Embedded Solution Agreement for Cloud Services

IBM

This Embedded Solution Agreement for Cloud Services (ESA-CS) and applicable Attachments and Transaction Documents (TDs) are the complete agreement regarding transactions under this ESA-CS (together, the "Agreement") under which Client may combine a Cloud Service with Client's value add to create a commercially available Client branded solution, distinct from the Cloud Service and adding new functionality or capability to the Cloud Service (Embedded Solution) in accordance with the terms herein. Attachments typically contain additional terms that apply to similar types of offerings. TDs, such as service descriptions, order documents or statements of work, contain specific details related to an order for a Cloud Service and there may be more than one TD providing the details of an order. In the event of conflict, an Attachment prevails over this ESA-CS and a TD prevails over both the ESA-CS and any Attachment.

1. **Cloud Services**

   a. A Cloud Service is an IBM branded offering provided by IBM and made available via a network. Each Cloud Service is described in an Attachment or a TD. Unless otherwise provided in a TD or prohibited by law, Client may access, use or market worldwide (through whatever channels it chooses) a Cloud Service in each case as part of an Embedded Solution in accordance with the terms herein. Client may not use the Cloud Services for its own productive use nor allow its affiliates to access or use the Cloud Services as an end user under this Agreement. Cloud Services are designed to be available 24/7, subject to maintenance. Client will be notified of scheduled maintenance, and Client is responsible to provide any required notifications to its end users and downstream sellers (i.e., a distributor, solution provider, integrator or reseller in Client's distribution chain). Technical support and service level commitments, if applicable, are specified in an Attachment or TD. Client is responsible to provide all support for the Embedded Solution.

   b. Client accepts an Attachment or TD by ordering, enrolling, using, or making a payment for the Cloud Service. When IBM accepts Client's order, IBM provides Client the authorizations specified in the TD. The term, including any renewal term, for a Cloud Service is described in an Attachment or TD.

   c. IBM will provide the facilities, personnel, equipment, software, and other resources necessary to provide the Cloud Services and generally available user guides and documentation to support Client's use of the Cloud Service. Client will provide hardware, software and connectivity to access and use the Cloud Service, including any required Client-specific URL addresses and associated certificates. An Attachment or TD may have additional Client responsibilities.

   d. Client may access a Cloud Service only to the extent of authorizations acquired by Client. Client is responsible for all uses of the Embedded Solution, including by any user who accesses the Cloud Service with Client's account credentials. Client will ensure anyone accessing, using or marketing Cloud Services as part of the Embedded Solution does so only in compliance with the terms of the Agreement. Client remains liable to IBM for any noncompliance of such terms and any such access, use or marketing and hereby indemnifies IBM for any claims associated with the foregoing. A Cloud Service may not be used in any jurisdiction for unlawful, obscene, offensive or fraudulent Content or activity, such as advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive, or deceptive messages, viruses or harmful code, or violating third party rights. If there is a complaint or notice of violation, use may be suspended until resolved, and terminated if not resolved promptly. Client may not resell direct access to a Cloud Service to a third party outside Client's Enterprise.

2. **Content and Data Protection**

   a. Content consists of all data, software, and information that Client or its end users provides, authorizes access to, or inputs to the Cloud Service. All end user data and other content associated with the Embedded Solution that is processed by the Cloud Service will be considered Content. Client is responsible for all Content. Use of the Cloud Service will not affect Client's or its end user's existing ownership or license rights in such Content. IBM and its contractors, and subprocessors may access and use the Content solely for the purpose of providing and managing the Cloud Service, unless otherwise described in a TD.

   b. Client is responsible for obtaining all necessary rights and permissions to enable, and grants such rights and permissions to, IBM, and its contractors and subprocessors to use, provide, store and process Content in the Cloud Service. This includes Client making necessary disclosures and obtaining consent, if required, before providing individuals' information, including personal or other regulated information in such Content. If any Content could be subject to governmental regulation or may require security measures beyond those specified by IBM for an offering, Client will not (and will ensure that End Users do not) input, provide, or allow such Content unless specifically permitted in the terms of the relevant TD or unless IBM has otherwise first agreed in writing to implement additional security and other measures.

