NCPA Administration Agreement

This Administration Agreement is made as of December 7, 2016, by and between National Cooperative Purchasing Alliance ("NCPA") and International Business Machines Corporation ("Vendor").

Recitals

WHEREAS, Region 14 ESC has entered into a certain Master Agreement dated December 7, 2016, referenced as Contract Number _____01-67_____, by and between Region 14 ESC and Vendor, as may be amended from time to time in accordance with the terms thereof (the "Master Agreement"), for the purchase of Technology Solutions;

WHEREAS, said Master Agreement provides that any state, city, special district, local government, school district, private K-12 school, technical or vocational school, higher education institution, other government agency or nonprofit organization (hereinafter referred to as "public agency" or collectively, "public agencies") may purchase products and services at the prices indicated in the Master Agreement;

WHEREAS, NCPA has the administrative and legal capacity to administer purchases under the Master Agreement to public agencies;

WHEREAS, NCPA serves as the administrative agent for Region 14 ESC in connection with other master agreements offered by NCPA;

WHEREAS, Region 14 ESC desires NCPA to proceed with administration of the Master Agreement;

WHEREAS, NCPA and Vendor desire to enter into this Agreement to make available the Master Agreement to public agencies on a national basis;

NOW, THEREFORE, in consideration of the payments to be made hereunder and the mutual covenants contained in this Agreement, NCPA and Vendor hereby agree as follows:

General Terms and Conditions

- The Master Agreement, attached hereto and incorporated herein by reference, and the terms and conditions contained therein shall apply to this Agreement except as may be expressly changed or modified by this Agreement.

- The IBM Client Relationship Agreement (CRA) and the IBM Cloud Services Agreement (CSA) - for Cloud specific offerings are attached hereto and incorporated herein by reference, and the terms and conditions contained in said documents shall apply to this Agreement, except as may be expressly changed or modified by this Agreement

- NCPA shall be afforded all of the rights, privileges and indemnifications afforded to Region 14 ESC under the Master Agreement, and such rights, privileges and indemnifications shall accrue and apply with equal effect to NCPA under this Agreement including, but not limited to, the Vendor's obligation to provide appropriate insurance and certain indemnifications to Region 14 ESC.

- Vendor shall perform all duties, responsibilities and obligations required under the Master Agreement in the time and manner specified by the Master Agreement.

- NCPA shall perform all of its duties, responsibilities, and obligations as administrator of purchases under the Master Agreement as set forth herein, and Vendor acknowledges that NCPA shall act in the capacity of administrator of purchases under the Master Agreement.

- With respect to any purchases made by Region 14 ESC or any Public Agency pursuant to the Master Agreement, NCPA (a) shall not be construed as a dealer, re-marketer, representative, partner, or agent of any type of Vendor, Region 14 ESC, or such Public Agency, (b) shall not be obligated, liable or responsible (i) for any orders made by Region 14 ESC, any Public Agency or any employee of Region 14 ESC or Public Agency under the Master Agreement, or (ii) for any payments required to be made with respect to such order, and (c) shall not be obligated, liable or responsible for any failure by the Public Agency to (i) comply with procedures or requirements of applicable law, or (ii) obtain the due authorization and approval necessary to purchase under the Master Agreement. NCPA makes no representations or guaranties with respect to any minimum purchases required to be made by Region 14 ESC, any Public Agency, or any employee of Region 14 ESC or Public Agency under this Agreement or the Master Agreement.

- The Public Agency participating in the NCPA contract and Vendor may enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in this contract, i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement developed as a result of this contract is exclusively between the Public Agency and Vendor. NCPA, its agents, members and employees shall not be made party to any claim for breach of such agreement.

Term of Agreement

- This Agreement shall be in effect so long as the Master Agreement remains in effect, provided, however, that the obligation to pay all amounts owed by Vendor to NCPA through the termination of this Agreement and all indemnifications afforded by Vendor to NCPA shall survive for two (2) years after the expiration of term of this Agreement.

Fees and Reporting

- Vendor shall electronically provide NCPA with a detailed quarterly report showing the dollar volume of all sales under the contract for the previous month or quarter. Reports shall be sent via e-mail to NCPA offices at reporting@ncpa.us. Reports are due on the fifteenth (15th) day after the close of the previous month or quarter. It is the responsibility of the vendor to collect and compile all sales under the contract from participating members and submit one (1) report. The report shall include at least the following information, as listed in the example below:

Vendor Name:

NCPA Reporting Quarter:

Entity Name	Zip Code	State	PO or Job #	Sale Amount

Total

- All Purchase Orders provided to IBM from Public Agencies must reference the NCPA Contract number.

- The NCPA Contract number on the Purchase Order will serve to validate the eligibility of the sale amount reported, and validate the payment of the administrative fee based on the sale amount(s) reported.

- Vendor shall pay to NCPA a quarterly administrative fee based upon the total purchase price paid to Vendor for the sale of products and services pursuant to the Master Agreement based upon the fee schedule below.

