

International Passport Advantage Agreement–US Federal Government

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

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

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

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

1. IPAA-US Federal Government Acceptance

- a. The Client Originating Company (identified as the Originating Site in the IPAA-US Federal Government Enrollment Form) accepts this IPAA-US Federal Government by awarding a contract or purchase order, incorporating this IPAA-US Federal Government by reference. Subsequent orders issued or an IPAA-US Federal Government Enrollment Form submitted under the awarded contract are governed by this IPAA-US Federal Government.
- b. The IBM Originating Company that accepts the Client Originating Company's orders and the Client Originating Company agree to coordinate the activities of their own Enterprise under this IPAA-US Federal Government. The Client Originating Company is responsible for compliance with the terms by all Client Sites assigned a Passport Advantage Site Number (each, a Site) under this IPAA-US Federal Government.
- c. Enterprise and Client means, a U.S. Government Agency or affiliated contracting entity of the U.S. Government, awarding a contract and subsequent delivery order under such contract. This Government Client is the legal entity that is authorized to execute and administer the Contract Agreement. A Contract Agreement is the agreement for which IBM assigns a Passport Advantage Agreement number.
- d. Upon IBM's acceptance of Client's orders, IBM will do the following: i) send a TD that includes the level of Authorized Use; ii) make a Program or Cloud Service available; iii) ship an Appliance; or iv) provide the Services.

2. Content and Data Protection

- a. Content consists of all data, software, and information that Client or its authorized users provide, authorize access to, or inputs to the Cloud Services or information or data Client may provide, make available or grant access to, in connection with IBM providing the Cloud Services or other Services. Client grants the rights and permissions to IBM, its affiliates, and contractors of either, to use, provide, store, and otherwise process Content solely for the purpose of providing the Cloud Services or other Services. As between IBM and Client, use of the Cloud Services or other Services will not affect Client's ownership or license rights in Content.
- b. IBM, its affiliates, and their respective contractors may access and use the Content solely for the purpose of providing and managing the IBM Cloud Services or other IBM Services. IBM will treat all Content as confidential by only disclosing the Content to IBM employees and contractors to the extent necessary to provide the IBM Cloud Services or other IBM Services.
- c. Client is responsible for obtaining all necessary rights and permissions to permit processing of Content in the Cloud Services or for IBM to perform other Services. Client will make disclosures and obtain consent required by law before Client provides, authorizes access to, or inputs individuals' information, including personal or other regulated data, for processing in the IBM Cloud Services or use by IBM in providing the other Services.

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

3. Warranties

- a. IBM warrants an IBM Program as set forth in its applicable IBM license agreement.
- b. IBM warrants it provides Services using commercially reasonable care and skill as described in the Agreement. The warranty for Services ends when the Services end.
- c. IBM warrants that an IBM Machine component of an Appliance used in its specified operating environment conforms to its specifications. The warranty period is specified in the applicable Attachment or TD.
- d. If an Appliance does not function as warranted during its warranty period and IBM is unable to repair or replace it with a functionally equivalent, Client may return it to IBM or the IBM Business Partner for a refund of the amount Client paid (for recurring charges, up to twelve months' charges) and Client's license or right to use such Appliance terminates.
- e. These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose. IBM does not warrant uninterrupted or error-free operations of an EP or that IBM will correct all defects or prevent third-party disruptions or unauthorized third-party access to an EP. IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, or failure to comply with written instructions provided by IBM. Non-IBM EPs and

preview products, or identified non-warranted IBM EPs are sold under the Agreement as-is, without warranties of any kind. Third parties may provide their own warranties to Client for Non-IBM EPs.