   c. Upon request by either party, IBM, Client or their affiliates will enter into additional agreements as required by law in the prescribed form for the protection of personal or regulated personal data included in Content. The parties agree (and will ensure that their respective affiliates agree) that such additional agreements will be subject to the terms of the Agreement. As required by law, IBM agrees to enter into such additional agreements with Client's end user, subject to end user agreeing to appropriate limitations and exclusions of liability.

   d. Client shall notify IBM in writing of the expiration or cancellation of the Embedded Solution for a particular end user and provide IBM with sufficient details to enable IBM to return or remove Content from IBM computing resources. IBM will return or remove Content upon such notification (assuming that Client has provided sufficient details to enable IBM to return or destroy such end user's Content), or earlier upon Client's request. If Client has not provided such notification or has not provided

sufficient details to enable IBM to return or remove end user's Content, IBM will return or remove all end users' Content within ninety (90) days of the expiration or cancellation of the Cloud Service. IBM may charge for certain activities performed at Client's request (such as delivering Content in a specific format). IBM does not archive Content, however some Content may remain in Cloud Service backup files until expiration of such files as governed by IBM's backup retention practices.

e. Each Cloud Service is designed to protect Content as described in the Agreement. IBM's Data Security and Privacy Principles for IBM Cloud Services (DSP), at http://www.ibm.com/cloud/data-security, apply for generally available Cloud Service offerings or as described in the applicable TD. IBM will treat all Content as confidential by not disclosing Content except to IBM employees, contractors, and subprocessors, and only to the extent necessary to deliver the Cloud Service, unless otherwise specified in a TD. Specific security features and functions of a Cloud Service may be provided in an Attachment and TDs. Client is responsible to assess the suitability of each Cloud Service for Client's intended use (and End User's intended use as part of the Embedded Solution) and Content. By using the Cloud Service, Client acknowledges (on behalf of itself and its end users) that it meets Client's requirements and processing instructions.

f. Client acknowledges that i) IBM may modify the DSP from time to time at IBM's sole discretion and ii) such modifications will supersede prior versions. The intent of any modification to the DSP will be to i) improve or clarify existing commitments, ii) maintain alignment to current adopted standards and applicable laws, or iii) provide additional commitments. No modification to the DSP will materially degrade the security of a Cloud Service.

3. **Changes**

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

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

c. Since this ESA-CS may apply to many future orders, IBM may modify this ESA-CS by providing Client at least three months' written notice. Changes are not retroactive; they apply, as of the effective date, only to new orders, ongoing Cloud Services that do not expire, and renewals. For transactions with a defined renewable contract period, Client may request that IBM defer the change effective date until the end of the current contract period. Client accepts changes by placing new orders or continuing use after the change effective date or allowing transactions to renew after receipt of the change notice. Except as provided above, all changes to the Agreement must be in writing accepted by both parties.

4. **Warranties**

a. IBM warrants that it provides Cloud Services using commercially reasonable care and skill in accordance with the applicable Attachment or TD. The warranty for a Cloud Service ends when the Cloud Service ends.

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

5. **Charges, Taxes, and Payment**

a. Client agrees to pay all applicable charges specified for a Cloud Service, charges for use in excess of authorizations, and any late payment fees. Charges are exclusive of any customs or other duty, tax, and similar levies imposed by any authority resulting from Client's acquisitions under the Agreement and will be invoiced in addition to such charges. Amounts are due upon receipt of the invoice and payable within 30 days of the invoice date to an account specified by IBM. Prepaid Services must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid. IBM may change charges on thirty days' notice or as specified in a TD.

b. Client agrees to: i) pay withholding tax directly to the appropriate government entity where required by law; ii) furnish a tax certificate evidencing such payment to IBM; iii) pay IBM only the net proceeds after tax; and iv) fully cooperate with IBM in seeking a waiver or reduction of such taxes and promptly complete and file all relevant documents.

