

End User SoftLayer Agreement

THIS END USER SOFTLAYER AGREEMENT (“End User Agreement”) is made effective and entered into as of the ____ day of _____, 20__ (“Effective Date”), by and between _____, with its primary office at _____ (“Provider”) and _____, with its primary office at _____ (hereinafter “End User”). Provider and End User may be referred to herein individually as “Party” or collectively as “Parties”.

WHEREAS, this End User SoftLayer Agreement sets forth basic terms and conditions under which Provider will resell cloud services to the End User. SoftLayer and Arrow will be third party beneficiaries to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. DEFINITIONS:

“Agreement” means the written terms between Arrow and Provider applicable to Provider’s purchase of the Services from Arrow.

“Arrow” means Arrow Enterprise Computing Solutions, Inc. which is the distributor of the Services purchased by Provider for resale to the End User”

“AUP” means SoftLayer’s Acceptable Use Policy, which is contained in the Cloud Services Agreement for IBM Federal Data Centers provided in Attachment A affixed at the end of this document.

“Content” means SoftLayer data, software and information provided by SoftLayer in the provisioning of the Services.

“Customer Content” means all data, software and information, including without limitation, data text, software, scripts, video, sound, music, graphic and images that are created, uploaded or transferred in connection with the Services by Provider or End Customer.

“Fees” means the amount invoiced by Provider for the Services.

“MSRP” means SoftLayer suggested retail price for the Services.

“PII” means any personally identifiable information relating to any individual that accesses and/or uses the Services.

“Order” means End User’s purchase order issued to Provider.

“Private Network” means the term as defined in the AUP

“Prohibited Content” means End User content that is illegal or unauthorized, including but not limited to violations of the AUP.

“Public Network” means the term as defined in the AUP.

“Services” means SoftLayer computer infrastructure and related services purchased by End User pursuant to the terms of this End User Agreement.

“SoftLayer Portal” means the SoftLayer web portal.

2. BUSINESS TERMS.

(a) General Overview. SoftLayer has authorized that Provider as an authorized Provider of the Services. End User agrees to purchase the Services from Provider for End User’s internal use. The terms of the Provider Agreement between the Arrow and Provider require that End User agree to certain flow down terms as set forth in the Agreement and that Provider enter into this End User Agreement with each End User before any Services can be purchased.

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(b) Prices for Services. Price for the Services will be those as quoted by Provider to End User.

(c) Orders.

(i). Orders received by Provider from End User must include the following information:

- End User by name and address
- quantity, part number and description of the Service
- bill-to address
- requested Service delivery dates
- contact name and telephone number

(ii). Orders must include all of the above plus a reference to this End User Agreement as controlling for terms of the purchase and no additional terms or conditions will be added to this End User Agreement or will be applicable to any Order unless specifically negotiated by the parties. No Product or Service substitutions or cancellations to the Order or are permitted without Provider's approval.

(d) Payment and Invoices. Payment terms of Provider invoices are Net 30 days from date of invoice unless the parties have agreed otherwise upon initial account set up. Services shall be invoiced upon shipment. Services shall be invoiced upon delivery. Payment terms of the Provider's invoice to End Users shall be that as agreed to by those parties.

(e) Service Delivery. Service is software related and will be downloaded from the SoftLayer Portal.

3. RESPONSIBILITIES OF END USER. End User represents and warrants that it shall during the term of this End User Agreement:

(a) Conduct its business so as to maintain the goodwill and reputation of SoftLayer and Provider at all times. End User shall not engage in any unfair or deceptive business practices with respect to the Services or otherwise; and agrees to; (i) comply with all applicable laws, rules and regulations, including, without limitation, the Foreign Corrupt Practices Act and related international anti-corruption laws and the Digital Millennium Copyright Act and related copyright laws; (ii) pay the Fees when due; (iii) use reasonable security precautions for providing access to the Services by its employees and any other individuals or companies to whom End User provides access; (iv) cooperate with SoftLayer's or Provider's investigation of outages, security problems, use of Prohibited Content and any suspected breach of the terms of this End User Agreement; (v) comply with all applicable license terms or terms of use for any software, content, service or website (including Customer Content) which End User uses or accesses when using or providing access to the Services; (vi) give Provider true, accurate, current, and complete account information; (vii) keep End User's account information up to date; ; (x) use commercially reasonable efforts to prevent unauthorized access to or use of the Services and immediately notify SoftLayer and Provider of any known or suspected unauthorized use of End User's account and End User's account, Services or any other breach of security. End User may not use the Services in any situation where failure or fault of the Services could lead to death or serious bodily injury of any person, or to physical or environmental damage. For example, End User may not use, or permit any other person to use, the Services in connection with aircraft or other modes of human mass transportation, nuclear or chemical facilities, or Class III medical devices under the Federal Food, Drug and Cosmetic Act.