4. Charges, Taxes, Payment, and Verification

- a. Client's right to use an EP is contingent on Client paying applicable charges as specified in the Agreement under which Client acquired the entitlements.
- b. Client will be invoiced all applicable charges specified in the TD for acquired entitlements and any charges for use of excess authorizations. IBM or its authorized reseller as applicable shall state separately on invoices any customs, other duty, taxes and similar levies imposed by any authority excluded from the fees, and Client agrees to pay the amount of taxes, as applicable, or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3. In accordance with the Prompt Payment Act, amounts are due upon receipt of the invoice and payable within 30 days of the invoice receipt date to an account specified by IBM and if not paid within 30 days, late payment interest may apply. Client is responsible to properly acquire additional entitlements in advance to increase its use. Prepaid EPs must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid except as specified in this Agreement. IBM may pro-rate charges for select EPs to align with a common date such as Anniversary dates.
- c. Client agrees, as applicable, to fully cooperate with IBM in seeking a waiver or reduction of such withholding taxes and promptly complete and file all relevant documents.
- d. The parties agree no tangible personal property (e.g., media or publications) shall transfer to Client if: i) IBM delivers Programs electronically to Client; or ii) as applicable, Client claims a sales or use tax exemption for Programs IBM delivers electronically to Client. Where taxes are based upon the location(s) receiving the benefit of the Program, Client has an ongoing obligation to notify IBM of such location(s) if different than Client's business address listed in the applicable TD.
- e. For Cloud Services, IBM will invoice: i) recurring charges in arrears at the end of the selected billing frequency period; ii) overage and usage charges in arrears; and iii) one-time charges upon IBM's acceptance of an order. If IBM has not otherwise committed to pricing during the term of a Cloud Service as specified in a TD, then IBM may change prices on thirty days' notice in accordance with the then current GSA Schedule Pricelist.

4.1 License Verification

- a. Client will, for all Programs at all Sites and for all environments, create, retain, and each year provide to IBM upon request with 30 days' advance notice: i) a report of deployed Programs, in a format requested by IBM, using records, system tools output, and other system information; and ii) supporting documentation (collectively, Deployment Data).
- b. Upon reasonable notice, IBM and its independent auditors may verify Client's compliance with the Agreement at all Sites and for all environments, in which Client uses (for any purpose) Programs. Verification will be conducted in a manner that minimizes disruption to Client's business, and may be conducted on Client's premises, during normal business hours. IBM will have written confidentiality agreement with the independent auditor. In addition to providing Deployment Data described above, Client agrees to provide to IBM and its auditors additional accurate information and Deployment Data upon request.
- c. Client will promptly order and IBM will invoice for charges at IBM's then current prices for: i) any deployments in excess of authorizations indicated on or by any annual report or verification; ii) applicable S&S for such excess deployments for the lesser of the duration of such excess use or two years; and iii) any additional allowable charges in accordance with the GSA Schedule Pricelist determined as a result of such verification, including but not limited to taxes, duties, and regulatory fees in accordance with Section 4.b. above.

5. Liability and Intellectual Property Protection

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

- b. The following amounts are not subject to the above cap: i) third-party payments related to infringement claims described in the paragraph 5(c) below; and ii) damages that cannot be limited under applicable law. 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.
- c. If a third party asserts a claim against Client that an IBM EP acquired under the Agreement infringes a patent or copyright, IBM will indemnify the Client against the claim, at IBM's expense and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM, provided that Client must promptly: i) notify IBM in writing of the claim; and ii) supply information requested by IBM. Client shall make every effort to permit IBM to fully participate in the defense and/or settlement of such claim. However, IBM understands such participation will be under the control of the U.S. Department of Justice. IBM's defense and payment obligations for infringement claims extend to claims of infringement based on open-source code that IBM selects and embeds in an IBM EP.
- d. IBM has no responsibility for claims based on Non-IBM EPs, items not provided by IBM, or any violation of law or third-party rights caused by Content, or any Client materials, designs, specifications, or use of a non-current version or release of an IBM EP when an infringement claim could have been avoided by using a current version or release.

6. Termination

- a. Subject to the Contract's Disputes Act, IBM may terminate an order/contract immediately for cause if the other is in material breach of an Agreement, provided the non-complying party is given notice and reasonable time to comply. Upon any termination of Client's license to use a Program, Client will promptly destroy all copies of such Program.
- b. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled and apply to successors and assignees.
- c. Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations. Client's failure to pay, or Client providing inaccurate or fraudulent account or payment information to acquire EPs, is a material breach.

7. Governing Laws and Geographic Scope

- a. Both parties agree to the application of the laws of the United States Federal Government apply without regard to conflict of law principles.
- b. The rights and obligations of each party are valid only in the country where the transaction is performed (or for IBM or Non-IBM Cloud Services the country of Client's business address) or, if IBM agrees, the country where the IBM EP or Non-IBM EP is placed in productive use, except all licenses are valid as specifically granted.
- c. Each party is also responsible for complying with: i) laws and regulations applicable to its business and Content; and ii) import, export and economic sanction laws and regulations, including the defense trade control regime of the United States of America and any applicable jurisdiction that prohibit or restrict the import, export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. IBM will not serve as Client's exporter or importer, except as required by data protection laws, for: i) any Content; ii) use of any portion of a Cloud Service from a country outside Client's business address.
- d. If any provision of the Agreement is invalid or unenforceable, the remaining provisions remain in full force and effect. Nothing in the Agreement affects statutory rights of consumers that cannot be waived or limited by contract. The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under the Agreement.