6. **Liability and Indemnity**

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

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

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

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

7. Termination

a. IBM may suspend, revoke or limit Client's use of a Cloud Service if IBM determines there is a material breach of Client's obligations, a security breach, or violation of law. If the cause of the suspension can reasonably be remedied, IBM will provide notice of the actions Client must take to reinstate the Cloud Service. If Client fails to take such actions within a reasonable time, IBM may terminate the Cloud Service. Failure to pay is a material breach.

b. Either party may terminate this ESA-CS: i) without cause on at least one month's notice to the other after expiration or termination of its obligations under the Agreement; or ii) immediately for cause if the other is in material breach of the Agreement, provided the one who is not complying is given notice and reasonable time to comply. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to successors and assignees. Termination of this ESA-CS does not terminate TDs, and provisions of this ESA-CS as they relate to such TDs remain in effect until fulfilled or otherwise terminated in accordance with their terms.

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

8. Governing Laws, Compliance Responsibilities and Geographic Scope

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

b. Client will, and ensures that all downstream sellers will, (i) comply with all applicable laws and regulations, including, without limitation, the US Foreign Corrupt Practices Act, and all other laws and regulations prohibiting corruption and bribery; (ii) have and maintain throughout the term of this Attachment business controls to support such compliance (which includes, among other things, applying a process for evaluating the integrity and role of downstream sellers in its distribution chains, to ensure lawful conduct); and (iii) keep and maintain throughout the term of the Attachment and for at least two years thereafter, all transaction documents and records related to such compliance and controls.

c. Client will maintain, and provide upon request, records and other requested end user transaction and usage data and downstream seller records, and reasonable assistance for IBM and its independent auditor to verify Client's compliance with the Agreement. These obligations remain in effect during the term of this Attachment and for two years thereafter.

d. Client will not, and ensures that all downstream sellers will not, directly or indirectly make or give, offer or promise to make or give, or authorize the making or giving of any payment, gift, or other thing of value or advantage (including, for example, accommodations, airfare, entertainment or meals) to any person or entity for the purpose of wrongfully influencing decisions or for any other purpose that is otherwise unlawful. IBM may terminate the Agreement immediately in case of a breach of this subsection or when IBM reasonably believes such a breach has occurred or is likely to occur.

e. Client is a PartnerWorld member and agrees to maintain such status for the term of this Attachment. Client will comply with the IBM Code of Conduct, a current version of which is available at https://www-356.ibm.com/partnerworld/wps/servlet/ContentHandler/pw_com_jnw_code_conduct. IBM may change the Code of Conduct at any time by posting a revised Code of Conduct on the above website or by providing Client with written notice. Client represents that it has read the Code of Conduct and is responsible to monitor the website regularly for changes to the Code of Conduct. Such changes are effective immediately when they are posted to the website; and client will provide prompt written notice (unless precluded by law or regulation) of any change or anticipated change in Client's business structure (for example, a material change in equity ownership or management).

f. Both parties agree to the application of the laws of the country of Client's business address to the Agreement, without regard to conflict of law principles. The rights and obligations of each party are valid only in the country of Client's business address. If Client or any user exports or imports Content or use of any portion of the Cloud Service outside the country of Client's business address, IBM will not serve as the exporter or importer. If any provision of the Agreement is invalid or unenforceable, the remaining provisions remain in full force and effect. Nothing in the Agreement affects statutory rights of consumers that cannot be waived or limited by contract. The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under the Agreement.