Annual Sales Through Contract	Administrative Fee
All Sales	1%

- Supplier shall maintain an accounting of all purchases made by Public Agencies under the Master Agreement. NCPA and Region 14 ESC reserve the right to audit the accounting for a period of four (4) years from the date NCPA receives the accounting. In the event of such an audit, the requested materials shall be provided at the location designated by Region 14 ESC or NCPA. In the event such audit reveals an underreporting of Contract Sales and a resulting underpayment of administrative fees, Vendor shall promptly pay NCPA the amount of such underpayment.

General Provisions

- This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

- Vendor agrees to allow NCPA to use its name and logo within website, marketing materials and advertisement. Any use of NCPA name and logo or any form of publicity regarding this contract by Vendor must have prior approval from NCPA.

- If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement or to recover any administrative fee and accrued interest, the prevailing party shall be entitled to reasonable attorney's fees and costs in addition to any other relief to which such party may be entitled.

- Neither this Agreement nor any rights or obligations hereunder shall be assignable by Vendor without prior written consent of NCPA. Any assignment without such consent will be void.

- This Agreement and NCPA's rights and obligations hereunder may be assigned at NCPA's sole discretion, to an existing or newly established legal entity that has the authority and capacity to perform NCPA's obligations hereunder

- All written communications given hereunder shall be delivered to the addresses as set forth below.

National Cooperative Purchasing Alliance (NCPA):

NCPA

P.O. Box 701362

Houston, TX 77007

Attn: Matthew Mackel

mmackel@ncpa.us

Phone: 888-543-6515

Website: www.ncpa.us

International Business Machines (IBM) Corporation:

IBM Corporation

1177 S. Belt Line Road

Coppell, TX 75019

Attn: Alan Ernst

aernst@us.ibm.com

Phone: 972-906-5045

National Cooperative Purchasing Alliance:

Name: Matthew Mackel

Title: Director, Business Development

Address: PO Box 701273

Houston, TX 77270

Signature _[signature]_

Date December 7, 2016

Vendor: International Business Machines Coropration

Name: Eric Rice

Title: Public Sector Contracts Sales Manager

Address: 7100 Highlands Pkwy

Smyrna, GA 30082

Signature _[signature]_

Date December 9, 2016

Master Agreement

The IBM Client Relationship Agreement (CRA) and Cloud Services Agreement (CSA) provides the basis for the terms and conditions governing the purchase of products and services from IBM under this contract. The CRA and CSA are incorporated by reference and attached to the NCPA Administrative Agreement.

Customer Support

- The Vendor shall provide timely and accurate technical advice and sales support. The vendor shall respond to such requests within one (1) working day after receipt of the request.

Disclosures

- Vendor affirms that he/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment. gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this Agreement, except as otherwise allowed for and provided for under the laws governing the applicable public servant.

Funding Out Clause

- If the term of this Agreement extends into fiscal years subsequent to that in which it is approved, such continuation of the Agreement is contingent on the appropriation of funds for such purpose by the appropriate legislative body. If funds to effect such continued payment are not appropriated, Vendor agrees to take back any affected deliverables furnished under this Agreement, terminate any services supplied to the purchasing entity under this Agreement, and relieve the purchasing entity of any further obligation therefore. The purchasing entity agrees: 1) to make a best efforts attempt to obtain appropriate funds for payment under the Agreement; 2) that if such funding is not made available, deliverables shall be returned to the Vendor in substantially the same condition in which delivered to the purchasing entity, subject to normal wear and tear; and 3) to pay for packing, crating and transportation to Vendor's nearest facility and for reimbursement to the Vendor for expenses incurred for their assistance in such packing and crating (if applicable).

Shipments (if applicable)

- Unless otherwise arranged between the purchasing entity and Vendor, all products shall be shipped within seven (7) business days after receipt of a valid purchase order, based on product availability, by a reliable and insured shipping company. If a product cannot be shipped within that time, Vendor shall notify the entity placing the order as to why the product has not shipped and shall provide an estimated shipping date.

Tax Exempt Status

- Vendor shall include appropriate sales and use taxes as part of the invoice and as applicable to the purchasing entity.

Payments

- The purchasing entity using the contract will make payments directly to the Vendor.

Pricing

IBM Products and Offerings currently available through this contract include the following:

- IBM Hardware and Maintenance - Storage, Tape, and Servers

- IBM Software Products and Software Subscription and Support-Entitled Software Products

- IBM Cloud Offerings:
  - Infrastructure as a Service (IaaS)
  - Platform as a Service (PaaS)
  - Software as a Service (SaaS)

- IT Professional Services - fixed price and hourly rate services

- Value Added Product and Services Bundles:
  - Passive Optical Network (PON) Bundle
  - IBM AppleCare for Enterprise
  - IBM MobileFirst Managed Mobility services for Apple OS

Pricing for this contract will be based on a quantity of one, unless otherwise noted. Additional discounting may be available in accordance with the specific scope of the purchasing entities request and/or when promotions permit.

