, and other support information and processes, is found by selecting the Cloud Service in the IBM support guide available at <https://www.ibm.com/support/home/pages/support-guide/>.

4. Charges

4.1 Charge Metrics

The charge metric(s) for the Cloud Service are specified in the Transaction Document.

The following charge metrics apply to this Cloud Service:

- Capacity Unit is an independent measure of capacity related to the use of the Cloud Services.
- Virtual Processor Core is a standard capacity, virtualized processor that is available to or managed by the Cloud Services.
- Gigabyte (GB) is 2 to the 30th power bytes of data processed by, analyzed, used, stored, or configured in the Cloud Services.

5. Additional Terms

For Cloud Service Agreements (or equivalent base cloud agreements) executed prior to January 1, 2019, the terms available at <https://www.ibm.com/acs> apply.

5.1 Retention Period

The following retention periods apply to incoming device data to the MAS Monitor functionality:

- Seven (7) days for a Non-Production Instance
- Three (3) months for a Production Instance

5.2 Maximo Mobile Restrictions

Client will be responsible for any action required by the Maximo Mobile administrator including any steps needed for upgrades.

5.3 Access to MAS Application Databases and MAS Applications

5.3.1 Database Access

Direct access to the Production Instance database is not allowed to either Client users or integrations to extract data. A Replica Database can be selected and read-only access is allowed to Production Instance data through the Replica Database. For Non-Production Instance databases, Client may request a read/write user for a named individual. Client is responsible for management of these users with regard to requesting, validating ongoing need, and requested termination of access.

5.3.2 MAS Application Access

IBM employees supporting the Cloud Service do not log into the MAS Application for purposes of delivery and operations.

6. Overriding Terms

6.1 Terms Applicable to the Cloud Services hosted on Amazon Web Services (AWS)

The following prevails over anything to the contrary in the base Cloud Service terms between the parties:

The Cloud Service application layer (in whole or in part) and Client's data and content are hosted on a third-party cloud service platform not managed by IBM. The Cloud Service infrastructure, certain aspects of the Cloud Service platform, and related services, including: data center, servers, storage and network; application and data backup; perimeter security and threat detection; and APIs for application deployment, monitoring and operation (collectively, the "Third Party Cloud Services") are hosted and managed by the third party provider. Accordingly, notwithstanding anything in this Service Description or the base services agreement under which this Cloud Service is provided (e.g., the IBM Cloud Services Agreement):

- a. If the provider of the Third Party Cloud Services notifies IBM that it has withdrawn or terminated its services or IBM's or Client's access to such services, IBM may (i) provide Client access to a functionally-equivalent IBM-hosted Cloud Service offering; or (ii) terminate the Cloud Service immediately upon the effective date of such termination by the third party provider by providing notice of termination to Client.
- b. IBM makes no warranties or conditions, express or implied, and IBM will have no liability to Client, regarding the Third-Party Cloud Services or to the Cloud Service to the extent dependent on the Third-Party Cloud Services. The foregoing disclaimer of liability does not apply to or limit compensation that may be payable under the Service Level Agreement section of this Service Description.
- c. The IBM Data Security and Privacy Principles (DSP) and Data Processing Addendum (DPA) do not apply to the Third Party Cloud Services or to the Cloud Service solely to the extent dependent on or under the control of the Third-Party Cloud Services or the third party provider. With respect to such Third Party Cloud Services and the Cloud Service to the extent dependent on or under the control of the Third Party Cloud Services or the third party provider, the data protection and technical and operational security measures for the Cloud Service will be no less than those described in the AWS Customer Agreement and its referenced attachments available here: <https://aws.amazon.com/agreement/>

PIMA COUNTY STANDARD CONTRACT ADDENDUM

The following terms are added to and form a part of the Passport Advantage Agreement Number 204090 between Pima County ("County") and International Business Machines Corporation dba IBM Corporation, ("Contractor").

1. CONFLICT OF INTEREST.

This Contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Contract by reference.

2. NON-APPROPRIATION OF FUNDS.

Notwithstanding any other provision in this Contract, County may terminate this Contract if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining County or other public entity obligations under this Contract. In the event of such termination, County will have no further obligation to Contractor, other than to pay for services rendered prior to termination.