9. **General**

   a. IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any responsibility for Client's business or operations. Each party is responsible for determining the assignment of its personnel, and all contractors and subprocessors, and for their direction, control, and compensation. No intellectual property rights are granted hereunder.

   b. IBM maintains a robust set of business conduct and related guidelines covering conflicts of interest, market abuse, anti-bribery & corruption, and fraud. IBM and its personnel comply with such policies and require contractors and subprocessors to have similar policies.

   c. Account Data is information Client provides to IBM, other than Content, about Client or its users that IBM needs to enable Client's use of a Cloud Service or information concerning such use. IBM, its contractors and subprocessors may process, store and use Account Data wherever they do business to enable product features, administer use, personalize experience, and otherwise support or improve use of the Cloud Service as described in IBM's Online Privacy Statement.

   d. IBM Business Partners who use or make available IBM Cloud Services are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings.

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

   f. This ESA-CS applies to IBM and Client and their respective Enterprise companies who avail themselves of the ESA-CS. The parties shall coordinate the activities of Enterprise companies under the Agreement. Enterprise companies include (i) companies within the same country that Client or IBM control (by owning greater than 50% of the voting shares), and (ii) any other entity that controls, is controlled by or is under common control with Client or IBM and has signed a participation agreement.

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

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

   i. IBM may use personnel and resources in locations worldwide, including third party contractors and subprocessors to support the delivery of the Cloud Services. IBM may transfer Content, including personally identifiable information, across country borders. A list of countries where Content may be processed for a Cloud Service is available at www.ibm.com/cloud/datacenters or as described in the Attachment or TD. IBM is responsible for the obligations under the Agreement even if IBM uses a third party contractor or subprocessors unless otherwise set forth in a TD. IBM will require subprocessors with access to Content to maintain technical and organizational security measures that will enable IBM to meet its obligations for a Cloud Service. A current list of subprocessors and their roles will be provided upon request.

   j. IBM may offer additional customization, configuration or other services to support Cloud Services, as detailed in a TD.

ESA-CS Master List of Country Required Terms (CRTs)

In the country of Client's business address, the following terms replace or modify the referenced terms:

AMERICAS

Section 8 Governing Laws and Geographic Scope In paragraph f, *replace the first use of the phrase, "the country of Client's business address to the Agreement" with:*
In Canada: the Province of Ontario.
In United States, Anguilla, Antigua/Barbuda, Aruba, British Virgin Islands, Cayman Islands, Dominica, Grenada, Guyana, Saint Kitts and Nevis, Saint Lucia, Saint Maarten, Saint Vincent and the Grenadines: the State of New York, United States.
Section 9. General
Add as a paragraph in the section:
In Canada in Province of Quebec: {x} Both parties agree to write this document in English. Les parties ont convenu de rédiger le présent document en langue anglaise.
In United States and Canada – Where taxes are based upon the location(s) receiving the benefit of the Cloud Service, Client has an ongoing obligation to notify IBM of such location(s) if different than Client's business address listed in the applicable Attachment or TD.

ASIA PACIFIC

Section 1. Cloud Services *In the first sentence of paragraph b, before the word "ordering," add:*

In Hong Kong, Macau: signing (by hand or electronically),

Section 4. Warranties – *Add as new paragraph at the end of 4*

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 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.

10.   **Section 5. Charges, Taxes, and Payment –**

11.   **India:** *In the first sentence of the paragraph b, remove the word "and" before "(iv)", and at the end of the sentence, add:*

 "**;** 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 Philippines- *In paragraph a., add a new sentence after "Amounts are due upon receipt of the invoice and payable within 30 days of the invoice date to an account specified by IBM" with:*

"If payment is not received within 30 days from the invoice date, a Late Payment Fee will be applied on the amount outstanding, at the rate of 2% per month, calculated on the number of days the payment is received late".

Section 6. Liability and Indemnity

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)"

Add as a new paragraph at the end of the first paragraph:

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

In paragraph a, last sentence is revised to read:
In Philippines: IBM will not be liable for special (including nominal and exemplary damages), moral, incidental, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.

Section 7. Termination- *add a new paragraph:*
In Indonesia: Both parties waive in this regard, the provision of article 1266 of the Indonesian Civil Code to the extent the article provision requires such court decree for the termination of an agreement creating mutual obligations.