Pricing will only be adjusted by the mutual agreement of the parties.

- All pricing shall include the administrative fee to be remitted to NCPA by the Vendor. It is the Vendor's responsibility to keep all pricing up to date and on file with NCPA.

- For the IBM Cloud Offerings, the pricing on file with the NCPA is and will remain non-binding initial estimates, and should be used for guidance only. There are many scope variables associated with Cloud offerings that can result in the estimate being lower or higher. It is IBM's intent to work with the individual purchasing entity to offer a best and final price at a transactional level.

- For hardware and software orders, all deliveries shall be freight prepaid, F.0.B. destination and shall be included in all pricing offered unless otherwise clearly stated in writing in the Transaction Document.

For Vendor services the pricing contained herein is exclusive of any travel and living expenses, other reasonable expenses incurred in connection with the Services, and any applicable taxes.

Warranty

- Product and Service warranty is as provided for in the IBM Client Relationship Agreement or IBM Cloud Services Agreement.

Indemnity

- Vendor shall indemnify and hold harmless Region 14 ESC, by defending its participants, administrators and employees from and against all third party claims for damages on account of any bodily injury to persons (including death), or damage to real property or tangible personal property for which Vendor is legally liable to that third party and pay all costs, damages and attorney's fees that a court finally awards or that are included in a settlement approved by Vendor, provided that Region 14 ESC shall promptly notify Vendor in writing of the claim, and allow Vendor to control the defense and will cooperate with Vendor in the defense and any related settlement negotiations.

Certificates of Insurance

- Certificates of insurance shall be delivered to the Public Agency, if required, prior to commencement of work. The insurance company shall be licensed in the applicable state in which work is being conducted. The Vendor shall give the purchasing entity a notice prior to any cancellation of policies in accordance with the terms and conditions of the applicable policy provisions. The Vendor shall require all subcontractors performing any work to maintain coverage in accordance with Vendor's standard agreements with such subcontractors.

Legal Obligations

- Vendor shall be aware of and comply with all local, state, and federal laws applicable to Vendor as a provider of information technology products/services under this contract.

Force Majeure

- If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such

party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

- The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or any civil or military authority; insurrections; riots; epidemics; landslides; lighting; earthquake; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.

Miscellaneous

- Either party may cancel this contract in whole or in part by providing written notice. The cancellation will take effect 30 business days after the other party receives the notice of cancellation. After the 30th business day all work will cease following completion of any final purchase order.

- Vendor will be reimbursed for any products and services Vendor delivers through the date of termination, as well as any reimbursable expenses Vendor incurs. Vendor may also seek reimbursement of any applicable adjustment or termination charges and for expenses Vendor incurs as a result of such termination (which Vendor will take reasonable steps to mitigate), all in accordance with the provisions of the contract.

Contract Administration

- The contract will be administered by Region 14 ESC. The National Program will be administered by NCPA on behalf of Region 14 ESC.

Contract Term

- The contract term will be for one (1) year starting from the date specified on the

NCPA Administrative Agreement. The contract may be renewed for up to four (4) additional one-year terms, based upon the mutual agreement of the parties.

Contract Waiver

- Any waiver of any provision of this contract shall be in writing and shall be signed by the duly authorized agent of Region 14 ESC. The waiver by either party of any term or condition of this contract shall not be deemed to constitute waiver thereof nor a waiver of any further or additional right that such party may hold under this contract.

Products and Services additions

- Products and Services may be added to the resulting contract during the term of the contract by written amendment duly executed by the parties, to the extent that those products and services are within the scope of the original RFP.

Client Relationship Agreement

Using this agreement, Client may order Programs, Cloud and other Services, Machines and Appliances (collectively IBM Products) and third party products and services (Non-IBM Products) available from IBM. Details regarding products, offerings or orders are provided in Attachments and Transaction Documents (TDs). This agreement and applicable Attachments and TDs are the complete agreement (Agreement) regarding transactions under this Agreement.

Programs

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

The license granted for a Program is subject to Client:

a. reproducing copyright notices and other markings;
b. ensuring anyone who uses the Program does so only for Client's authorized use and complies with the license;
c. not reverse assembling, reverse compiling, translating, or reverse engineering the Program; and
d. not using any of the elements of the Program or related licensed material separately from the Program.

The metric applicable to a Program license is specified in an Attachment or TD. All licenses on a server or capacity based metric must be licensed to the full capacity of the server on which the Program is installed, unless sub-capacity usage is available from IBM and Client complies with the applicable sub-capacity requirements.

Services - Cloud Services

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

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.

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.

Client may access a Cloud Service only to the extent of authorizations acquired by Client. Client is responsible for use of Cloud Services by any user who accesses the Cloud Service with Client's account credentials. A Cloud Service may not be used in any jurisdiction for unlawful, obscene, offensive or fraudulent content or activity, such as advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive or deceptive messages, viruses or harmful code, or violating third party rights. If there is a complaint or notice of violation, use may be suspended until resolved, and terminated if not resolved promptly. Unless expressly provided in a TD, Client is not authorized to use a Cloud Service to provide hosting or timesharing services to any third party.

