Chapter 3 Client Relationship Agreement for Machines– US Federal Government

This Client Relationship Agreement for Machines (CRA) and applicable Attachments and Transaction Documents are the complete agreement regarding each transaction under this CRA (together, the "Agreement") under which Client may order Machines (IBM Products) and third-party machines (Non-IBM Products). An IBM Product includes warranty services (Services). Available support services are as described in an Attachment and TD.

Transaction Documents (TDs) provide the specifics of transactions such as charges and a description of and information about the Product. Examples of TDs include statements of work, service descriptions, license information, licensed program specifications, ordering documents, supplements, or invoices. There may be more than one TD applicable to a transaction.

Attachments provide supplemental terms that apply across certain types of IBM Products and Non-IBM Products.

In the event of conflict, an Attachment prevails over this CRA and a TD prevails over both the CRA and any Attachment and only applies to the specific transaction.

1. Machines

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

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

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

d. Unless otherwise specified in a TD, IBM's prices cover equipment delivery to destination for any location within the United States.

e. Acceptance of Machines is the date of delivery to the location designated on the Purchase Order. Notwithstanding anything to the contrary, the parties agree as follows: (i) the ordering activity may negotiate an extension regarding the time of acceptance before issuing a delivery order; and (ii) the parties may mutually agree on the acceptance period for overseas orders.

1.1 Machine Code and Built in Capacity

a. Machines may include Machine Code (MC) and Built in Capacity (BIC). MC is computer instructions, fixes, replacements, and related materials, such as data and passwords relied on, provided, used with or generated by MC, that permit the operation of the machine's processors, storage or other functionality. MC may include Other Internal Licensed Code (OILC) licensed under a separate agreement as identified for a Machine in the server product support pages at https://www.ibm.com/support/pages/node/631391. BIC is computing resource (e.g., processors, storage and other functionality) that IBM provides for a Machine. Use of BIC may be restricted by contract, technology or other measures.

b. Copies of MC are copyrighted and licensed. IBM only provides copies, fixes or replacements for MC for Machines under warranty or IBM maintenance, or under a separate written agreement which may be subject to additional charges. Client agrees that all copies, fixes or replacements for MC will be obtained solely as authorized by IBM.

c. Client is granted a nonexclusive license to use MC only: i) on the Machine for which IBM provided it; and ii) to access and use BIC only to the extent paid for by Client, activated by IBM and subject to the IBM Authorized Use Table for Machines (AUT) Attachment available at http://www.ibm.com/systems/support/machine_warranties/machine_code/aut.html.

d. Except as provided in an OILC, Client may not alter, reverse assemble, reverse compile, translate or reverse engineer the MC, or circumvent or interfere, by any means, with IBM's contractual, technological or other measures that restrict, monitor or report on use of BIC or MC.

Client agrees to IBM's implementation of technological and other measures that restrict, monitor and report on use of BIC or MC, and to install any changes IBM provides. Use of BIC in excess of authorizations from IBM is subject to additional charges.

While Client's license to MC is in effect, Client may transfer possession of the entire MC along with all of Client's rights and obligations only with corresponding transfer of the Machine, including BIC, and a hardcopy of this MC license, and only if the transferee agrees to the terms of this MC license. Client's MC license terminates immediately upon transfer.

e. This Agreement governs MC and BIC on Machines Client acquires from another party.

f. Upon any termination of Client's license to use MC, Client will promptly destroy all copies of the MC.

2. Content and Data Protection

a. Content consists of all data, software, and information that Client or its authorized users provides, authorizes access to, make available or grant access to, in connection with IBM providing 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 Services. Use of the Services will not affect Client's ownership or license rights in Content.

b. IBM, its affiliates, and contractors of either may access and use the Content solely for the purpose of providing and managing the applicable Services. IBM will treat all Content as confidential by only disclosing to IBM employees and contractors to the extent necessary to perform Services.

c. Client is responsible for obtaining all necessary rights and permissions to permit processing of Content to provide 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 use by IBM in providing the Services.

d. If any Content could be subject to governmental regulation or may require security measures beyond those specified by IBM to provide Services. Client will not provide, allow access to, or input Content to provide 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 prior to providing or allowing access of Content to IBM to provide Services.

e. IBM Data Security and Privacy Principles (DSP), at http://ibm.com/terms/?id=z126-7745, apply for generally available Services to support an IBM Product as identified in a TD. At IBM's discretion, IBM may change the DSP from time to time and the change will be effective when published or on the specified effective date. The intent of any change will be to improve and clarify existing commitments and maintain alignment to current adopted operational and security standards or applicable laws. The intent is not to degrade the security or functionality

f. The specific security features and functions of other Services will be described in the applicable Attachment and TD. Client is responsible for assessing the intended use or the use of Content with Services IBM will provide. Client acknowledges that the Services meet Client's requirements and processing instructions required to comply with applicable laws.