Section 8 Governing Laws and Geographic Scope
In paragraph f, *replace in the first sentence only the phrase , "the country of Client's business address to the Agreement" 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: Hong Kong;
In Korea: the Republic of Korea, and subject to the Seoul Central District Court of the Republic of Korea;
In Macau: Hong Kong
In Taiwan: Taiwan
In paragraph f, replace in the second and third sentences both uses of the phrase, "the country of Client's business address" with:
In Hong Kong: Hong Kong;
In Macau: Macau

Add as a new paragraph to the end of section 8 :

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

In India: {x} 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: {x} Disputes will be finally settled by arbitration in Jakarta, Indonesia, under the rules of the Board of the Indonesian National Board of Arbitration (Badan Arbitrase Nasional Indonesia or "BANI").

In Malaysia: {x} Disputes will be finally settled by arbitration in Kuala Lumpur, under the Arbitration Rules of the Kuala Lumpur Regional Centre for Arbitration ("KLRCA Rules").

In People's Republic of China: **{x}** Either party has the right to submit the dispute to the China International Economic and Trade Arbitration Commission in Beijing, the PRC, for arbitration.

In Vietnam: {x} Disputes will be finally settled by arbitration in Vietnam under the Arbitration Rules of the Vietnam International Arbitration Centre ("VIAC Rules").

Section 9. General –

In paragraph f, third sentence, replace the phrase "the same country" with:

In Hong Kong: Hong Kong;

In Macau: Macau

In the second sentence of the paragraph h, replace the word "two years" with:

In India: "three years".

Add as a new paragraph k:

In Indonesia: "This ESA-CS is made in the English and Indonesian languages. To the extent permitted by the prevailing law, the English language of this ESA-CS will prevail in the case of any inconsistencies or differences of interpretation with the Indonesian language text of this ESA-CS."

EMEA

12. Section 3. Changes

In Hungary: *In paragraph c, fourth sentence, add the word "only" after the first word "Client".*

13. Section 4. Warranties

In paragraph b, before the last sentence, insert the following:

In Czech Republic, Estonia and Lithuania: , or liabilities for defects. The parties hereby exclude any liability of IBM for defects beyond the agreed warranties.

Section 5. Charges, Taxes, and Payment

Add the following to the end of the first sentence of paragraph a:

In Italy: due based on IBM's 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).

14. Section 6. Liability and Indemnity

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

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

In UK and Ireland: 125% of

In the first sentence of paragraph a, 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

Insert after the first sentence of paragraph a:

In Slovakia: The total foreseeable damage shall not exceed the amount above.

Insert before the last sentence of paragraph a:

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

In the last sentence of paragraph a, replace "special, incidental, exemplary" with:

In France and Spain: damages to reputation

In the last sentence of paragraph a, delete:

In Ireland and UK: economic

Replace the last sentence of paragraph a with:

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

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

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

Section 7. Termination

In paragraph a, delete:

In Switzerland: Failure to pay is a material breach.

In paragraph b, insert the following to 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

Section 8. Governing Laws and Geographic Scope

In paragraph f, **in the first sentence** *replace the phrase "the country of Client's business address to the Agreement" with:*

***Only for offshore agreements:* 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

***Only for offshore agreements:* 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, 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 the United Kingdom: England

Add the following at the end of paragraph f:

***Only for offshore agreements:* 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.

***Only for offshore agreements:* 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.

***Only for onshore agreements:* In Russia:** All disputes will be settled by the Arbitration Court of Moscow.

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

interim relief to prevent material prejudice or a breach of confidentiality provisions or intellectual property rights, or (2) determining the validity or ownership of any copyright, patent or trademark owned or asserted by a party or its Enterprise company, or (3) debt collection in amounts below USD 500.000,00.