Data Protection for Cloud Services

Each Cloud Service is designed to protect content that Client inputs into the Cloud Service. Except for account data, Client is the sole controller for any personal data included in the content, and appoints IBM as a processor to process such personal data (as those terms are defined in EU Directive 95/46/EC). Except as otherwise specified in an Attachment or TD, IBM will treat content as confidential by not disclosing content other than to IBM employees and contractors for use only to the extent needed to deliver the Cloud Service. IBM will return or destroy it upon the expiration or cancellation of the Cloud Service, 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). Content is not subject to any separate confidentiality agreement between the parties.

The Attachment or TD for each Cloud Service describes the security functions and features of the Cloud Service. By using the Cloud Service Client acknowledges that it meets Client's requirements and processing instructions. IBM will provide Client notice of any unauthorized third party access to Client's content of which IBM becomes aware and will use reasonable efforts to remediate identified security vulnerabilities. If Client's content is lost or damaged, IBM will assist Client in restoring it to the Cloud Service from Client's last available backup copy in compatible format.

IBM may use processors and subprocessors (including personnel and resources) in locations worldwide to deliver the Cloud Services. IBM may transfer Client's personal data across country borders including outside the European Economic Area (EEA). 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. A list of subprocessors is available upon request.

Upon request by either party, IBM, Client or their affiliates will enter into additional agreements required by law for the protection of personal data included in content such as the standard unmodified EU Model Clauses agreement pursuant to EC Decision 2010/87/EU with optional clauses

removed. The parties agree (and will procure that their respective affiliates agree) that such additional agreements will be subject to the terms of the Agreement.

IBM, its affiliates, and their third party suppliers 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. Account data is all information (which may be further described in an Attachment or TD) about Client or its users provided to or collected by IBM (including through tracking and other technologies, such as cookies) which is processed in accordance with the IBM Online Privacy Statement available at www.ibm.com/privacy/details/us/en/.

Changes to Cloud Services

IBM may modify a Cloud Service, without degrading its functionality or security features. Any change that affects the commercial terms (e.g. charges) of the Cloud Service will not be effective until the next agreed renewal or extension.

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

Suspension of Cloud Services

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. Charges will continue to accrue for the Cloud Service during any suspension. 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.

Services – Other Services

IBM provides consulting, installation, customization and configuration, maintenance, and other services as detailed in an Attachment or TD. Client will own the copyright in works of authorship that IBM develops for Client under a Statement of Work (SOW) (Project Materials). Project Materials exclude works of authorship delivered to Client, but not created, under the SOW, and any modifications or enhancements of such works made under the SOW (Existing Works). Some Existing Works are subject to a separate license agreement (Existing Licensed Works). A Program is an example of an Existing Licensed Work and is subject to the Program terms. IBM grants Client an irrevocable (subject to Client's payment obligations), nonexclusive, worldwide license to use, execute, reproduce, display, perform and prepare derivatives of Existing Works that are not Existing Licensed Works. IBM retains an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works of Project Materials.

Either party may terminate a Service if a material breach concerning the Service is not remedied within a reasonable time. IBM will provide at least 90 days' notice prior to withdrawal of Service. Client will pay charges for Services provided through the effective date of termination. If Client terminates without cause or IBM terminates for breach, Client will meet all minimum commitments and pay

termination or adjustment charges specified in the SOW or TD and any additional costs IBM reasonably incurs because of early termination, such as costs relating to subcontracts or relocation. IBM will take reasonable steps to mitigate any such additional costs.

Machines and Appliances

A **Machine** is an IBM-branded device including its features, upgrades, and accessories. An **Appliance** is a Program and Machine combination designed for a particular function. Unless otherwise provided, terms that apply to a Program apply to the Program component of an Appliance and terms that apply to a Machine apply to the Machine component of an Appliance. Client may not use or transfer an Appliance's Program component independently of the Appliance.

When IBM accepts Client's order, IBM transfers title to Machines and non-IBM machines to Client or Client's lessor upon payment of all amounts due, except in the United States where title transfers upon shipment. IBM bears risk of loss until delivery to the carrier for shipment. IBM pays for insurance on Client's behalf until delivery to Client's location. Client must report any loss in writing to IBM within 10 business days of delivery and follow the claim procedure. Additional charges may apply for IBM installation more than six months after shipment. Client must follow instructions provided to install Client set up Machines.

Machines and parts removed or exchanged for upgrade, warranty service, or maintenance are IBM property and must be returned to IBM promptly. A replacement assumes the warranty or maintenance status of the replaced part. A Machine may include parts that are not new and in some instances Machines may have been previously installed. Regardless, IBM's warranty terms apply. Client will promptly install or allow IBM to install mandatory engineering changes. Client may only acquire Machines for use within Client's Enterprise in the country where acquired and not for resale, lease, or transfer. Lease-back financing is permitted.