3. COMMITTED PRICING.

Upon signed acceptance of the terms by the parties, Contractor will have been deemed to have committed to the pricing proposed in Quote 19490203 and Quote 19489842. Contractor may not change charges as described in Section 2 (b) of the International Passport Advantage Agreement without mutual agreement with County and a duly executed Contract amendment.

4. TIMING OF INVOICES.

IBM will invoice County on an annual basis. County must receive invoices no more than 30 days after the end of the billing period in which IBM delivered the invoiced products or services to County. Invoices are due within 30 days of receipt. County may refuse to pay for any product or service for which Contractor does not timely invoice the County and, pursuant to A.R.S. § 11-622(C), will not pay for any product or service invoiced more than 6-months late.

5. BOOKS AND RECORDS.

Contractor will keep and maintain proper and complete books, records and accounts, which will be open at all reasonable times for inspection and audit by duly authorized representatives of County. In addition, Contractor will retain all records relating to this Contract for at least five (5) years after its expiration or termination or, if later, until any related pending proceeding or litigation has concluded.

6. INDEMNIFICATION.

To the fullest extent permitted by law, Contractor will defend, indemnify, and hold harmless Pima County and any related taxing district, and the officials and employees of each of them (collectively, "Indemnitee") from and against any and all third-party claims, actions, liabilities, losses, and expenses (including reasonable attorneys' fees) (collectively, "Claims") arising out of actual or alleged injury of any person (including death) or loss or damage to real property or tangible personal property caused, or alleged to be caused, in whole or in part, by any act or omission of Contractor or any of Contractor's directors, officers, agents, employees, volunteers, or subcontractors that a court finally awards or that is included in a settlement approved by Contractor, provided that County shall promptly notify Contractor in writing of the claim, and will reasonably cooperate with the Contractor in the defense and any related settlement negotiations. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The Indemnitee will, in all instances, except for Claims arising solely from the acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all third-party Claims. Contractor is responsible for primary loss investigation, defense and judgment costs for any Claim to which this indemnity applies. This indemnity will survive the expiration or termination of this Contract.

7. WAIVER OF LIABILITY; THIRD-PARTY CLOUD SERVICES

Section 6.1 (b) of the Maximo Service Description shall have no effect and is deemed void as it applies to the County since IBM is not providing County with any third-party cloud services under this Contract.

8. PUBLIC RECORDS.

8.1. Disclosure.

Pursuant to A.R.S. § 39-121 et seq., and A.R.S. § 34-603(H) in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all documents submitted in response to the solicitation resulting in award of this Contract, including, but not limited to, pricing schedules, product specifications, work plans, and any supporting documents, are public records. As such, those documents are subject to release and/or review by the general public upon request, including competitors.

8.2. Records Marked Confidential; Notice and Protective Order.

If Contractor reasonably believes that some of those records contain proprietary, trade-secret or otherwise confidential information, Contractor must prominently mark those records "CONFIDENTIAL." In the event a public-records request is submitted to County for records marked CONFIDENTIAL, County will notify Contractor of the request as soon as reasonably possible. County will release the records 10 business days after the date of that notice, unless Contractor has, within that period, secured an appropriate order from a court of competent jurisdiction, enjoining the release of the records. County will not, under any circumstances, be responsible for securing such an order, nor will County be in any way financially responsible for any costs associated with securing such an order. When compelled by law, the release of any information related to this Contract, confidential or otherwise, shall not be contingent upon County signing any separate agreement with Contractor.

9. LAWS AND REGULATIONS.

9.1. Compliance with Laws.

Notwithstanding any provision in this Contract to the contrary, the Contract shall be governed by all applicable federal, state, and local laws, rules, regulations, standards and Executive Orders.

9.2. Licensing.

Contractor warrants that it is appropriately licensed to provide the services under this Contract and that any subcontractors will be appropriately licensed.

9.3. Choice of Law; Venue.

The laws and regulations of the State of Arizona govern the rights and obligations of the parties under this Contract. Any action relating to this Contract must be filed and maintained in the appropriate court of the State of Arizona in Pima County.

10. NON-DISCRIMINATION.

Contractor will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this contract, including flow-down of all provisions and requirements to any subcontractors. During the performance of this Contract, Contractor will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

11. LEGAL ARIZONA WORKERS ACT COMPLIANCE.

If Contractor, under this Contract, furnishes labor, time or effort to County within the State of Arizona, the following applies: Contractor warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to its employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Contractor will further ensure that each subcontractor who performs any work for Contractor under this Contract

likewise complies with the State and Federal Immigration Laws. A breach of this paragraph will be deemed a material breach of this Contract that subjects Contractor to penalties up to and including termination of the Contract. County retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the Contract to ensure that the Contractor or subcontractor is complying with this warranty.