8. Program License

- a. IBM Programs available under this IPAA-US Federal Government are licensed under IBM's International Program License Agreement (IPLA) or a designated IBM license agreement available at <https://www.ibm.com/support/customer/csol/terms/?ref=i125-3301-15-10-2021-us-federal-en>, and the Program's LI available at <http://www.ibm.com/terms/?cat=software-license>. If there is a conflict between the terms of this IPAA-US Federal Government, including its applicable Attachments and TDs, and the terms of the IPLA including the applicable LI, the terms of this IPAA-US Federal Government prevail.

- b. Trade-up licenses for Programs that replace qualifying IBM Programs active on S&S or qualifying Non-IBM Programs may be acquired for a reduced charge. When Client installs a replacement Program, the replaced Program license terminates, Client is required to uninstall and destroy all terminated copies of the replaced Program, and upon request from IBM, provide evidence of such.

8.1 IBM Software Subscription and Support

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

9. Term Licenses and Renewal

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

9.1 Subscription License

- a. No more than a 12-month term is permitted. IBM will invoice in full upon acceptance of Client's order. Client will not receive a prorated refund for any unused term.
- b. For select Programs that Client has previously licensed and has active S&S (Qualifying Program), Client may upgrade to a Subscription License Upgrade Program, as detailed in a TD. When a Subscription License Upgrade is acquired, Client may use the Qualifying Program and the Subscription License Program in any deployment combination up to the total number of entitlements purchased for the Subscription License Upgrade Program.

9.2 Monthly License

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

9.3 Fixed Term License

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

9.4 Term License Renewal

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

10. Full Capacity and Virtualization Requirements

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

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

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

10.2 Client's Reporting Responsibilities

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

- a. For EPs under Sub-Capacity Licensing and Container Licensing, Client agrees to properly install, run, and maintain the most current version of the applicable license reporting tool within 90 days of

Client's first deployment and produce a report. Unless IBM approves a different reporting tool, the Client agrees to the following tools.

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

10.3 Excess Use Resolution

- a. IBM will notify Client in writing if Client has used any EPs in excess of Client's Authorized Use or is otherwise not in compliance with the Agreement. IBM will invoice Client at then current GSA Schedule prices that IBM specifies in an invoice for: i) such excess use; ii) S&S and Selected Support for such excess use for the lesser of the duration of such excess use or two years; and iii) any additional contractually binding or legally obligated charges and other liabilities determined as a result of such verification including but not limited to taxes, duties, and other regulatory fees. Client agrees either to pay the amount of the taxes or provide evidence necessary to sustain an exemption, in accordance with GSA Schedule Contract Clause 552.212-4(k)

11. Selected Support

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

12. CEO (Complete Enterprise Option) Product Categories

- a. Collections of EPs may be offered by IBM on a per user basis subject to a minimum initial user quantity (a CEO Product Category). For Client's first CEO Product Category, Client must acquire licenses for all users in their Enterprise who have been assigned a machine capable of copying, using, or extending the use of any Program in the CEO Product Category (CEO User). For each

additional CEO Product Category, Client must meet the applicable minimum initial order user quantity requirement for the CEO Product Category but is not required to acquire licenses for all CEO Users.

- b. Any installs of any component of a CEO Product Category can only be used by or for users for whom licenses have been obtained. All Programs used on an end user device to access a Program on a server must be acquired from the same CEO Product Category as the server Program they access.

13. Appliances

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

13.1 Appliance Services

- a. IBM provides Appliance Services consisting of Machine maintenance and S&S as a single offering as well as other service offerings described in the IBM Appliance Support Guide at <https://www.ibm.com/support/pages/node/737691>.
- b. Appliance Services cover undamaged and properly maintained and installed Appliances used as authorized by IBM with unaltered identification labels. Services do not cover alterations, accessories, supply items, consumables (such as batteries), structural parts (such as frames and covers), or failures caused by a product for which IBM is not responsible. One year of Appliance Services is included with the purchase of an Appliance starting on the Warranty Start Date specified in a TD.
- c. If Client renews Appliance Services for an Appliance, Client must: i) also renew any expansions or add-ons applied to the Appliance; and ii) maintain Appliance Services for all uses and installations of the Appliance and expansions at a designated Site. All renewals will be fulfilled with Appliance Services offered at the same level of service, if available, that Client was entitled to during that prior coverage.