Machine Code and Built in Capacity

Machines may include **Machine Code (MC)** and **Built in Capacity (BIC)**. MC is computer instructions, fixes, replacements and related materials, such as data and passwords relied on, provided, used with or generated by MC, that permit the operation of the machine's processors, storage or other functionality. MC is copyrighted and licensed (not sold). IBM only provides copies, fixes or replacements for MC for Machines under warranty or IBM maintenance, or under a separate written agreement which may be subject to additional charges. Client agrees that all copies, fixes or replacements for MC will be obtained solely as authorized by IBM. IBM grants Client a nonexclusive license to use MC only (i) on the Machine for which IBM provided it, and (ii) to access and use BIC only to the extent paid for by Client, activated by IBM and subject to the Attachment called IBM Authorized Use Table for Machines (AUT) available from IBM and at http://www.ibm.com/systems/support/machine_warranties/machine_code/aut.html. BIC is computing resource (e.g., processors, storage and other functionality) that IBM provides for a Machine. Use of BIC may be restricted by contract, technological or other measures. Client agrees to IBM's implementation of technological and other measures that restrict, monitor and report on use of BIC or MC, and to install any changes IBM provides. Client may not alter, reverse assemble, reverse compile, translate or reverse

engineer the MC, or circumvent or interfere, by any means, with IBM's contractual, technological or other measures that restrict, monitor or report on use of BIC or MC. While Client's license to MC is in effect, Client may transfer possession of the entire MC along with all of Client's rights and obligations only with corresponding transfer of the Machine and a hardcopy of this MC license, and only if the transferee agrees to the terms of this MC license. Client's MC license terminates immediately upon transfer. This Agreement governs MC and BIC on Machines acquired from another party. Use of BIC in excess of authorizations from IBM is subject to additional charges.

Warranties and Post Warranty Support

IBM warrants that Programs used in their specified operating environment conform to their official published specifications. The warranty period for a Program (not the Program component of an Appliance) is one year, or the initial license term if less than one year, unless another warranty period is specified in an Attachment or TD. During the Program warranty period, IBM provides Software Subscription and Support (S&S), entitling Client to defect correction information, restrictions, bypasses, and new releases and versions IBM makes generally available. Unless Client elects to discontinue S&S, annual S&S automatically renews at then-current charges until S&S for a version or release is withdrawn. If Client elects to continue S&S for a Program at a designated Client site, Client must maintain S&S for all uses and installations of the Program at that site.

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

IBM warrants that Machines used in their specified operating environment conform to their official published specifications. For a Machine or Appliance, the warranty period is specified in the Attachment or TD. During its warranty period, IBM will repair or exchange the Machine without charge, as specified in the Attachment. Warranty does not apply to Machines that Client did not allow IBM to install as required by the TD. Client may purchase warranty service upgrades and post warranty support where available. For Appliances, post warranty support includes maintenance and S&S.

If a Machine or Program does not function as warranted during its warranty period and IBM is unable to repair or replace it with a functional equivalent, Client may return it to IBM for a refund of the amount Client paid (for recurring charges, up to twelve months' charges) and Client's license or right to use it terminates.

IBM does not warrant uninterrupted or error-free operation of an IBM Product or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access to an IBM Product. 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 Products are sold under the Agreement as-is,

without warranties of any kind. Third parties may provide their own warranties to Client.

Charges, Taxes, Payment and Verification

Client agrees to pay all applicable charges specified by IBM, charges for use in excess of authorizations, any customs or other duty, tax, levy, or fee imposed by any authority resulting from Client's acquisitions under the Agreement, and any late payment fees. Amounts are due upon receipt of the invoice and payable within 30 days of the invoice date to an account specified by IBM. Prepaid Services must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid.

Client agrees to: i) pay withholding tax directly to the appropriate government entity where required by law; ii) furnish a tax certificate evidencing such payment to IBM; iii) pay IBM only the net proceeds after tax; and iv) fully cooperate with IBM in seeking a waiver or reduction of such taxes and promptly complete and file all relevant documents. Where taxes are based upon the location(s) receiving the benefit of the Cloud Service, Client has an ongoing obligation to notify IBM of such location(s) if different than Client's business address listed in the applicable Attachment or TD.

IBM may change recurring charges, labor rates and minimum commitments on three months' notice. A change applies on the invoice date or the first day of the charging period on or after the effective date IBM specifies in the notice. IBM may change one-time charges without notice. However, a change to a one-time charge does not apply to an order if i) IBM receives the order before the announcement date of the increase and ii) within three months after IBM's receipt of the order, the product is shipped or made available to Client.

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

Liability and Indemnity

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

The following amounts, if a party is legally liable for them, are not subject to the above cap: i) third party payments referred to in the paragraph below; ii) damages for body injury (including death); iii) damages to real property and

tangible personal property; and iv) damages that cannot be limited under applicable law.

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

IBM has no responsibility for claims based, in whole or part, on Non-IBM Products, items not provided by IBM, or any violation of law or third party rights caused by Client's content, materials, designs, specifications, or use of a non-current version or release of an IBM Product when an infringement claim could have been avoided by using a current version or release.