12. AMERICANS WITH DISABILITIES ACT.

Contractor will comply with Title II of the Americans with Disabilities Act (Public Law 110-325, 42 U.S.C. §§ 12101-12213) and the federal regulations for Title II (28 CFR Part 35).

13. ISRAEL BOYCOTT CERTIFICATION.

Pursuant to A.R.S. § 35-393.01, if Contractor engages in for-profit activity and has 10 or more employees, and if this Contract has a value of \$100,000.00 or more, Contractor certifies it is not currently engaged in, and agrees for the duration of this Contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

14. FORCED LABOR OF ETHNIC UYGHURS.

Pursuant to A.R.S. § 35-394 if Contractor engages in for-profit activity and has 10 or more employees, Contractor certifies it is not currently using, and agrees for the duration of this Contract to not use (1) the forced labor of ethnic Uyghurs in the People's Republic of China; (2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and (3) any contractors, subcontractor or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If Contractor becomes aware during the term of the Contract that the Contractor is not in compliance with A.R.S. § 35-394, Contractor must notify the County within five business days and provide a written certification to County regarding compliance within one hundred eighty days.

15. VOLUME PRICING.

Section 4.2 (b) of the International Passport Advantage Agreement is understood and agreed to by the parties to have the following meaning:

The initial PA Program Term commences with Client's first order after enrollment and continues until the last day of the twelfth full month thereafter (i.e., the initial PA Program Term includes 12 full months, plus if the order was not placed on the first day of a month, the remainder of the first month). On the first day of the month following the end of the prior PA Program Term (the Anniversary), the next 12-month PA Program Term begins. For each PA Program Term after the initial PA Program Term, Client's RSVP level is reset on the Anniversary, based on EPs acquired by all active Sites during the prior PA Program Term. The RSVP level for a new PA Program Term will not be lowered by more than one level below Client's RSVP level at the end of the prior PA Program Term.

PIMA COUNTY INSURANCE REQUIREMENTS ADDENDUM

The following terms are added to and form a part of the Passport Advantage Agreement Number 204090 between Pima County ("County") and International Business Machines Corporation dba IBM Corporation, ("Contractor").

The Insurance Requirements ("Required Insurance") herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. Contractor's insurance shall be placed with companies licensed in the State of Arizona and the insureds shall have an "A.M. Best" rating of not less than A- VII, unless otherwise approved by County. County in no way warrants that the minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

1. MINIMUM SCOPE AND LIMITS OF INSURANCE

Contractor will procure and maintain at its own expense, until all contractual obligations have been discharged, the insurance coverage with limits of liability not less than stated below, until all contractual obligations have been discharged. County in no way warrants that the minimum insurance limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract. If necessary, Contractor may obtain commercial umbrella or excess insurance to satisfy the County's Insurance Requirements.

1.1. Commercial General Liability (CGL)

Occurrence Form with limits of \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy shall include cover for liability arising from premises, operations, personal injury, third party bodily injury, property damage, broad form contractual liability coverage, personal and advertising injury and products – completed operations.

1.2. Business Automobile Liability

Bodily Injury and Property Damage for any owned, leased, hired, and/or non-owned automobiles assigned to or used in the performance of this Contract with a Combined Single Limit (CSL) of \$1,000,000 Each Accident.

1.3. Workers' Compensation (WC) and Employers' Liability

Statutory requirements and benefits for Workers' Compensation. In Arizona, WC coverage is compulsory for employers of one or more employees. In Arizona, WC coverage is compulsory for employers of one or more employees. Employers' Liability coverage with limits of \$1,000,000 each accident and \$1,000,000 each person - disease.

1.4. Professional Liability Errors and Omissions (E&O) Insurance

This insurance is required when Professional Liability or any other coverage is excluded from the above CGL policy. This insurance covers actual or alleged breach of duty, neglect, error, misstatement, misleading statements or omission, solely for acts or omissions committed by IBM in providing professional services under this Contract, with a minimum per claim limit of USD \$2,000,000. Coverage includes network security and privacy liability.