- d. If Client allows Appliance Services coverage to lapse, the benefits of Appliance Services will no longer be available to the Client. To reinstate Appliance Services, Client must acquire Appliance Services at then current prices for all uses and installations. The Appliance may be inspected by IBM no later than 30 days after Appliance Services have been reinstated. If the Appliance is not in acceptable condition, Client must restore the Appliance into acceptable working condition, as determined by IBM, to receive Appliance Service for that Appliance.
- e. Parts removed or exchanged for upgrade, warranty service, or maintenance become IBM property and must be returned to IBM within 30 days. A replacement takes on the warranty or maintenance status of the replaced part. If Client returns an Appliance to IBM, Client will remove all features not supported under Appliance Services, securely erase all data, and ensure that it is free of any legal restrictions that would prevent its return.

14. Cloud Services

- a. Cloud Services are "as a service" EPs that IBM makes available and provides via a network, such as software as a service, platform as a service, or infrastructure as a service, or other network delivered services as specified in a TD.
- b. Cloud Services are designed to be available 24/7, subject to maintenance. IBM will provide advance notice of scheduled maintenance.
- c. When IBM accepts Client's order, IBM provides Client the authorizations specified in the TD. IBM provides the facilities, personnel, equipment, software, and other resources necessary to provide Cloud Services. IBM provides generally available user guides and documentation to support Client's use of the IBM Cloud Service.
- d. Client will provide hardware, software, and connectivity to access and use Cloud Services, including any required Client-specific URL addresses and associated certificates.
- e. Client's authorized users may access Cloud Services only to the extent of authorizations Client acquires. Client is responsible for use of Cloud Services by any user who accesses the Cloud Services with Client's account credentials.
- f. The following acceptable use terms apply for Client's use of the Cloud Services. Cloud Services may not be used to undertake any activity or host Content that: i) is unlawful, fraudulent, harmful, malicious, obscene, or offensive; ii) threatens or violates the rights of others; iii) disrupts or gains (or intends to disrupt or gain) unauthorized access to data, services, networks, or computing environments within or external to IBM; iv) sends unsolicited, abusive, or deceptive messages of any type; or v) distributes any form of malware. Client may not use Cloud Services for crypto mining, unless otherwise agreed by IBM in writing. Client may not: i) reverse engineer any portion of a Cloud Service; ii) assign or resell direct access to a Cloud Service to a third party outside Client's Enterprise; or iii) combine a Cloud Service with Client's value add to create a Client branded solution that Client markets to its end user customers unless otherwise agreed by IBM in writing.
- g. Each Cloud Service is described in a Service Description and may include additional Client responsibilities. These documents can be viewed at <http://www.ibm.com/terms/?cat=cloud-sd>, or attached hereto. Technical support and service level commitments, if any, are specified in a TD.
- h. Client acquires Cloud Services on a subscription basis or as specified in a TD. Client may increase authorization levels to the Cloud Services by placing an order. Client may only decrease Client's authorization levels when renewing the Cloud Services.
- i. At any time and at IBM's discretion, IBM may change i) the IBM Cloud Services, including the corresponding published descriptions. The intent of any change will be to: (i) make available additional features and functionality; (ii) improve and clarify existing commitments; or (iii) maintain alignment to current adopted operational and security standards or applicable laws. Changes will not degrade the security or data protection features or functionality of the IBM Cloud Services. Changes to the published descriptions, or published other documents, will be effective when published or on the specified effective date.
- j. Any changes that do not meet conditions specified in item 14i above will only take effect, and Client accepts, upon: (i) a new order; (ii) the renewal order for the Cloud Services; or (iii) notification from IBM of the change effective date for ongoing services.