(b) give Provider prompt written notice (unless precluded by law or regulation) of any change or anticipated change in End User's financial condition, business structure, or operating environment (for example, a material change in equity ownership or management or any substantive change to information End User provided to Provider).

4. LIMITS OF AUTHORITY. End User shall not, without in each case the express prior written approval from an authorized representative of SoftLayer and Provider, take any of the following actions:

(a) Make any representations, warranties or commitments on behalf of SoftLayer or Provider;

(b) Make any representations or warranties in respect of the Services except as approved by SoftLayer and provided in this End User Agreement or alter, remove, modify or obfuscate any confidentiality legends or proprietary notices placed on or contained within the Services; or

(c) Delegate or subcontract any of its activities or obligations under this End User Agreement.

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5. **SELECTION AND MODIFICATION OF THE SERVICES.** For downgrades or cancellation of Services, End User must provide Provider or if directed by Provider to do so, SoftLayer with a written cancellation notice via cancellation ticket in accordance with the procedures in the SoftLayer Portal a minimum of 24 hours prior to 00:00:01 CST (GMT-6) on the Service renewal date. The failure to provide the required 24 hours written notice will result in the downgrade or discontinuance of Services (and any corresponding change in Fees) being effective on the following renewal date. Any Services cancelled prior to such 24 hour period will remain accessible to Provider and End User until the automated process reclaims the server on the renewal date, at which time the Services will cease to be accessible by Provider or End User.

6. **DATA CENTER SELECTION, PRIVACY LAWS.** If applicable, during its selection of Services, End User may select the data center from which the Services provided will be hosted. End User understands and acknowledges the sensitivity and confidentiality of PII which may be stored on or transmitted to and from the data center, and that such information may be obtained from End User or third parties who are subject to the Gramm-Leach-Bliley Act, the Healthcare Insurance Portability and Accountability Act, EU Member States' laws promulgated in accordance with the European Data Protection Directive, other individual country laws governing the collection, processing, storage, and transmittal of PII, and/or other applicable data protection and privacy laws, regulations and guidelines ("**Privacy Laws**"). End User acknowledges the protections afforded by Privacy Laws to PII and agrees to comply with all legal and contractual requirements relating to the privacy and confidentiality of PII applicable to it in the performance of its obligations under this End User Agreement.

7. **CUSTOMER SUPPORT.** Unless otherwise agreed, End User shall be responsible for its own technical and other support at its own cost and expense.

8. **AUDIT.** Upon Provider's written request, End User shall certify in writing that End User's use of the Services and all other activities under this End User Agreement are in compliance with the terms of the Agreement. With prior notice of at least ten (10) days and during regular business hours and subject to applicable Government security requirements, Provider may audit End User's compliance with the terms of this End User Agreement. If, upon performing the audit, it is determined that End User has underpaid Provider, Provider shall invoice End User for the additional amount due.

9. **CONFIDENTIALITY.** The Parties agree to maintain strict confidentiality of transactions and all trade secret and business confidential information ("Confidential Information") of the other Party acquired or received under this End User Agreement, including any information, which, if publicly disclosed, could harm the non-disclosing Party. The Parties further agree not to use any confidential information of the other Party, except in performance of this End User Agreement and solely for the purpose(s) provided. Moreover, the Parties agree not to disclose Confidential Information to third parties for any purpose whatsoever without the express written consent of the non-disclosing Party. This limitation does not apply to the disclosure of Confidential Information that is needed to perform or administer work under this End User Agreement, such as the disclosure of Confidential Information to attorneys, accountants and Board Members, so long as the individual(s) receiving Confidential Information agree to abide by the confidentiality provisions herein. For purposes of this End User Agreement, Confidential Information shall not include any information that: (i) is now or becomes in the public domain through no breach of this End User Agreement; (ii) is in the possession of the receiving Party as of the date of execution hereof; (iii) is independently learned by the receiving Party from a third party without breach of this End User Agreement; or (iv) is required by law, including, but not limited to the Freedom of Information Act, 5 U.S.C. § 552, or order of a court, administrative agency or other governmental body to be disclosed by the receiving Party. The Parties agree that the provisions of this Section shall survive the termination, for any reason, of this End User Agreement.