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, 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, Greece, Israel, Italy, Portugal, Spain and Turkey All disputes will be brought before and subject to the exclusive jurisdiction of the following court of competent jurisdiction:

In Andorra: the Commercial Court of Paris;

In Austria: the court of Vienna, Austria (InnerCity);

In Cyprus: the competent courts of Nicosia;

In Greece: the competent court of Athens;

In Israel: the courts of Tel AvivJaffa;

In Italy: the courts of Milan;

In Portugal: the courts of Lisbon;

In Spain: the courts of Madrid;

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

Section 9 General

Add as a new paragraph and ensure list properly re-letter:

For EU Member States, Iceland, Liechtenstein, Norway, Switzerland, and Turkey:

If Client includes, or authorizes others to include, personal data in the Content, Client represents that it is either the data controller or that it has, prior to agreeing to this Agreement or extending the benefit of the Cloud Services to any other data controller, been instructed by or obtained the consent of the relevant data controllers to enter into this Agreement. Client appoints IBM as a data processor to process such personal data. Client will not use the IBM Product in conjunction with personal data to the extent that doing so would violate applicable data protection laws.

IBM shall reasonably cooperate with Client in its fulfillment of any legal requirement, including providing Client with access to personal data. Client agrees that IBM may transfer Client's personal data across a country border, including outside the European Economic Area (EEA).If the Cloud Service is included in IBM's Privacy Shield certification listed at http://www.ibm.com/privacy/details/us/en/privacy_shield.html and Client chooses to have the Cloud Service hosted in a data center located in the United States, Client may rely on such certification for the transfer of personal data outside the EEA. Alternatively, the parties or their relevant affiliates may enter into separate standard unmodified EU Model Clause agreements in their corresponding roles pursuant to EC Decision 2010/87/EU (as amended or replaced, from time to time) with optional clauses removed. If IBM makes a change to the way it processes or secures personal data as part of the Cloud Services and such change causes Client to be noncompliant with data protection laws, Client may terminate the affected Cloud Services by providing written notice to IBM within 30 days of IBM's notification of the change to Client.

Add to the end paragraph h:

In Czech Republic: Pursuant to Section to Section 1801 of Act No. 89/2012 Coll. (the "Civil Code"), Section 1799 and Section 1800 of the Civil Code as amended, do not apply to transactions under this Agreement. The parties exclude application of Section 1740 (3) and Section 1751 (2) of the Civil Code, which provide that the Agreement is concluded even in the absence of full compatibility of the parties' expression of intent. Client accepts the risk of a change of circumstances under Section 1765 of the Civil Code.

Delete the following sentence in paragraph h:

In Bulgaria, Croatia, Poland, Russia, Serbia, and Slovenia: Neither party will bring a legal action arising out of or related to this Agreement more than two years after the cause of action arose.

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

In Latvia and Ukraine: three

In Slovakia: four

In paragraph h, add to the end of the following sentence: "Neither party is responsible for failure to fulfil its non-monetary obligations due to causes beyond its control":

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 Ukraine: , including but not limited to import, export and economic sanctions requirements of the United States.

Add as a new paragraph and ensure list properly re-letters

In Hungary: 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: Cloud Services; Changes; Warranties; Charges, Taxes, and Payment; Liability and Indemnity, Termination; Governing Laws and Geographic Scope, and General.

In Czech Republic: Client expressly accepts the terms of this Agreement which includes the following important commercial terms: (i) limitation and disclaimer of liability for defects (Warranties), (ii) limitation of Client's entitlement to damages (Liability and Indemnity), (iii) binding nature of export and import regulations (Governing Laws and Geographic Scope), (iv) shorter limitation periods (General), (v) exclusion of applicability of provisions on adhesion contracts (General), (vi) exclusion of rules permitting the execution of a contract in cases where the parties fail to reach full consensus (General) and (vii) acceptance of the risk of a change of circumstances (General).

Add the following at the end of the document, after the signatures:

In Italy: Pursuant to the art. 1341 and 1342 of Italian Civil Code, Client expressly accepts the following articles of this Agreement: Cloud Services; Content and Data Protection, Changes, Warranties; Charges, Taxes, and Payment; Liability and Indemnity, Termination; Governing Laws and Geographic Scope, and General.

Agreed by: Client Company Name_____