14.1 Cloud Services Term and Termination

- a. The Cloud Service term begins on the date IBM notifies Client that Client can access the Cloud Services. The ordering TD will specify whether the Cloud Services renew, proceed on a continuous use basis with appropriate funding provided, or terminate at the end of the term. For continuous use, the Cloud Services will continue to be available on a month-to-month basis until Client provides 30 days written termination notice to IBM or the IBM Business Partner involved in the Cloud Services. The Cloud Services will remain available until the end of the calendar month after such 30-day period.
- b. Subject to the Contract Disputes Act for Federal Ordering Activities IBM may suspend or limit, to the extent necessary, Client's use of Cloud Services if IBM reasonably determines there is a material breach of Client's obligations, security breach, violation of law, or breach of the Acceptable Use Terms. IBM will provide notice prior to a suspension as commercially reasonable. If the cause of a suspension can reasonably be remedied, IBM will provide notice of the actions Client must take to reinstate the Cloud Services. If Client fails to take such actions within a reasonable time, IBM may terminate the Cloud Services. Clients' failure to pay, or Client providing inaccurate or fraudulent Client account or payment information to acquire Cloud Services, is a material breach.
- c. Client may terminate the Cloud Services at time of renewal in accordance with the Federal Acquisition Regulation. Client may terminate upon 30 days' notice i) at the written recommendation of a government or regulatory agency following a change in either applicable law or the Cloud Services; ii) if a change to the Cloud Services causes Client to be noncompliant with applicable laws; or iii) if IBM notifies Client of a change to the Cloud Services that has a material adverse effect on Client's use of the Cloud Services, provided that IBM will have 90 days to work with Client to minimize such effect. In the event of any such Client termination above or a similar termination of a Non-IBM Cloud Service, IBM shall refund a portion of any prepaid amounts for the applicable Cloud Service for the period after the date of termination. If the Cloud Services are terminated for any other reason, Client will be invoiced, on the date of termination, for total amounts due per the Cloud Service terms. Upon termination, IBM may assist Client in transitioning Content to an alternative technology for an additional charge and under separately agreed terms.

14.2 Hybrid and Dual Entitlement Offerings

- a. Hybrid and Dual Entitlement offerings are Cloud Services which provide Client with access to Programs for use in the environment of Client's choice as well as software as a service function provided in an IBM cloud environment. Programs and S&S are provided in accordance with Program License and IBM Software Subscription and Support terms in Section 8, with the following modifications:
 - (1) Client's Program license ends when the Cloud Service subscription ends. Client agrees to promptly remove all such Programs from all Client selected computing environments and destroy all copies;
 - (2) for Hybrid Entitlement offerings, separate entitlements are required for the simultaneous use of the Cloud Service and use of the Programs in a Client computing environment; and
 - (3) for Dual Entitlement offerings, entitlements permit simultaneous use of the Cloud Services and use of the identified Programs in a Client computing environment.
- b. Enabling Software is software that Client downloads to Client systems that facilitates the use of a Cloud Service and will be identified in a TD. Enabling Software is not part of the Cloud Services and Client may use Enabling Software only in connection with use of the Cloud Service in accordance with any licensing terms specified in a TD. The licensing terms will specify applicable warranties, if any. Otherwise Enabling Software is provided as-is, without warranties of any kind.

15. General Terms

- a. EPs are for use within Client's Enterprise only. Client may not assign, resell, rent, lease, or transfer an EP to a third party. Any attempt to do so is void. Lease-back financing of Appliances is permitted. EPs may not be used to provide commercial hosting or other commercial information technology services to third parties.
- b. IBM may withdraw on 12 months' notice Term Licenses, S&S, Selected Support, Cloud Services, Appliance Services, or other Services. IBM will continue to provide the withdrawn offering for the remainder of Client's unexpired term or work with Client to migrate to another generally available

IBM offering. Non-IBM EPs may be discontinued at any time if the third party discontinues or IBM no longer makes available such Non-IBM EPs.