10. **SUSPENSION.**

10.1 **Suspension.**

(i) Softlayer and/or Provider may suspend provision of Services to End Users immediately in the event that:

(a) SoftLayer and/or Provider determines that there is an emergency situation, including, but not limited to breach of security or

(b) suspension is required by law, statute, regulation, rule or court order. SoftLayer will give End User reasonable advance notice of a suspension under this paragraph and a chance to cure the grounds on which the suspension is based, unless SoftLayer determines, in SoftLayer's reasonable commercial

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judgment, that a suspension on shorter or contemporaneous notice is necessary to protect SoftLayer or its other customers from operational, security, or other risk or the suspension is ordered by a court or other judicial body.

10.2 Responsibility upon Suspension. If SoftLayer or Provider suspends End User's right to access or use any portion or all of the Service:

(a) End User remains responsible for all Fees and charges End User has incurred through the date of suspension;

(b) End User remains responsible for any applicable Fees and charges for any Services to which End User has continued to have access, as well as applicable data storage Fees and charges, and Fees and charges for in-process tasks completed after the date of suspension;

(c) End User will not be entitled to any SLA Credits under any Service Level Agreement accrued during any period of suspension with respect to any such suspended services; and

(d) SoftLayer or Provider may terminate End Users' access to the relevant Customer Content stored in the Services during a suspension, and neither SoftLayer nor Provider shall be liable to End User, or any third party for any damages or losses Provider, End User, or any third party may incur as a result of such suspension.

11. ALLEGED MATERIAL BREACH. Recourse against the United States for any alleged breach of this agreement must be made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

12. TERM AND TERMINATION.

(a) This End User Agreement will become effective on the Effective Date, continue for one (1) year.

(b) Recourse against the United States for any alleged breach of this agreement must be made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(c) Any termination will be without prejudice to any other right or remedy afforded to the Parties and will not affect any rights or obligations, which have occurred prior to such termination. Thus, any Orders with open commitments shall be completed with the terms and conditions of this End User Agreement governing each Order until the commitment has been completed.

13. CONTROLLING AGREEMENTS. Terms that apply to this agreement, listed in their order of precedence, are: (i) Cloud Services Agreement for IBM Federal Data Centers, which includes the AUP, and (ii) End User SoftLayer Agreement.

14. WARRANTY DISCLAIMER. THE SERVICES ARE FURNISHED BY SOFTLAYER, ARROW AND PROVIDER "AS IS" AND WITHOUT WARRANTIES OR CONDITIONS, STATUTORY OR OTHERWISE, OF ANY KIND. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED, SOFTLAYER AND PROVIDER: (A) EXPRESSLY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE; (B) DOES NOT WARRANT THAT THE SERVICES WILL MEET END USERS' REQUIREMENTS, OR THAT THEIR OPERATION WILL BE TIMELY, UNINTERRUPTED, SECURE, OR ERROR-FREE OR THAT ANY DEFECTS WILL BE CORRECTED; AND (C) DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS OR CONDITIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SERVICES IN TERMS OF THEIR ACCURACY, RELIABILITY, TIMELINESS, COMPLETENESS, OR OTHERWISE.

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END USER ASSUMES TOTAL RESPONSIBILITY FOR THE USE OF THE SERVICES BY END USER. NOTWITHSTANDING THE FOREGOING, SOFTLAYER SHALL PROVIDE FOR THE REPAIR OR REPLACEMENT OF DEFECTIVE ITEMS DISCOVERED WITHIN A REASONABLE PERIOD OF TIME AFTER ACCEPTANCE.