In the event that the Technology E&O insurance required by this Contract is written on a claims-made basis, Contractor shall warrant that continuous coverage will be maintained as outlined under "Additional Insurance Requirements – Claims-Made Coverage" section.

1.5. Reserved

2. ADDITIONAL INSURANCE REQUIREMENTS

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions.

2.1. Claims Made Coverage

If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Agreement, and Contractor must maintain such coverage for a period of not less than three (3) years following Agreement expiration, termination or cancellation.

2.2. Additional Insured Endorsement

The General Liability and the Business Automobile Liability policies must each be endorsed to include Pima County and all its related special districts, elected officials, officers, agents, employees and volunteers (collectively "County and its Agents") as additional insureds with respect to liability arising from work performed by or on behalf of the Contractor. The full policy limits and scope of protection must apply to the County and its Agents as an additional insured, even if they exceed the Insurance Requirements.

2.3. Subrogation Endorsement

The General Liability, Business Automobile Liability, and Workers' Compensation Policies shall each contain a waiver of subrogation endorsement in favor of County and its departments, districts, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor. However, waiver of subrogation does not apply in instances of gross negligence on the part of the County, where gross negligence is defined to mean carelessness that is reckless disregard for the safety of others and/or a failure to use the slightest degree of care.

2.4. Primary Insurance Endorsement

The Commercial General Liability Insurance and Automobile Liability Insurance, the Contractor's policies shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by Pima County, its agents, officials, or employees shall be excess and not contributory insurance. The Required Insurance policies may not obligate the County to pay any portion of a Contractor's deductible or Self Insurance Retention (SIR).

Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

2.5. Reserved

3. NOTICE OF CANCELLATION

Contractor will continue the specified insurance coverages for the term of the Agreement and two years after the Agreement expiration as long as such coverage remains commercially available in the market place. Should any of the specified policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. Contractor will provide County with 30 days' prior written notice of cancellation.

4. VERIFICATION OF COVERAGE

Contractor shall furnish County with certificates of insurance (valid ACORD form or equivalent approved by County) as required by this Agreement. An authorized representative of the insurer shall sign the certificates. Each certificate must include.

4.1. The Pima County tracking number for this Agreement, which is shown on the first page of the Agreement, and a project description, in the body of the Certificate.

4.2. Reserved.

4.3. Certificates must specify that the appropriate policies are endorsed to include additional insured and subrogation waiver endorsements for the County and its Agents.

5. CERTIFICATES AND ENDORSEMENTS REQUIREMENTS

- 5.1. All certificates and endorsements, as required by this written agreement, are to be received and approved by County before, and be in effect not less than 15 days prior to, commencement of work. A renewal certificate must be provided to County not less than 15 days prior to the policy's expiration date. Failure to maintain the insurance coverages or policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
- 5.2. All certificates required by this Agreement shall be sent directly to the appropriate County Department. The Certificate of Insurance shall include the County project or contract number and project description on the certificate.

6. RESERVED

PIMA COUNTY DATA MANAGEMENT & SECURITY ADDENDUM

The following terms are added to and form a part of the Passport Advantage Agreement Number 204090 between Pima County ("County") and International Business Machines Corporation dba IBM Corporation, ("Contractor"). In the event of a conflict between this Addendum and the specific terms found in IBM Agreement Number 204090, the specific terms shall take precedence.

1. DATA MANAGEMENT & SECURITY

The provisions of this Section 5 apply only if Contractor receives access to Content. Contractor recognizes and agrees that Content may contain personally identifiable information or other private information, even if the presence of such information is not labeled or disclosed. An Addendum may waive or modify the obligations of this Section 5 with respect to the subject matter of such Addendum.