Termination

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

Governing Laws and Geographic Scope

Each party is responsible for complying with: i) laws and regulations applicable to its business and content, and ii) import, export and economic sanction laws and regulations, including 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.

Both parties agree to the application of the laws of the country where the transaction is performed (or for Cloud Services, the laws of the state of New York, United States, to the Agreement, without regard to conflict of law principles. The rights and obligations of each party are valid only in the country where the transaction is performed or, if IBM agrees, the country where the product is placed in productive use, except all licenses are valid as specifically granted. If 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.

General

Parties will not disclose confidential information without a separate, signed confidentiality agreement. If confidential information is exchanged in connection with the Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this agreement.

Client accepts an Attachment or TD by ordering, enrolling, using, or making a payment for, the product, offering or service. Since this agreement may apply to many future orders, IBM may modify this agreement by providing Client at least three months' written notice. Changes are not retroactive; they apply, as of the effective date, only to new orders, ongoing services that do not expire, and renewals. For transactions with a defined renewable contract period, 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. If there is a conflict, an Attachment or TD prevails over the terms of this agreement.

IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any responsibility for Client's business or operations. Each party is responsible for determining the assignment of its personnel and contractors, and for their direction, control, and compensation.

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 to have similar policies.

IBM Business Partners are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings.

Client is responsible for obtaining all necessary permissions to use, provide, store and process content in Cloud, other Services, maintenance, or Program support, and grants IBM permission to do the same. Client is responsible for adequate content back-up. Some of Client's content may be subject to governmental regulation or may require security measures beyond those specified by IBM for an offering. Client will not input or provide such content unless IBM has first agreed in writing to implement additional required security measures.

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

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 and by IBM in conjunction with the sale of the portion of IBM's business that includes a product or service is not restricted.

The Agreement applies to IBM and Client (the signatories below) and their respective Enterprise companies who avail themselves of the Agreement. The signatories 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 as Client or IBM and has signed a participation Attachment.

All notices under the Agreement must be in writing and sent to the address below, 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.

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.

Agreed to:
Client Company Name:

By_____
                    Authorized signature
Title: _Director, Business Development_

Name (type or print): _Matthew Mackel_

Date: _December 7, 2016_

Client number: _1432687_

Enterprise number:_____

Client address: _PO Box 701273_

_____ _Houston, TX 77270_

_____

Agreed to:
International Business Machines Corporation

By_____
                    Authorized signature
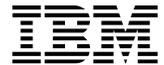Title: _IBM Public Sector Contacts Sales Manager_

Name (type or print): _Eric Rice_

Date: _____December 9, 2016_

Agreement number: _____

IBM address: _____7100 Highlands Pkwy_

_____ _Smyrna, GA 30082_

_____

Client participates in PA by submitting an enrollment form and an order, subject to acceptance by IBM. Client enrolls an initial Client site (referred to as the Originating Site) and may add additional authorized Client sites (referred to as Additional Sites). A site can be a physical location or organizational unit in Client's Enterprise and is designated through the PA enrollment process. For purposes of PA only (not for other products ordered under the CRA), Enterprise companies do not require a separate participation Attachment.

IBM identifies IBM Products and Non-IBM Products that are eligible for PA (called Eligible Products or EPs), and assigns each EP a point value.

Relationship Suggested Volume Pricing (RSVP) and Suggested Volume Pricing (SVP)

An RSVP level is determined by aggregating points for all EPs ordered during Client's PA Term (as described below). The point value of Client's initial EP order determines Client's initial RSVP level. Client may attain a higher RSVP Level by placing additional EP orders. The higher RSVP level will apply to orders placed after the higher RSVP level is attained, for the remainder of Client's PA Term. An SVP level is also calculated for each EP order, and is based on the point value for a single order. If the SVP level for a particular order is higher than Client's current RSVP level, the SVP level will apply to that order.

RSVP/SVP Level Table:

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

PA Term

The initial PA Term commences with Client's first order after enrollment and continues until the last day of the twelfth full month thereafter (i.e., the initial PA term includes 12 full months, plus if the order was not placed on the first day of a month, the remainder of the first month). The PA Term is a measurement period, not the contract duration. On the first day of the month following the end of the prior PA Term (the PA Anniversary), the next 12 month PA Term begins. For each PA Term after the initial PA Term, Client's RSVP Level is reset on the PA Anniversary, based on EP acquired by all participating Client sites during the prior PA Term. The RSVP Level for a new PA Term will not be lowered by more than one level below Client's RSVP level at the end of the prior PA Term. However, if Client does not place any new PA orders (or have outstanding quotes) for any Originating or Additional Sites for a 2-year period and allows S&S on Programs previously ordered under PA to lapse, Client's RSVP level will be reset and Client's prior points will not be taken into account in establishing a new RSVP level. Client may be required to re-enroll in PA.