15. LIMITATION OF LIABILITY. EXCEPT FOR LIABILITY ARISING FROM THE INDEMNIFICATION OBLIGATIONS HEREIN, OR AS OTHERWISE REQUIRED BY LAW, SOFTLAYER'S, ARROW'S AND PROVIDER'S TOTAL CUMULATIVE LIABILITY AND END USER'S SOLE REMEDY FOR ALL CLAIMS SHALL IN NO EVENT EXCEED THE GREATER OF THE AMOUNT OF FEES ACTUALLY PAID BY END USER TO PROVIDER FOR THE TWELVE MONTHS PRIOR TO THE OCCURRENCE OF THE EVENT(S) GIVING RISE TO THE LIABILITY OR \$100,000 U.S. End User's exclusive remedy for any and all damages under the agreement, including, but not limited to, consequential, indirect, or special damages, is against Provider. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

16. U.S. GOVERNMENT CUSTOMERS AND U.S. GOVERNMENT RIGHTS. Services are provided for ultimate federal government end use solely in accordance with the following license rights to use, modify, reproduce, release, perform, display, or disclose: Government technical data and software rights related to the Services include only those rights customarily provided to the public. This customary commercial license is provided in accordance with the Federal Acquisition Regulation ("FAR") at 48 C.F.R. 12.211 (Technical Data) and FAR 12.212 (Software) for civilian agencies of the federal government, and, for Department of Defense transactions, the Defense Federal Acquisition Regulation Supplement ("DFARS") at 48 C.F.R. 252.227-7015 (Technical Data – Commercial Items), 48 C.F.R. 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). This U.S. Government Rights clause, consistent with 48 C.F.R. 12.211, 48 C.F.R. 27.212 (federal civilian agencies) or 48 C.F.R. 227.7202-4 (DoD agencies) is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses U.S. Government rights in computer software, computer software documentation or technical data related to the SoftLayer Commercial Computer Software and Commercial Computer Software Documentation that is the subject of this End User Agreement or in any contract or subcontract under which this SoftLayer Commercial Computer Software and Commercial Computer Software Documentation is acquired or licensed. If a government agency has a need for rights not conveyed under these terms, it must negotiate with SoftLayer to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in writing and agreed to by SoftLayer in any applicable contract or agreement.

17. EXPORT MATTERS. The Parties will comply with laws applicable to either Party generally as a provider of information technology services and products. Neither Party is performing the other Party's regulatory or management obligations and is not responsible for determining the requirements of laws applicable to either Party's business, including those related to Services sold hereunder. Regardless of where located when accessing the Services, the Parties agree to comply with all applicable export and import laws and regulations, including those of the United States regarding embargo and sanctions regulations and prohibitions on export for certain end uses or by any prohibited end users. The Parties represent that Customer Content will not, in whole or part, be controlled under the U.S. International Traffic in Arms Regulation (ITAR). The Parties are prohibited from exporting, re-exporting, diverting transfer, disclosing or permitting access to any portion of the Services, enabling software, Content, or related technical information, directly or indirectly, in violation of such export and import laws and regulations. The Parties are also responsible for complying with all other laws, rules, and regulations that may be applicable to their use of the Services.

End User acknowledges that SoftLayer and Provider use global resources (non-permanent residents used locally and personnel in locations worldwide) to remotely support the delivery of Services. End User represents that no Content accessible to SoftLayer for the Services will require an export license or is restricted from export to any SoftLayer global resource or personnel under applicable export control laws. At the time of this End User Agreement, the following countries' laws and regulations are in scope: Germany, Hong Kong, Japan, the Netherlands, Singapore, the United Kingdom and the United States and other countries will be assumed covered under this paragraph as they become applicable.

End User represents that they are not subject, either directly or indirectly (by affiliation or any other connection with another party), to any order issued by any agency of the United States Government revoking or denying in whole or in part, their United States export privileges. End User agrees to notify Provider immediately if End User becomes subject to any such order.

18. MISCELLANEOUS

(a) This End User Agreement, together with the underlying GSA Schedule Contract, Schedule Price List, and applicable Customer Purchase Order(s), constitutes the entire understanding and agreement between the Parties hereto with respect to the matters herein, and supersedes all prior or contemporaneous representations or agreements, written or oral, with respect to the matters covered herein.

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(b) Nothing in this End User Agreement is intended to create, or shall be construed as creating, a joint venture, or agency, or taxable entity between the Parties, or any right to pledge the other's credit; it being understood that Provider and End User are independent contractors and shall not be deemed to be employed by, or an employee of, the other.