g. IBM's Data Processing Addendum (DPA) is found at http://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 IBM's processing of personal data on behalf of the Client. Please contact your IBM representative for the applicable Data Processing Exhibit.

h. If IBM stores any Content on IBM computing resources, IBM will return or remove Content from IBM computing resources upon the expiration or cancellation of the 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 that a Machine, when used in its specified operating environment conforms to its specifications. For a Machine, the warranty period is specified in the Attachment or TD. During its warranty period, IBM will repair or exchange the Machine without charge, as specified in the Attachment or TD. Warranty does not apply to Machines that Client did not allow IBM to install as required by the TD. Client may purchase warranty service upgrades and post warranty support where available. For Appliances, post warranty support includes maintenance and S&S.

b. The warranty period for machines that require IBM installation will commence upon the earlier of the calendar day following the completion of the installation by IBM, or 45 days following shipment from IBM. The warranty period for customer set up (CSU) machines will commence upon the earlier of two calendar days after delivery to IBM's end client by IBM's common carrier, or two calendar days after the standard transit allowance period from the last IBM location.

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

d. **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 operation of an IBM Product or that IBM will correct all defects or prevent third-party disruptions or unauthorized third-party access to an IBM Product. 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 Products and preview products, or identified non-warranted IBM Products, are sold under the Agreement as-is, without warranties of any kind. Third parties may provide their own warranties to Client for Non-IBM Products.**

e. Additional support available during or after the warranty period may be available under separate agreement.

4.   Charges, Taxes, Payment, and Verification

a. Client will be invoiced all applicable charges specified in a TD for an IBM Product or Non-IBM Product, and charges for use in excess of authorizations. The Government will be invoiced for products upon shipment. IBM shall state separately on invoices taxes excluded from the fees, and the Client agrees either to pay the amount of the taxes or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3. Amounts are due upon receipt of the invoice and payable within 30 days, in accordance with the Prompt Payment Act, to an account specified by IBM. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid, except as may be specified in an Agreement.

b. If applicable, Client agrees: 1) to pay any withholding tax directly to the appropriate government entity where required by law; ii) furnish a tax certificate evidencing such payment to IBM; iii) pay IBM only the 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 .

c. If Client imports, exports, transfers, accesses, or uses an IBM Product or Non-IBM Product across a border, Client agrees to be responsible for and pay authorities any custom, duty, tax, or similar levy assessed by the authorities. This excludes those taxes based on IBM's net income.

4.1   Licensing Verification

a. Client will, for all Machine Code (MC), at all sites and for all environments, create, retain, and each year provide to IBM upon request within 30 days' advance notice: i) a report, 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 this Agreement, at all sites and for all environments, in which Client uses (for any purposes) MC. 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 a written confidentiality agreement with the independent auditor. In addition to providing Deployment Data described above, Licensee 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 rates associated with: i) any deployments in excess of authorizations indicated on or by any annual report or verification; ii) applicable software maintenance or subscription and support services (S&S) for such excess deployments for the lesser of the duration of such excess use or two years; and iii) any additional charges and other liabilities determined as a result of such verification, including but not limited to taxes, duties, and regulatory fees.

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 Product 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 below; and ii) damages for which liability cannot be limited by law.

c. If a third party asserts a claim against Client that an IBM Product acquired under the Agreement infringes a patent or copyright, IBM will indemnify the Client against that 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. The Government 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 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 Product.

d. IBM has no responsibility for claims based on: i) Non-IBM Products; ii), items not provided by IBM ; iii) IBM's proper use of any Client required third-party product or service related to the administration of the transaction; iv) any violation of law or third-party rights caused by Content or any Client materials, designs, specifications; or v) Client's use of a non-current version or release of an IBM Product when an infringement claim could have been avoided by using a current version or release.

6. Termination

a. Upon any termination of Client's license to use MC, Client will promptly destroy all copies of the MC after either party has terminated the license.

7. Governing Laws and Geographic Scope

a. Each party is responsible for complying with: i) laws and regulations applicable to its business and Content; and ii) import, export and economic sanction laws and regulations, including the defense trade control regime of the United States of America and any applicable jurisdiction, including the International Traffic in Arms Regulations 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 any Content.

b. Both parties agree to the application of the laws of the US Federal Government apply without regard to conflict of law principles. The rights and obligations of each party are valid only in the country where the transaction is performed or, if IBM agrees, the country where the product is placed in productive use, except all licenses are valid as specifically granted. If any provision of the Agreement is invalid or unenforceable, the remaining provisions remain in full force and effect. Nothing in the Agreement affects statutory rights of consumers that cannot be waived or limited by contract. The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under the Agreement.