S&S and Selected Support

Selected Support may be available for certain IBM non-warranted programs and Non-IBM Products, until withdrawn. S&S and Selected Support include assistance with routine, short duration installation and usage questions. Selected Support does not include new versions, releases, updates, restrictions or bypasses, however assistance with designing and developing applications may be available, although additional charges may apply. Like S&S, annual Selected Support automatically renews at then current charges unless Client elects to discontinue Selected Support. If S&S or Selected Support for a version or release is withdrawn by IBM, Client must upgrade to a supported version or release to continue receiving support. If Client renewed support prior to notice of withdrawal, IBM may either continue to provide support until the end of the current term or provide Client a prorated refund.

If Client elects to continue S&S or Selected Support, Client must maintain it for all program uses and installations at a Client site. If Client requests to renew expiring S&S at a lesser quantity of program uses and installations than the expiring quantity, Client must provide a report that verifies current program usage and installation, and may be required to provide other compliance verification information.

If Client allows S&S or Selected Support to lapse, Client may no longer access any associated benefits for that Client Site, including fixes, releases, versions or other materials that were available but not installed prior to the lapse. After the lapse, reinstatement charges at then current rates will apply, and renewal pricing will not be available.

Sub-Capacity Usage

IBM designates certain EPs as eligible for sub-capacity usage. Sub-capacity usage is based on the machine's processor capacity made available to the EP as measured by a tool that IBM provides.

To qualify for sub-capacity usage, Client must: 1) install and configure IBM's license management tool within 90 days of first use in an eligible environment, 2) run the tool continuously after installation and promptly install any tool updates, 3) generate system reports quarterly using the tool, retain them for at least two years, provide them to IBM upon request, and adhere to the compliance verification requirements in the CRA, and 4) meet IBM's operating system, processor technology, and virtualization environment requirements for sub-capacity usage. Client may not modify, alter, circumvent or interfere, by any means, with the tool or the output it generates. Exceptions to running the tool may be available if Client's environment meets certain qualifications established by IBM. If Client does not comply with the sub-capacity usage qualifications, charges based on full capacity of the machine will apply.

Fixed Term, Token and Monthly Licenses

IBM designates certain EPs as Fixed Term Licenses (FTLs), Token Licenses (TLs), or Monthly Licenses (MLs). The license term for an FTL, TL or ML is specified in a TD and begins on the date Client's order is accepted by IBM. The term for an FTL or TL automatically renews at then current charges, unless Client provides written notice of termination

prior to expiration of the term. For an ML, Client selects a renewal option at the time of order. IBM assigns a Token value to each EP available for TL. If Client selects TL for one or more EPs, Client must acquire sufficient Tokens to support Client's peak concurrent use of those of EPs.

CEO Product Categories

Collections of EPs may be offered by IBM on a per user basis subject to a minimum initial user quantity (a CEO Product Category). For Client's first (primary) CEO Product Category, Client must acquire licenses for all users in their Enterprise who have been assigned a machine capable of accessing any Program in the CEO Product Category. For each additional (secondary) CEO Product Category, Client must meet the applicable minimum initial order quantity requirement.

All client access 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.

Trade-ups

IBM may designate certain Programs as eligible for Trade Up at a reduced charge, if used to replace a specified Program or Non-IBM Product. To qualify, Client must terminate use of and uninstall the replaced product.

Relationship to CRA and Compliance Verification

Client's participation in PA is subject to the CRA. As an example, Client's usage of and payment for EPs, including S&S and maintenance, sub-capacity, FTL, TL, ML, CEO Product Categories, Trade Up, and other metrics, are subject to the compliance verification obligations in the CRA.

Client is responsible for retaining adequate records. If Client's records are inadequate to determine S&S or Selected Support charges, IBM's charges for any excess usage will include two years of associated maintenance and S&S or Selected Support.

General

With the exception of certain Programs that IBM designates as platform or operating system specific, Client may install and use Programs in any available national language for any platform or operating system available from IBM, up to Client's authorizations.

IBM may pro-rate charges for S&S, Selected Support, FTL, TL of six months or more, or other charges, to align with Client's PA Anniversary.

IBM may add or delete EPs (including in CEO Product Categories), change point values, or add or withdraw a license metric for an EP at any time.   Changes apply only to new orders and renewals.

Non-IBM Products available under PA are provided by IBM as-is, without warranty of any kind. Third parties provide and license products and services directly to Client under their own agreements.

An EP may contain technical measures that disable or restrict its use after the end of a term or in excess of authorizations.

Cloud Services Agreement

Using this agreement, Client may order Cloud Services. This agreement and applicable Attachments and Transaction Documents (TDs) are the complete agreement (Agreement) regarding transactions under this Agreement.

Cloud Services

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

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.

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.