(c) This End User Agreement may not be altered, modified, amended or waived, in whole or in part, in any way, except by an instrument in writing signed by duly authorized officers of Provider and End User.

(d) Performance of any obligation required of a Party hereunder may be waived only by a written waiver signed by a duly authorized officer of the Party for whose benefit such obligation was to be performed. Any waiver shall in no way be construed as a waiver of any subsequent breach of this End User Agreement by the other Party.

(e) If any provision of this End User Agreement is found void, invalid or unenforceable, it shall not affect the validity of the balance of this End User Agreement, which shall remain valid and enforceable according to its terms.

(f) Excusable delays shall be governed by FAR 52.212-4(f).

(g) The Parties shall comply with provisions of all applicable federal, state, county and local laws, ordinances, regulations and codes (including procurement of required permits or certificates in its performance in connection with this End User Agreement).

(h) The headings of the Sections are inserted for convenience only and are not intended to affect the meaning or interpretation of this End User Agreement.

(i) The obligations set forth in this End User Agreement shall survive any termination of this End User Agreement, particularly the provisions relating to the protection of Confidential Information.

(j) All notices, requests, authorizations, consents, waivers, and other communications under this End User Agreement must be in writing and will be deemed to have been duly given when: (i) delivered by hand (with written confirmation of receipt); or (ii) when delivered, if sent by a nationally recognized overnight delivery service to the address first written above (or to such other addresses as a Party may designate by written notice to the other Party).

(k) End User may not assign this End User Agreement without Provider's written consent. End User must also notify Provider in writing of any name change to the present company name.

(l) End User warrants and represents it complies with Provider's Business Code of Conduct on Provider's web site or has implemented and abides by a code of conduct that is substantially similar thereto (in such case, Provider shall provide a copy to End User for review upon Provider's request).

(m) To the extent not exempt, the Parties shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

(n) This End User Agreement will in all respects be governed by and construed in accordance with the Federal laws of the United States, excluding that body of laws known as conflict of laws. Venue and jurisdiction are mandated by applicable United States Federal law. The application of the UN Agreement pertaining to contracts of international purchase of goods dated January 1, 1989 (UNCISG) BGBI 96/1988 and all its relevant and valid amendments shall expressly be excluded.

IN WITNESS WHEREOF, the parties have executed this End User Agreement as of the Effective Date.

PROVIDER

END USER

Name: _____

Name: _____

Signature: _____

Signature: _____

Title: _____

Title: _____

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Date: _____

Date: _____



Appendix A

Cloud Services Agreement For IBM Federal Data Centers

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, in accordance with the Contract's Disputes Act. 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. 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). The Client is responsible for issuing to IBM a funding document prior to IBM performing such activities.

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.

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. 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 changes to this agreement by IBM 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.

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. 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.

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. Nothing in this section shall limit the Government's right to (i) excess procurement costs in the event of a Termination for Default; or (ii) the contractual remedies prescribed under the Price Reductions clause (GSAR 552.238-75) and GSAR 552.215-72, Price Adjustment – Failure to Provide Accurate Information. This limit applies collectively to IBM, its subsidiaries, contractors, and suppliers. IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.

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

If a third party asserts a claim against Client that an IBM Service acquired under this Agreement infringes a patent or copyright, IBM will indemnify the 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, and (ii) gives IBM such opportunity as is offered by applicable laws, rules and regulations to participate in the defense thereof. The Client shall make every effort to permit IBM to fully participate in the defense and/or in any settlement of such claim. However, IBM understands that such participation will be under the control of the Department of Justice. 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 in accordance with the Contract's Disputes Act.

Client may terminate an order by providing IBM with at least one month's written notice. In accordance with the Contract's Disputes Act, IBM may terminate this Agreement: for cause if the Client is in material breach of this Agreement. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled.

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 users or end users. Client is responsible for its use of IBM and non-IBM products and services.

This agreement is governed by Federal law.

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.

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.

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 this Agreement or any transaction under it. 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.

Commercial Cloud Services

Cloud Services are commercial services available in the commercial marketplace and customarily used by the general public or by non-government customers for other than government purposes and have been "offered for sale, sold, leased, or licensed to the general public" in substantial quantity. The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government herein

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