- c. IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory or other obligations or assume any responsibility for Client's business or operations. Client is responsible for its use of IBM EPs and Non-IBM EPs. IBM is acting as an information technology provider only. IBM's direction, suggested usage, guidance, or Client's use of an IBM EP does not constitute medical, clinical, legal, accounting, or other licensed professional advice. Client should obtain its own expert advice. Each party is responsible for determining the assignment, direction, control, and compensation of its and its affiliates personnel and their respective contractors.
- d. For Programs IBM provides to Client in tangible form, IBM fulfills its shipping and delivery obligations upon the delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by Client and IBM.
- e. Client may not use IBM EPs or Non-IBM EPs if failure or interruption of the IBM EPs or Non-IBM EPs could lead to death, serious bodily injury, or property or environmental damage.
- f. Parties will not disclose confidential information to employees or contractors of the other party without a separate, signed confidentiality agreement. If confidential information is exchanged in connection with the Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this IPAA-US Federal Government. This paragraph does not apply to Content provided in the use of an IBM Cloud Services or Non-IBM Cloud Service.
- g. IBM maintains a robust set of business conduct and related guidelines covering conflicts of interest, market abuse, anti-bribery and corruption, and fraud. IBM and its personnel comply with such policies and require contractors to have similar policies.
- h. IBM, its affiliates, and their respective contractors require use of business contact information and certain account usage information. This information is not Content. Business contact information is used to communicate and manage business dealings with the Client. Examples of business contact information include name, business telephone, address, email, user ID, and tax registration number(s). Account usage information is required to enable, provide, manage, support, administer, and improve EPs. Examples of account usage information include reported errors and digital information gathered using tracking technologies, such as cookies and web beacons during use of the EPs. The IBM Privacy Statement at <http://www.ibm.com/privacy> or attached hereto upon request, provides additional details with respect to IBM's collection, use, and handling of business contact and account usage information. When Client provides information to IBM and notice to, or consent by, the individuals is required for such processing, Client will notify the individuals and obtain their consent.
- i. IBM Business Partners who use or make available IBM EPs or Non-IBM EPs are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings. If IBM notifies Client their current IBM Business Partner will no longer resell an IBM EP, Client may select to acquire the EP directly from IBM or another authorized IBM Business Partner as available.
- j. IBM may offer Non-IBM EPs, or an IBM EP may enable access to Non-IBM EP, that may require acceptance of third-party terms presented to the Client. Please contact your IBM representative for a copy of the terms. Linking to or use of Non-IBM EPs constitutes Client's agreement with such third-party terms. Third-party terms and privacy practices govern use of Content Client may provide, grant access to or input to a Non-IBM Cloud Service or other Non-IBM Service. IBM is not a party to any third-party agreement and is not responsible for Non-IBM EPs. Access to Non-IBM EPs may be discontinued at any time if the third party discontinues or IBM no longer makes available such Non-IBM EPs.
- k. A preview product is when IBM makes an IBM EP or Non-IBM EP or feature of an IBM EP or Non-IBM EP available at no charge, with limited or pre-release functionality, or for a limited time, to try available functionality (such as beta, trial, evaluation, no-charge, or designated preview products). Services levels agreements set forth in the Agreement (including in a TD or Attachment) that provides service levels does not apply to preview products. A preview product may not be covered by support and IBM may change or discontinue a preview product at any time and without notice. For any preview product that is provided as a pre-release, IBM is not obligated to release a

generally available product. Client is responsible for placing an order under generally available terms for generally available EPs when a preview expires.

- l. Neither party may assign the Agreement, in whole or in part, without the prior written consent of the other. IBM may assign its right to receive payments without consent. IBM will remain responsible to perform its obligations. Assignments by IBM in conjunction with the sale of the portion of IBM's business that includes an IBM EP or Non-IBM EP is not restricted.
- m. The parties' consent to use electronic means and facsimile transmissions for communications as a signed writing. Any reproduction of the Agreement made by reliable electronic means is considered an original. The Agreement supersedes any course of dealing, discussions, or representations between the parties. Where approval acceptance, consent, access, cooperation, or similar action by either party is required, such action will not be unreasonably delayed or withheld.
- n. No right or cause of action for any third party is created by the Agreement or any transaction under it. Unless a longer period is permitted by the Federal Contracts Disputes Act, 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.
- o. IBM may use personnel and resources in locations worldwide, including third-party contractors to support the delivery of IBM EPs and Non-IBM EPs. Client's use of IBM EPs or Non-IBM EPs may result in the transfer of Content, including personally identifiable information, across country borders. A list of countries where Content may be transferred and processed is described in the TD or as specified in Services support documentation. IBM is responsible for the obligations under the Agreement even if IBM uses a third-party contractor and will have appropriate agreements in place to enable IBM to meet its obligations.
- p. If IBM and Client agree to use a Client requested third-party service to support the procurement or payment activities associated with the Agreement, IBM agrees to submit or receive applicable documents (such as invoices or similar contracting documents) using the third-party service. Client agrees to reimburse IBM for any third-party fees associated with IBM's use of such third-party service. In the event: i) the third-party service becomes unavailable for any reason; or ii) the third-party provider modifies the service or terms of use in a manner IBM deems commercially unacceptable, the Client agrees to directly accept documents from IBM and pay IBM directly. Client remains responsible to IBM for timely payments of invoices. If there is a claim or proceeding against IBM related to IBM's proper use of Client's requested third-party service, Client is responsible to reimburse IBM for reasonable defense costs and any amounts IBM is required to pay due to such claim or proceeding. Such claims or proceedings include those due to the third-party service provider's use, misuse, or disclosure of data or confidential information disclosed through the third-party service or the third-party's failure to comply with applicable data protection laws. IBM agrees to promptly notify Client in writing of any such claim or proceeding.