Client may access a Cloud Service only to the extent of authorizations acquired by Client. Client is responsible for use of Cloud Services by any user who accesses the Cloud Service with Client's account credentials. A Cloud Service may not be used in any jurisdiction for unlawful, obscene, offensive or fraudulent content or activity, such as advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive or deceptive messages, viruses or harmful code, or violating third party rights. If there is a complaint or notice of violation, use may be suspended until resolved, and terminated if not resolved promptly. Unless expressly provided in an Attachment or TD, Client is not authorized to use a Cloud Service to provide hosting or timesharing services to any third party.

Data Protection

Each Cloud Service is designed to protect content that Client inputs into the Cloud Service. Except for account data, Client is the sole controller for any personal data included in the content, and appoints IBM as a processor to process such personal data (as those terms are defined in EU Directive 95/46/EC). Except as specified in an Attachment or TD, IBM will treat content as confidential by not disclosing content other than to IBM employees and contractors for use only to the extent needed to deliver the Cloud Service. IBM will return or destroy it upon the expiration or cancellation of the Cloud Service, 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).

Client is responsible for obtaining all necessary permissions to use, provide, store and process content in the Cloud Service and grants IBM permission to do the same. Some of Client's content may be subject to governmental regulation or may require security measures beyond those specified by IBM for an offering. Client will not input or provide such content unless IBM has first agreed in writing to implement additional required security measures.

The Attachment or TD for each Cloud Service describes the security functions and features of the Cloud Service. By using the Cloud Service Client acknowledges that it meets Client's requirements and processing instructions. IBM will provide Client notice of any unauthorized third party access to Client's content of which IBM becomes aware and will use reasonable efforts to remediate identified security vulnerabilities. If Client's content is lost or damaged, IBM will assist Client in restoring it to the Cloud Service from the last available backup copy in compatible format.

IBM may use processors and subprocessors (including personnel and resources) in locations worldwide to deliver the Cloud Services. IBM may transfer Client's personal data across country borders including outside the European Economic Area (EEA). 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. A list of subprocessors is available upon request.

Upon request by either party, IBM, Client or their affiliates will enter into additional agreements required by law for the protection of personal data included in content, such as the standard unmodified EU Model Clauses agreement pursuant to EC Decision 2010/87/EU with optional clauses removed. The parties agree (and will procure that their respective affiliates agree) that such additional agreements will be subject to the terms of the Agreement.

IBM, its affiliates, and their third party suppliers 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. Account data is all information (which may be further described in an Attachment or TD) about Client or its users provided to or collected by IBM (including through tracking and other technologies, such as cookies) which is processed in accordance with the IBM Online Privacy Statement available at www.ibm.com/privacy/details/us/en/.

Changes

IBM may modify a Cloud Service, without degrading its functionality or security features. Any change that affects the commercial terms (e.g. charges) of the Cloud Service will not be effective until the next agreed renewal or extension.

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

Since this agreement may apply to many future orders, IBM may modify this agreement 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. If

there is a conflict, an Attachment or TD prevails over the terms of this agreement.

Warranties

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.

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.

Charges, Taxes, and Payment

Client agrees to pay all applicable charges specified by IBM, charges for use in excess of authorizations, any customs or other duty, tax, levy, or fee imposed by any authority resulting from Client's acquisitions under the Agreement, and any late payment fees. Amounts are due upon receipt of the invoice and payable within 30 days of the invoice date to an account specified by IBM. Prepaid Services must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid.

Client agrees to: i) pay withholding tax directly to the appropriate government entity where required by law; ii) furnish a tax certificate evidencing such payment to IBM; iii) pay IBM only the net proceeds after tax; and iv) fully cooperate with IBM in seeking a waiver or reduction of such taxes and promptly complete and file all relevant documents. Where taxes are based upon the location(s) receiving the benefit of the Cloud Service, Client has an ongoing obligation to notify IBM of such location(s) if different than Client's business address listed in the applicable Attachment or TD.

Liability and Indemnity

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

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

If a third party asserts a claim against Client that an IBM Service acquired under 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.

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 Client's content, materials, designs, or specifications.

Termination

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.

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

Governing Laws and Geographic Scope

Each party is responsible for complying with: i) laws and regulations applicable to its business and content, and ii) import, export and economic sanction laws and regulations, including 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.

Both parties agree to the application of the laws of the State of New York, United States, without regard to conflict of law principles. The rights and obligations of each party are valid only in the country of Client's business address. If any provision of the Agreement is invalid or unenforceable, the remaining provisions remain in full force and effect. Nothing in the Agreement affects statutory rights of consumers that cannot be waived or limited by contract. The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under the Agreement.

General

IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any responsibility for Client's business or operations. Each party is responsible for determining the assignment of its personnel and contractors, and for their direction, control, and compensation.

IBM 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 to have similar policies.

IBM Business Partners are independent from IBM and unilaterally determine their prices and terms. IBM is not

responsible for their actions, omissions, statements, or offerings.

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 and by IBM in conjunction with the sale of the portion of IBM's business that includes a service is not restricted.

The Agreement applies to IBM and Client and their respective Enterprise companies who avail themselves of the Agreement. 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 Attachment.

All notices under the Agreement must be in writing and sent to the address below, 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.

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.