1.1. Data Management.

- 1.1.1. *Access, Use, & Legal Compulsion.* Unless it receives County's prior written consent, Contractor: (i) will not access, process, or otherwise use Content other than as necessary to perform as required in this Agreement; (ii) will not give any of its employees access to Content except to the extent that such individual needs access to facilitate the provision of products and services to County pursuant to this Agreement; and (iii) will not give any third party access to Content, including without limitation Contractor's other customers. Notwithstanding the foregoing, Contractor may disclose Content as required by applicable law or by proper legal or governmental authority. Contractor will give County prompt notice of any such legal or governmental demand and reasonably cooperate with County in any effort to seek a protective order or otherwise to contest such required disclosure, at County's expense.
- 1.1.2. *County's Rights.* County possesses and retains all right, title, and interest in and to Content, and Contractor's use and possession thereof is solely on County's behalf. County may access and copy any Content in Contractor's possession at any time, and Contractor will reasonably facilitate such access and copying promptly after County's request. The parties recognize and agree that Contractor is a bailee for hire with respect to Content.
- 1.1.3. *Handling, Retention, & Deletion.* Contractor will not erase Content, or any copy thereof, without County's prior written consent and will follow any written instructions from County regarding retention and erasure of Content. Unless prohibited by applicable law, Contractor will purge all systems under its control of all Content at such time as County may request. Promptly after erasure, Contractor will certify such erasure to County in writing. In purging or erasing Content as required by this Agreement, Contractor will leave no data recoverable on its computers or other media, to the maximum extent commercially feasible. County must retrieve any Content from Contractor's Cloud Optics Storage within 30 days of termination of this Agreement. Finally, Contractor will not transfer Content outside the continental United States of America, including Alaska and Hawaii (the "Approved Region") without County's prior written consent. Contractor's obligations set forth in this Subsection (without limitation) apply likewise to Contractor's successors, including without limitation any trustee in bankruptcy.

1.2. Data Security.

In addition to the requirements below of this Section 5.2, Contractor will exercise commercially reasonable efforts to prevent unauthorized exposure or disclosure of Project Data and will observe any data security procedures set forth in the applicable Addendum.

1.2.1. *DataSec Program.* Contractor maintains and complies with its written data security program (the “DataSec Program”) that requires commercially reasonable policies and procedures to ensure compliance with this Section 5.2 and with Section 5.1 above (Data Management). The DataSec Program’s policies and procedures will contain administrative, technical, and physical safeguards, including without limitation: (i) guidelines on the proper disposal of Content after it is no longer needed to carry out the purposes of the Agreement; (ii) access controls on electronic systems used to maintain, access, or transmit Content; (iii) access restrictions at physical locations containing Content; (iv) encryption of electronic Content; (v) testing and monitoring of electronic systems; and (vii) procedures to detect actual and attempted attacks on or intrusions into the systems containing or accessing Content. Contractor reviews the DataSec Program and all other Content security precautions regularly, but no less than annually, and updates and maintains them to comply with applicable laws, regulations, technology changes, and best practices.

1.2.2. *Data Breaches.* Contractor maintains a program for managing actual or suspected Data Breaches, consistent with National Institute of Standards and Technology, United States Department of Commerce (“NIST”) guidelines or equivalent industry standards for computer security incident handling and will comply with the following: in the event of a Data Breach, or in the event that Contractor suspects a Data Breach, Contractor will (i) promptly notify County by telephone or in person and (ii) cooperate with County and law enforcement agencies, where applicable, to investigate and resolve the Data Breach, including without limitation by providing reasonable assistance to County in notifying injured third parties. In addition, Contractor will provide 1 year of credit monitoring service to any affected individual, unless the Data Breach resulted from County’s act or omission. Contractor will give County prompt access to such records related to a Data Breach as County may reasonably request; provided such records will be Contractor’s Confidential Information, and Contractor will not be required to provide County with records belonging to or compromising the security of its own systems or other customers. The provisions of this Subsection 1.2.2 do not limit County’s other rights or remedies, if any, resulting from a Data Breach.

END OF LICENSED SOFTWARE/SAAS STANDARD TERMS & CONDITIONS

CONTRACT NO. MA-PO-23-164 SIGNATURE PAGE

This Contract will become effective when all parties have signed it. The effective date of the Contract will be the date this Contract is signed by the last party (as indicated by the date associated with that party's signature).

IN WITNESS WHEREOF, the parties have approved this Contract MA-PO-23-164 and agree to be bound by the terms and conditions of the Contract on the dates written below.

Pima County

International Business Machines Corporation dba IBM Corporation

e-Signed by Randall Serak

Chair, Board of Supervisors

on 2023-04-28

Authorized Officer Signature

Date

Randall Serak Associate Partner

Printed Name and Title

2023-04-28 07:27:37 PDT

Date

ATTEST

Clerk of the Board

Date

APPROVED AS TO FORM



Deputy County Attorney

Bobby Yu

Printed DCA Name