8. General

a. 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 CRA.

b. 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. Client is responsible for its use of IBM Products and Non-IBM Products. IBM is acting as an information technology provider only. IBM's direction, suggested usage, guidance, or Client's use of an IBM Product does not constitute medical, clinical, legal, accounting, or other licensed professional advice. Client should obtain its own expert advice. Client is responsible for its use of IBM Products and Non-IBM Products. Each party is responsible for determining the assignment of its and its affiliates personnel and their respective contractors, and for their direction, control, and compensation.

c. Client may not use IBM Products or Non-IBM Products if failure or interruption of the IBM Products or Non-IBM Products could lead to death, serious bodily injury, or property or environmental damage.

d. 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.

e. IBM Business Partners who use or make available IBM Products or Non-IBM Products are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings.

f. IBM may offer Non-IBM Products, or an IBM Product may enable access to Non-IBM Product, that may require acceptance of third party terms presented to the Client. Third party terms and privacy practices govern use of a Non-IBM Cloud Service or other Service, including Content Client may provide, grant access to or input to. IBM will invoice Client for charges due and submit Client's order details to the third party provider for the enablement and delivery of the Non-IBM Product. Terms are reviewed and accepted by the Client. Linking to or use of Non-IBM Products constitutes Client's agreement with such terms. IBM is not a party to such third party agreements and is not responsible for such Non-IBM Products. Access to ongoing Non-IBM Cloud Products may be discontinued at any time if the third party discontinues or IBM no longer makes available such Non-IBM Products.

g. An IBM Product or Non-IBM Product or feature of an IBM Product or Non-IBM Product is considered "preview product" when IBM makes such product or features available for 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). Service level agreements, if any, do not apply to preview products. A preview product may not be covered by support and IBM may charge or discontinue a preview product at any time and without notice. For any preview product that is provided as pre-release, IBM is not obligated to release a generally available product. Client

is responsible to return a preview product or place an order under generally available terms for acquiring IBM Product or Non-IBM Product beyond the preview period.

h. IBM, its affiliates, and contractors of either 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 information. Account usage information is required to enable, provide, manage, support, administer, and improve IBM Products. Examples of account usage information include reported errors and digital information gathered using tracking technologies, such as cookies and web beacons, during use of IBM Products. The IBM Privacy Statement at https://www.ibm.com/privacy/ provides additional details with respect to IBM's collection, use, and handling of business contact and account usage information. When Client provides information to IBM and notice to, or consent by, the individuals is required for such processing, Client will notify individuals and obtain consent.

i. Neither party may assign the Agreement, in whole or in part, without the prior written consent of the other. IBM may assign rights to receive payments.(e.g., Leases). IBM will remain responsible to perform its obligations. Assignment by IBM in conjunction with the sale of the portion of IBM's business that includes an IBM Product or Non-IBM Product is not restricted.

j. All notices under the Agreement must be in writing and sent to the business address specified for the Agreement, unless a party designates in writing a different address. The parties consent to the use of electronic means and facsimile transmissions for communications as a signed writing. Any reproduction of the Agreement made by reliable means is considered an original. The Agreement supersedes any course of dealing, discussions or representations between the parties. Where approval, acceptance, consent, access, cooperation, or similar action by either party is required, such action will not be unreasonably delayed or withheld.

k. No right or cause of action for any third party is created by the Agreement or any transaction under it. Neither party will bring a legal action arising out of or related to the Agreement more than two years after the cause of action arose. Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control. Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations.

l. IBM may use personnel and resources in locations worldwide, including third-party contractors, to support the delivery of IBM Products and Non-IBM Products. As allowable per the Client Contract, IBM Products or Non-IBM Products 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 applicable 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.

m. US Government Enterprise is defined as the US Government Agency acquiring IBM products and/or services for the exclusive use by that Agency.

n. If IBM and Client agree to use a Client requested third-party service to support the procurement or payment activities associated with an Agreement, IBM agrees to submit or receive applicable documents (such as invoices or similar contracting documents) using the 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. 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, IBM reserves the right, subject to the Contract Disputes Act, to seek reimbursement from the Client for reasonable costs and amounts IBM is required to pay associated with such claims or proceedings. This includes claims or proceedings 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.